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I

104TH CONGRESS
1ST SESSION

# H. R. 2517

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

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IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1995

Mr. KASICH introduced the following bill; which was referred to the Committee on the Budget, and in addition to the Committees on Agriculture, Banking and Financial Services, Commerce, Economic and Educational Opportunities, Government Reform and Oversight, International Relations, the Judiciary, National Security, Resources, Rules, Science, Transportation and Infrastructure, Veterans' Affairs, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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# A BILL

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

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Seven-Year Balanced Budget Reconciliation Act of 1995''.

**SEC. 2. TABLE OF TITLES.**

This Act is organized into titles as follows:

Title I—Committee on Agriculture
Title II—Committee on Banking and Financial Services
Title III—Committee on Commerce
Title IV—Committee on Economic and Educational Opportunities
Title V—Committee on Government Reform and Oversight
Title VI—Committee on International Relations
Title VII—Committee on the Judiciary
Title VIII—Committee on National Security
Title IX—Committee on Resources
Title X—Committee on Transportation and Infrastructure
Title XI—Committee on Veterans' Affairs
Title XII—Committee on Ways and Means-Trade
Title XIII—Committee on Ways and Means-Revenues
Title XIV—Committee on Ways and Means-Tax Simplification
Title XV—Preserving, Protecting, and Strengthening Medicare
Title XVI—Transformation of the Medicaid Program
Title XVII—Abolishment of Department of Commerce
Title XVIII—Welfare Reform
Title XIX—Contract with America-Tax Relief
Title XX—Budget Enforcement

# TITLE I—COMMITTEE ON AGRICULTURE

**SEC. 1001. SHORT TITLE AND TABLE OF CONTENTS.**

(a) SHORT TITLE.—This title may be cited as the ''Agricultural Reconciliation Act of 1995''.

(b) TABLE OF CONTENTS.—The table of contents of this title is as follows:

**TITLE I—COMMITTEE ON AGRICULTURE**

Sec. 1001. Short title and table of contents.

**Subtitle A—Freedom to Farm**

Sec. 1101. Short title.
Sec. 1102. Seven-year contracts to improve farming certainty and flexibility.
Sec. 1103. Availability of nonrecourse marketing assistance loans for wheat, feed grains, cotton, rice, and oilseeds.
Sec. 1104. Reform of payment limitation provisions of Food Security Act of 1985.
Sec. 1105. Suspension of certain provisions regarding program crops.

**Subtitle B—Dairy**

CHAPTER 1—AUTHORIZATION OF MARKET TRANSITION PAYMENTS IN LIEU OF MILK PRICE SUPPORT PROGRAM

Sec. 1201. Seven-year market transition contracts for milk producers.

Sec. 1202. Recourse loans for commercial processors of dairy products.

CHAPTER 2—DAIRY EXPORT PROGRAMS

Sec. 1211. Dairy export incentive program.
Sec. 1212. Authority to assist in establishment and maintenance of export trading company.
Sec. 1213. Standby authority to indicate entity best suited to provide international market development and export services.
Sec. 1214. Study and report regarding potential impact of Uruguay Round on prices, income and Government purchases.

CHAPTER 3—DAIRY PROMOTION PROGRAMS

Sec. 1221. Research and promotion activities under Fluid Milk Promotion Act of 1990.
Sec. 1222. Expansion of dairy promotion program to cover dairy products imported into the United States.
Sec. 1223. Promotion of United States dairy products in international markets through dairy promotion program.
Sec. 1224. Issuance of amended order under Dairy Production Stabilization Act of 1983.

CHAPTER 4—VERIFICATION OF MILK RECEIPTS

Sec. 1231. Program to verify receipts of milk.
Sec. 1232. Verification program to supersede multiple existing Federal orders.

CHAPTER 5—MISCELLANEOUS PROVISIONS RELATED TO DAIRY

Sec. 1241. Extension of transfer authority regarding military and veterans hospitals.
Sec. 1242. Extension of dairy indemnity program.
Sec. 1243. Extension of report regarding export sales of dairy products.
Sec. 1244. Status of producer-handlers.

**Subtitle C—Other Commodities**

Sec. 1301. Extension and modification of price support and quota programs for peanuts.
Sec. 1302. Availability of loans for processors of sugarcane and sugar beets.
Sec. 1303. Repeal of obsolete authority for price support for cottonseed and cottonseed products.

**Subtitle D—Miscellaneous Program Changes**

Sec. 1401. Limitations on assistance under emergency livestock feed assistance program.
Sec. 1402. Conservation reserve program.
Sec. 1403. Crop insurance program.
Sec. 1404. Repeal of farmer owned reserve program.
Sec. 1405. Reduction in funding levels for export enhancement program.
Sec. 1406. Business Interruption Insurance Program.

**Subtitle E—Commission on 21st Century Production Agriculture**

Sec. 1501. Establishment.

Sec. 1502. Composition.
Sec. 1503. Comprehensive review of past and future of production agriculture.
Sec. 1504. Reports.
Sec. 1505. Powers.
Sec. 1506. Commission procedures.
Sec. 1507. Personnel matters.
Sec. 1508. Termination of Commission.

# Subtitle A—Freedom to Farm

**SEC. 1101. SHORT TITLE.**

This subtitle may be cited as the ''Freedom to Farm Act of 1995''.

**SEC. 1102. SEVEN-YEAR CONTRACTS TO IMPROVE FARMING CERTAINTY AND FLEXIBILITY.**

(a) CONTRACTS AUTHORIZED.—Section 102 of the Agricultural Act of 1949 (7 U.S.C. 1443), which is obsolete, is amended to read as follows:

**"SEC. 102. SEVEN-YEAR MARKET TRANSITION CONTRACTS.**

''(a) CONTRACTS AUTHORIZED.—

''(1) OFFER AND MAIN TERMS.—Beginning as soon as possible after the date of the enactment of this section, the Secretary shall offer to enter into a contract (to be known as a 'market transition contract') with eligible owners and operators described in paragraph (2) on a farm containing eligible farmland. Under the terms of a market transition contract, the owner or operator shall agree, in exchange for annual payments under the contract, to comply with the conservation compliance plan for the farm prepared in accordance with section 1212 of the

Food Security Act of 1985 (16 U.S.C. 3812) and wetland protection requirements applicable to the farm under subtitle C of title XII of such Act (16 U.S.C. 3821 et seq.).

''(2) ELIGIBLE OWNERS AND OPERATORS DESCRIBED.—The following persons shall be considered to be an owner or operator eligible to enter into a market transition contract:

''(A) An owner of eligible farmland who assumes all of the risk of producing a crop.

''(B) An owner of eligible farmland who shares in the risk of producing a crop.

''(C) An operator of eligible farmland with a share-rent lease of the eligible farmland, regardless of the length of the lease, if the owner enters into the same market transition contract.

''(D) An operator of eligible farmland who cash rents the eligible farmland under a lease expiring on or after September 30, 2002, in which case the consent of the owner is not required.

''(E) An operator of eligible farmland who cash rents the eligible farmland under a lease expiring before September 30, 2002, if the owner consents to the contract.

"(F) An owner of eligible farmland who cash rents the eligible farmland and the lease term expires before September 30, 2002, but only if the actual operator of the farm declines to enter into a market transition contract. In the case of an owner covered by this subparagraph, payments will not begin under a market transition contract until the fiscal year following the fiscal year in which the lease held by the nonparticipating operator expires.

"(3) TENANTS AND SHARECROPPERS.—The Secretary shall provide adequate safeguards to protect the interests of operators who are tenants and sharecroppers.

"(b) ELEMENTS OF CONTRACTING.—

"(1) TIME FOR CONTRACTING.—

"(A) DEADLINE.—Except as provided in subparagraph (B), the Secretary may not enter into a market transition contract after April 15, 1996.

"(B) SPECIAL RULE FOR CONSERVATION RESERVE LANDS.—Eligible owners and operators on farms covered by a conservation reserve contract under section 1231 of the Food Security Act of 1985 (16 U.S.C. 3831) that expires

after April 15, 1996, may enter into or expand a market transition contract to cover the acreage equal to the quantity of the farm's crop acreage bases restored with respect to the farm under the terms and conditions of the conservation reserve program. The Secretary shall annually conduct an enrollment for such conservation reserve program acreage for the fiscal years 1997 through 2002.

''(2) DURATION OF CONTRACT.—The term of each market transition contract shall—

''(A) begin with the 1996 crop year, or the crop year in which the contract is entered into in the case of a contract entered into after April 15, 1996; and

''(B) extend through the 2002 crop year.

''(3) ESTIMATION OF PAYMENTS.—At the time the Secretary enters into a market transition contract, the Secretary shall provide an estimate of the minimum payments anticipated to be made under the contract during at least the first fiscal year for which payments will be made. If the actual payment under the contract for the first fiscal year is less than 95 percent of the estimated payment, the

owner or operator subject to the contract may terminate the contract without penalty.

''(4) REPORT ON CONTRACTING.—Not later than 90 days after the date of the enactment of this section, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the manner in which the Secretary proposes to enter into market transition contracts, the number of persons and acreage covered by such contracts, and the total amount of anticipated payments to be made under such contracts (consistent with the limitations specified in subsection (e)).

''(c) ELIGIBLE FARMLAND DESCRIBED.—Land shall be considered to be farmland eligible for coverage under a market transition contract only if the land has crop acreage base attributable to the land and—

''(1) for at least one of the 1991 through 1995 crop years, at least a portion of the land was enrolled in the acreage reduction program authorized for a crop of rice, upland cotton, feed grains, or wheat under section 101B, 103B, 105B, or 107B or was considered planted to rice, upland cotton, feed

grains, or wheat, as certified under section 503(c)(7);

''(2) was subject to a conservation reserve contract under section 1231 of the Food Security Act of 1985 (16 U.S.C. 3831) whose term expired on or after January 1, 1995; or

''(3) is released from coverage under a conservation reserve contract by the Secretary during the period beginning on January 1, 1995, and ending on April 15, 1996.

''(d) TIME FOR PAYMENT.—

''(1) IN GENERAL.—An annual payment under a market transition contract shall be made not later than September 30 of each of the fiscal years 1996 through 2002.

''(2) ADVANCE PAYMENTS.—Beginning in fiscal year 1997, half of the annual payment may be made on March 15 at the option of the owner or operator subject to the contract. At the option of the owner or operator, half of the annual payment for fiscal year 1996 may be made within 90 days of the date on which the owner or operator enters into the market transition contract.

''(e) TOTAL AMOUNTS AVAILABLE FOR PAYMENTS UNDER ALL CONTRACTS.—

"(1) TOTAL PAYMENTS.—Total payments under all market transition contracts for fiscal years 1996 through 2002 shall not exceed $38,733,000,000.

"(2) TOTAL PAYMENTS PER FISCAL YEAR.—Beginning in fiscal year 1996, the Secretary shall expend on a fiscal year basis the following amounts to satisfy the obligations of the Secretary under market transition contracts:

"(A) For fiscal year 1996, $6,014,000,000.

"(B) For fiscal year 1997, $5,829,000,000.

"(C) For fiscal year 1998, $6,244,000,000.

"(D) For fiscal year 1999, $6,047,000,000.

"(E) For fiscal year 2000, $5,573,000,000.

"(F) For fiscal year 2001, $4,574,000,000.

"(G) For fiscal year 2002, $4,453,000,000.

"(3) ADJUSTMENT OF PAYMENT AMOUNTS.—The Secretary shall adjust the amount specified in

paragraph (1), and the amount specified in paragraph (2) for a particular fiscal year, as follows:

''(A) Subtracting an amount equal to the amount, if any, necessary during that fiscal year to satisfy payment requirements under sections 101B, 103B, 105B, and 107B for the 1994 and 1995 crop years.

''(B) Adding an amount equal to the sum of all producer repayments of deficiency payments received during that fiscal year under section 114(a)(2).

''(C) Adding an amount equal to the sum of all market transition contract payments withheld by the Secretary, at the request of producers, during the preceding fiscal year as an offset against producer repayments of deficiency payments otherwise required under section 114(a)(2).

''(D) Adding an amount equal to the sum of all refunds of market transition contract payments received during the preceding fiscal year under subsection (i).

''(f) CONTRACT PAYMENTS TO BE BASED ON HISTORIC EXPENDITURE LEVELS.—

"(1) CONTRACT COMMODITY DEFINED.—For purposes of this section, the term 'contract commodity' means rice, upland cotton, feed grains, or wheat.

"(2) CALCULATION OF HISTORIC EXPENDITURE LEVELS.—

"(A) IN GENERAL.—For each contract commodity, the Secretary shall calculate the total expenditures that were required for the 1991 through 1995 crops of that contract commodity under section 101B, 103B, 105B, or 107B, including expenditures in the form of deficiency payments, loan deficiency payments, gains realized from repaying loans at a level less than the original level, and marketing certificates.

"(B) SPECIAL RULE FOR 1995 CROP YEAR.—In the absence of information regarding actual expenditures for the 1995 crop of each contract commodity, the Secretary may use an estimate of expenditures under section 101B, 103B, 105B, or 107B for that crop year. The Secretary shall base such estimate on information contained in the President's budget for fiscal year 1997 submitted to the Congress under section 1105 of title 31, United States Code.

"(3) AMOUNTS AVAILABLE FOR EACH CONTRACT COMMODITY.—The amount available for a fiscal year for payments with respect to crop acreage base of a contract commodity included in market transition contracts in effect during that fiscal year shall be equal to the product of—

"(A) the ratio of the amount calculated under paragraph (2) for that contract commodity to the total amount calculated for all contract commodities under such paragraph; and

"(B) the amount specified in paragraph (2) of subsection (e) for that fiscal year, as adjusted under paragraph (3) of such subsection.

"(g) DETERMINATION OF PAYMENTS UNDER PARTICULAR CONTRACT.—

"(1) INDIVIDUAL PRODUCTION OF CONTRACT COMMODITIES.—For each market transition contract, the amount of production of a contract commodity covered by the contract shall be equal to the product of—

"(A) the crop acreage base of that contract commodity attributable to the eligible farmland subject to the contract; and

"(B) the farm program payment yield in effect for the 1995 crop of that contract com-

modity for the farm containing that eligible farmland.

''(2) ANNUAL TOTAL PRODUCTION OF CONTRACT COMMODITIES.—For each of the fiscal years 1996 through 2002, the total production of each contract commodity covered by all market transition contracts shall be equal to the sum of the amounts calculated under paragraph (1) for each individual market transition contract in effect during that fiscal year.

''(3) ANNUAL PAYMENT RATE.—The payment rate for a contract commodity for a fiscal year shall be equal to—

''(A) the amount made available under subsection (f)(3) for that contract commodity for that fiscal year; divided by

''(B) the amount determined under paragraph (2) for that fiscal year.

''(4) ANNUAL PAYMENT AMOUNT.—For each of the fiscal years 1996 through 2002, the amount to be paid under a particular market transition contract in effect during that fiscal year with respect to a contract commodity shall be equal to the product of—

"(A) the amount of production determined under paragraph (1) for that contract for that contract commodity; and

"(B) the payment rate in effect under paragraph (3) for that fiscal year for that contract commodity.

"(5) ASSIGNMENT OF PAYMENTS.—The provisions of section 8(g) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(g)) (relating to assignment of payments) shall apply to payments under this subsection. The owner or operator making the assignment, or the assignee, shall provide the Secretary with notice, in such manner as the Secretary may require in the market transition contract, of any assignment made under this paragraph.

"(6) SHARING OF PAYMENTS.—The Secretary shall provide for the sharing of payments made under a market transition contract among the owners and operators subject to the contract on a fair and equitable basis.

"(h) LIMITATION ON TOTAL AMOUNT OF PAYMENT.—The total amount of payments made to a person under a market transition contract during any fiscal year may not exceed $50,000. The Secretary shall issue regula-

tions defining the term 'person' as used in this section, which shall conform, to the extent practicable, to the regulations defining the term 'person' issued under section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308). In the case of payments under a market transition contract provided to corporations and other persons described in paragraph (5)(B)(i)(II) of such section, the Secretary shall comply with the attribution requirements specified in paragraph (5)(C) of such section.

''(i) EFFECT OF VIOLATION.—

''(1) TERMINATION OF CONTRACT.—If an owner or operator subject to a market transition contract violates the conservation compliance plan for the farm containing eligible farmland under the contract or wetland protection requirements applicable to the farm, the Secretary may terminate the market transition contract with respect to that owner or operator. Upon such termination, the owner or operator shall forfeit all rights to receive future payments under the contract and shall refund to the Secretary all payments under the contract received by the owner or operator during the period of the violation, together with interest thereon as determined by the Secretary.

''(2) REFUND OR ADJUSTMENT.—If the Secretary determines that a violation of a market transition contract does not warrant termination of the contract under paragraph (1), the Secretary may require the owner or operator subject to the contract—

''(A) to refund to the Secretary that part of the payments received by the owner or operator during the period of the violation, together with interest thereon as determined by the Secretary; or

''(B) to accept an adjustment in the amount of future payments otherwise required under the contract.

''(3) FORECLOSURE.—An owner or operator subject to a market transition contract may not be required to make repayments to the Secretary of amounts received under the contract if the eligible farm land that is subject to the contract has been foreclosed upon and the Secretary determines that forgiving such repayments is appropriate in order to provide fair and equitable treatment. This paragraph shall not void the responsibilities of such an owner or operator under the contract if the owner or operator continues or resumes operation, or control, of the

property that is subject to the contract. Upon the resumption of operation or control over the property by the owner or operator, the provisions of the contract in effect on the date of the foreclosure shall apply.

''(4) REVIEW.—A determination of the Secretary under this subsection shall be considered to be an adverse decision for purposes of the availability of administrative review of the determination.

''(j) TRANSFER OF INTEREST IN LANDS SUBJECT TO CONTRACT.—

''(1) EFFECT OF TRANSFER.—Except as provided in paragraph (2), the transfer by an owner or operator subject to a market transition contract of the right and interest of the owner or operator in the eligible farmland under the contract shall result in the termination of the contract with respect to that farmland, effective on the date of the transfer, unless the transferee of the land agrees with the Secretary to assume all obligations of the contract. At the request of the transferee, the Secretary may modify the contract if the modifications are consistent with the objectives of this section as determined by the Secretary.

''(2) EXCEPTION.—If an owner or operator who is entitled to a payment under a market transition contract dies, becomes incompetent, or is otherwise unable to receive such payment, the Secretary shall make such payment, in accordance with regulations prescribed by the Secretary and without regard to any other provision of law, in such manner as the Secretary determines is fair and reasonable in light of all of the circumstances.

''(k) PLANTING FLEXIBILITY.—

''(1) PERMITTED CROPS.—In the case of acreage on a farm that serves as the basis for payments under a market transition contract, an owner or operator on the farm may plant for harvest on the acreage—

''(A) rice, upland cotton, feed grains, and wheat;

''(B) any oilseed;

''(C) any industrial or experimental crop designated by the Secretary;

''(D) mung beans, lentils, and dry peas; and

''(E) any other crop, except any fruit or vegetable crop (including potatoes and dry edible beans) not covered by subparagraph (D),

unless such fruit or vegetable crop is designated by the Secretary as—

"(i) an industrial or experimental crop; or

"(ii) a crop for which no substantial domestic production or market exists.

"(2) LIMITATION.—At the discretion of the Secretary, the Secretary may prohibit the planting of any crop specified in paragraph (1) on acreage on a farm that serves as the basis for payments under a market transition contract.

"(3) NOTIFICATION.—With regard to commodities that may be planted pursuant to this subsection, the Secretary shall make a determination in each crop year of the commodities that may not be planted pursuant to this subsection and shall make available a list of the commodities.

"(4) CONSERVATION USES.—In lieu of planting any crop specified in paragraph (1), the owner or operator on a farm may devote to conservation uses all or part of the eligible farmland subject to a market transition contract, in accordance with regulations issued by the Secretary.

"(5) HAYING AND GRAZING.—Haying and grazing of eligible farmland subject to a market transi-

tion contract shall be permitted, except during any consecutive five-month period that is established by the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State. The 5-month period shall be established during the period beginning April 1, and ending October 31, of a year. In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on the eligible farmland. The Secretary may not exclude irrigated or irrigable acreage not planted in alfalfa when exercising the authority under the preceding sentence.

''(l) MARKET TRANSITION CONTRACTS.—Notwithstanding any other provision of law, no order issued for any fiscal year under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902) shall affect any payment under any market transition contract.

''(m) COMMODITY CREDIT CORPORATION.—The Secretary shall carry out this section through the Commodity Credit Corporation, except that no funds of the Corporation shall be used for any salary or expense of any officer or employee of the Department of Agriculture in connection with the administration of market transition payments or loans under this Act.

''(n) REGULATIONS.—The Secretary may issue such regulations as the Secretary determines necessary to carry out this section.''.

(b) CONFORMING AMENDMENTS.—

(1) WHEAT 0/85 PROGRAM.—Section 107B(c)(1)(E) of the Agricultural Act of 1949 (7 U.S.C. 1445b–3a(c)(1)(E)) is amended by striking ''through 1997'' in clauses (i) and (vii) each place it appears and inserting ''and 1995''.

(2) FEED GRAINS 0/85 PROGRAM.—Section 105B(c)(1)(E) of such Act (7 U.S.C. 1444f(c)(1)(E)) is amended by striking ''through 1997'' in clauses (i) and (vii) each place it appears and inserting ''and 1995''.

(3) COTTON PROGRAM.—Section 103B of such Act (7 U.S.C. 1444–2) is amended—

(A) in the section heading, by striking ''**1997**'' and inserting ''**1995**'';

(B) in subsections (a)(1), (b)(1), (c)(1)(A), (c)(1)(B)(ii), and (o), by striking ''1997'' each place it appears and inserting ''1995'';

(C) in subsections (c)(1)(D)(i) and (c)(1)(D)(v)(II) by striking ''through 1997'' each place it appears and inserting ''and 1995'';

(D) in the heading of subsection (c)(1)(D)(v)(II), by striking ''THROUGH 1997 CROPS'' and inserting ''AND 1995 CROPS'';

(E) in subsection (e)(1)(D), by striking ''29½ percent for each of the 1995 and 1996 crops, and 29 percent for the 1997 crop'' and inserting ''and 29½ percent for the 1995 crop''; and

(F) in subparagraphs (B)(i), (D)(i), (E)(i), and (F)(i) of subsection (a)(5), by striking ''1998'' each place it appears and inserting ''1996''.

(4) RICE 50/85 PROGRAM.—Section 101B of such Act (7 U.S.C. 1441–2) is amended—

(A) in subsections (c)(1)(D)(i) and (c)(1)(D)(v)(II), by striking ''through 1997'' each place it appears and inserting ''and 1995''; and

(B) in the heading of subsection (c)(1)(D)(v)(II), by striking ''THROUGH 1997 CROPS'' and inserting ''AND 1995 CROPS''.

(5) OILSEEDS.—Section 205(c) of such Act (7 U.S.C. 1446f(c)) is amended by striking ''through 1997'' both places it appears and inserting ''and 1995''.

(6) CROP ACREAGE BASE.—Section 509 of such Act (7 U.S.C. 1469) is amended by striking ''effective only for the 1991 through 1997 program crops'' and inserting ''effective only until January 1, 1996''.

**SEC. 1103. AVAILABILITY OF NONRECOURSE MARKETING ASSISTANCE LOANS FOR WHEAT, FEED GRAINS, COTTON, RICE, AND OILSEEDS.**

(a) NONRECOURSE LOANS AVAILABLE.—The Agricultural Act of 1949 is amended by inserting after section 102, as amended by section 1102, the following new section:

**''SEC. 102A. NONRECOURSE MARKETING ASSISTANCE LOANS FOR CERTAIN CROPS.**

''(a) NONRECOURSE LOANS AVAILABLE.—For each of the 1996 through 2002 crops of wheat, feed grains, upland cotton, extra long staple cotton, rice, and oilseeds, the Secretary shall make available to eligible producers on a farm nonrecourse marketing assistance loans under terms and conditions that are prescribed by the Secretary and at a loan rate calculated under subsection (c). A marketing assistance loan shall have a term of nine months beginning on the first day of the first month after the month in which the loan is made. The Secretary may not extend the term of a marketing assistance loan.

"(b) ANNOUNCEMENT OF LOAN RATE.—The Secretary shall announce the loan rate for each commodity specified in subsection (a) not later than the start of the marketing year of the commodity for which the loan rate is to be in effect.

"(c) CALCULATION OF LOAN RATE.—

"(1) CALCULATION.—Subject to adjustment under paragraph (2), the loan rate for marketing assistance loans under subsection (a) for a particular commodity specified in such subsection shall be equal to 70 percent of the simple average price received by producers of that commodity during the marketing years for the immediately preceding five crops of that commodity.

"(2) REQUIRED BUDGETARY ADJUSTMENTS.—If the Secretary estimates for one of the marketing years for the 1996 through 2002 crops of a particular commodity specified in subsection (a) that the average price to be received by producers of that commodity is likely to be less that the loan rate calculated under paragraph (1) for that marketing year, the Secretary shall reduce the loan rate for that commodity for that marketing year by an amount sufficient to enable the Secretary to provide marketing assistance loans at no net cost to the

Federal Government by preventing the accumulation of that commodity by the Commodity Credit Corporation through loan forfeitures and by limiting producer gains under the marketing loan provision under subsection (d).

''(3) SIMPLE AVERAGE PRICE.—The Secretary shall be responsible for determining the simple average price received by producers of a commodity specified in subsection (a). In determining the simple average price a commodity for a five-year period, the Secretary shall exclude the year in which the average price was the highest and the year in which the average price was the lowest during the period.

''(d) MARKETING LOAN PROVISION.—If during the marketing year, the Secretary determines that the market price of a commodity subject to a marketing assistance loan under this section falls below the lower of (1) the loan rate, or (2) the loan rate as adjusted by subsection (c)(2), the Secretary shall allow such loan to be repaid at such market price. This subsection shall not apply in the case of marketing assistance loans for extra long staple cotton, rye, or oilseeds.

''(e) ADJUSTMENTS FOR GRADE, TYPE, QUALITY, LOCATION, AND OTHER FACTORS.—The Secretary may make such adjustments in the announced loan rate for a

commodity specified in subsection (a) as the Secretary considers appropriate to reflect differences in grade, type, quality, location, and other factors.

''(f) PRODUCERS ELIGIBLE FOR LOANS.—Only the following producers shall be eligible for a marketing assistance loan under this section:

''(1) In the case of a marketing assistance loan for a crop of wheat, feed grains (other than rye), upland cotton, or rice, a producer whose land on which the crop is raised is subject to a market transition contract under section 102.

''(2) In the case of a marketing assistance loan for a crop of extra long staple cotton, rye, or oilseeds, any producer.

''(g) PROHIBITION ON STORAGE PAYMENTS.—The Secretary may not make payments to producers to cover storage charges incurred in connection with marketing assistance loans made under this section.

''(h) DEFINITIONS.—For purposes of this section:

''(1) The term 'feed grains' means corn, grain sorghums, barley, oats, and rye.

''(2) The term 'oilseeds' means soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, and, if designated by the Secretary, other oilseeds.

"(i) REGULATIONS.—The Secretary may issue such regulations as the Secretary determines necessary to carry out this section.".

(b) REPEAL OF CURRENT ADJUSTMENT AUTHORITY.—Section 403 of the Agricultural Act of 1949 (7 U.S.C. 1423) is repealed.

**SEC. 1104. REFORM OF PAYMENT LIMITATION PROVISIONS OF FOOD SECURITY ACT OF 1985.**

(a) ATTRIBUTION OF PAYMENTS MADE TO CORPORATIONS AND OTHER ENTITIES.—Paragraph (5)(C) of section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) is amended to read as follows:

"(C)(i) In the case of payments to corporations and other entities described in subparagraph (B)(i)(II), the Secretary shall attribute payments to individuals in proportion to their ownership interests in the corporation or entity receiving the payment or in any other corporation or entity that has a substantial beneficial interest in the corporation or entity actually receiving the payment. This subparagraph shall apply to individuals who hold or acquire, directly or through another corporation or entity, a substantial beneficial interest in the corporation or entity actually receiving the payment.

"(ii) In the case of payments to corporations and other entities described in subparagraph (B)(i)(II), the

Secretary shall also attribute payments to any State (or political subdivision or agency thereof) or other corporation or entity that has a substantial beneficial interest in the corporation or entity actually receiving the payment in proportion to their ownership interests in the corporation or entity receiving the payment. This subparagraph shall apply even if the payments are also attributable to individuals under clause (i).

''(iii) For purposes of this subparagraph, the term 'substantial beneficial interest' means not less than five percent of all beneficial interests in the corporation or entity actually receiving the payment, except that the Secretary may set a lower percentage in order to ensure that the provisions of this section and the scheme or device provisions in section 1001B are not circumvented.''.

(b) TRACKING OF PAYMENTS.—Paragraph (3) of section 1001A(a) of the Food Security Act of 1985 (7 U.S.C. 1308–1(a)) is amended to read as follows:

''(3) NOTIFICATION.—To facilitate administration of this section, each entity or individual receiving payments as a separate person shall notify each individual or other entity that acquires or holds a substantial beneficial interest in it of the requirements and limitations under this subsection. Each such entity or individual receiving payments shall

provide to the Secretary, at such times and in such manner as prescribed by the Secretary, the name and social security number of each individual, or the name and taxpayer identification number of each entity, that holds or acquires a substantial beneficial interest.''.

(c) CONFORMING AMENDMENT.—Paragraph (2) of such section is amended to read as follows:

''(2) SUBSTANTIAL BENEFICIAL INTEREST.—For purposes of this subsection, the term 'substantial beneficial interest' has the meaning given such term in section 1001(5)(C)(iii).''.

**SEC. 1105. SUSPENSION OF CERTAIN PROVISIONS REGARDING PROGRAM CROPS.**

(a) WHEAT.—

(1) NONAPPLICABILITY OF CERTIFICATE REQUIREMENTS.—Sections 379d through 379j of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379d–1379j) (relating to marketing certificate requirements for processors and exporters) shall not be applicable to wheat processors or exporters during the period June 1, 1996, through May 31, 2003.

(2) SUSPENSION OF LAND USE, WHEAT MARKETING ALLOCATION, AND PRODUCER CERTIFICATE PROVISIONS.—Sections 331 through 339, 379b, and

379c of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1331 through 1339, 1379b, and 1379c) shall not be applicable to the 1996 through 2002 crops of wheat.

(3) SUSPENSION OF CERTAIN QUOTA PROVISIONS.—The joint resolution entitled ''A joint resolution relating to corn and wheat marketing quotas under the Agricultural Adjustment Act of 1938, as amended'', approved May 26, 1941 (7 U.S.C. 1330 and 1340) shall not be applicable to the crops of wheat planted for harvest in the calendar years 1996 through 2002.

(4) NONAPPLICABILITY OF SECTION 107 PROGRAM.—Section 107 of the Agricultural Act of 1949 (7 U.S.C. 1445a) shall not be applicable to the 1996 through 2002 crops of wheat.

(b) FEED GRAINS.—Section 105 of the Agricultural Act of 1949 (7 U.S.C. 1444b) shall not be applicable to the 1996 through 2002 crops of feed grains.

(c) COTTON.—

(1) SUSPENSION OF BASE ACREAGE ALLOTMENTS, MARKETING QUOTAS, AND RELATED PROVISIONS.—Sections 342, 343, 344, 345, 346, and 377 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1342–1346 and 1377) shall not be applicable

to any of the 1996 through 2002 crops of upland cotton.

(2) NONAPPLICABILITY OF SECTION 103 PROGRAM.—Section 103(a) of the Agricultural Act of 1949 (7 U.S.C. 1444(a)) shall not be applicable to the 1996 through 2002 crops of upland cotton.

# Subtitle B—Dairy

## CHAPTER 1—AUTHORIZATION OF MARKET TRANSITION PAYMENTS IN LIEU OF MILK PRICE SUPPORT PROGRAM

### SEC. 1201. SEVEN-YEAR MARKET TRANSITION CONTRACTS FOR MILK PRODUCERS.

(a) CONTRACTS AUTHORIZED.—Section 204 of the Agricultural Act of 1949 (7 U.S.C. 1446e) is amended to read as follows:

### "SEC. 204. SEVEN-YEAR MARKET TRANSITION CONTRACTS FOR MILK PRODUCERS AND RELATED PROVISIONS.

''(a) MARKET TRANSITION CONTRACTS AUTHORIZED.—

''(1) OFFER AND MAIN TERMS.—The Secretary shall offer to enter into a contract (to be known as a 'market transition contract') with willing milk producers, under which the milk producers agree, in ex-

change for seven payments under the contract, to comply with—

''(A) governmental animal waste management regulations otherwise applicable to the milk producer; and

''(B) any wetland protection requirements applicable to the farm under subtitle C of title XII of such Act (16 U.S.C. 3821 et seq.).

''(2) MILK PRODUCER DEFINED.—For purposes of this section, the term 'milk producer' means a person that was engaged in the production of cow's milk in the 48 contiguous States on September 15, 1995, and that received a payment during the 45-day period before that date for cow's milk marketed for commercial use. Such term includes a person considered to be a producer-handler that satisfies the requirements of the preceding sentence.

''(b) TIME FOR CONTRACTING; DURATION.—The Secretary shall begin to offer to enter into market transition contracts as soon as possible after the date of the enactment of this section. The Secretary may not enter into a market transition contract after April 15, 1996. The term of each market transition contract shall extend through December 31, 2001.

"(c) ESTIMATION OF PAYMENTS.—At the time the Secretary enters into a market transition contract, the Secretary shall provide an estimate of the payments anticipated to be made under the contract for at least fiscal year 1996.

"(d) TIME FOR PAYMENT.—The fiscal year 1996 payment under a market transition contract shall be made on April 15, 1996, or as soon thereafter as practicable. The Secretary shall make subsequent payments not later than October 15 of each of the fiscal years 1997 through 2002.

"(e) PAYMENT RATE.—The Secretary shall use the following payment rates to calculate payments under a market transition contract for a fiscal year:

"(1) For fiscal year 1996, 10 cents per hundredweight.

"(2) For fiscal year 1997, 15 cents per hundredweight.

"(3) For fiscal year 1998, 13 cents per hundredweight.

"(4) For fiscal year 1999, 11 cents per hundredweight.

"(5) For fiscal year 2000, 9 cents per hundredweight.

"(6) For fiscal year 2001, 7 cents per hundredweight.

"(7) For fiscal year 2002, 5 cents per hundredweight.

"(f) CONTRACT PAYMENTS TO BE BASED ON PRODUCTION HISTORY.—

"(1) IN GENERAL.—The Secretary shall determine the historic annual milk production for each milk producer that enters into a market transition contract on the basis of milk checks reflecting payments for commercial marketings of cow's milk or such other records of commercial marketings or product sales as may be acceptable to the Secretary. Each milk producer's historic annual milk production shall be expressed in terms of hundredweights of milk.

"(2) PRODUCERS WITH THREE OR MORE YEARS OF PRODUCTION.—In the case of a milk producer that has been engaged in the production of milk for at least three of the calendar years 1991 through 1995, the milk producer's historic annual milk production shall be equal to the average quantity of milk marketed by the milk producer during the three years of such period in which the largest quantities of milk were marketed by the milk producer.

"(3) PRODUCERS WITH FEWER YEARS OF PRODUCTION.—In the case of a milk producer not covered by paragraph (2), the Secretary shall assign the milk producer an historic annual milk production equal to an annualized average of the monthly quantity of milk marketed by the milk producer during the period in which the milk producer has been engaged in milk production. The Secretary shall not consider months of production after December 31, 1995.

"(g) CALCULATION OF PAYMENT AMOUNT.—The total amount to be paid to a milk producer under a market transition contract for a fiscal year shall be equal to the product of—

"(1) the payment rate in effect for that fiscal year under subsection (e); and

"(2) the historic annual milk production for the milk producer determined under subsection (f).

"(h) ASSIGNMENT OF PAYMENTS.—The right of a milk producer to a payment under a market transition contract shall be freely assignable by the milk producer. The milk producer or assignee shall provide the Secretary with notice, in such manner as the Secretary may require in the market transition contract, of any assignment made under this subsection.

"(i) EFFECT OF VIOLATION.—

"(1) TERMINATION OF CONTRACT.—If a milk producer subject to a market transition contract violates any governmental animal waste management regulation that applies to the producer or wetland protection requirements applicable to the producer, the Secretary may terminate the producer's market transition contract. Upon such termination, the milk producer shall forfeit all rights to receive future payments under the contract and shall refund to the Secretary any payment under the contract received by the producer after notification of the violation, together with interest thereon as determined by the Secretary. The Secretary shall make a determination regarding violations of animal waste management regulations under this paragraph in consultation with the appropriate State governmental authority.

"(2) REFUND OR ADJUSTMENT.—If the Secretary determines that a violation of a market transition contract does not warrant termination of the contract under paragraph (1), the Secretary may require the milk producer subject to the contract—

"(A) to refund to the Secretary any payment under the contract received by the producer after notification of the violation, to-

gether with interest thereon as determined by the Secretary; or

''(B) to accept an adjustment in the amount of future payments otherwise required under the contract.

''(j) MARKET TRANSITION CONTRACTS.—Notwithstanding any other provision of law, no order issued for any fiscal year under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902) shall affect any payment under any market transition contract.''.

(b) CONTINUED OPERATION OF EXISTING PROGRAM THROUGH 1995.—

(1) PRICE SUPPORT OPERATIONS.—Until December 31, 1995, the Secretary of Agriculture shall continue to use section 204 of the Agricultural Act of 1949 (7 U.S.C. 1446e), as in effect on the day before the date of the enactment of this Act, to support the price of milk produced in the 48 contiguous States.

(2) PRICE REDUCTION.—Subsection (h) of such section, relating to a reduction in the price received by milk producers for all milk produced in the 48 contiguous States and marketed for commercial use, shall continue to apply with respect to milk mar-

keted through December 31, 1995. In the case of milk producers that did not increase milk marketings in 1995 when compared to 1994 milk marketings, the Secretary of Agriculture shall make refunds available in 1996 to such milk producers in the manner provided in paragraph (3) of such subsection.

(c) CONFORMING REPEAL OF GENERAL AUTHORITY TO PROVIDE PRICE SUPPORT FOR MILK.—

(1) DESIGNATED NONBASIC AGRICULTURAL COMMODITY.—Section 201(a) of the Agricultural Act of 1949 (7 U.S.C. 1446(a)) is amended by striking ''milk,''.

(2) OTHER NONBASIC AGRICULTURAL COMMODITIES.—Section 301 of the Agricultural Act of 1949 (7 U.S.C. 1447) is amended by inserting ''(other than milk)'' after ''title II''.

**SEC. 1202. RECOURSE LOANS FOR COMMERCIAL PROCESSORS OF DAIRY PRODUCTS.**

The Agricultural Act of 1949 is amended by striking section 424 (7 U.S.C. 1433c), as added by section 1003 of the Food Security Act of 1985 and effective for 1986 through 1990 crops, and inserting the following new section:

**"SEC. 424. RECOURSE LOANS FOR COMMERCIAL PROCESSORS OF DAIRY PRODUCTS.**

''(a) RECOURSE LOANS AVAILABLE.—On and after January 1, 1996, the Secretary may make recourse loans available to commercial processors of eligible dairy products to assist such processors to manage inventories of eligible dairy products to assure a greater degree of price stability for the dairy industry during the year. Recourse loans may be made available under such reasonable terms and conditions as the Secretary may prescribe.

''(b) AMOUNT OF LOAN.—The Secretary shall establish the amount of a loan for eligible dairy products, which shall reflect 90 percent of the reference price for that product. The rate of interest charged participants in this program shall not be less than the rate of interest charged the Commodity Credit Corporation by the United States Treasury.

''(c) PERIOD OF LOANS.—A recourse loan made under this section may not extend beyond the end of the fiscal year during which the loan is made, except that the Secretary may extend the loan for an additional period not to exceed the end of the next fiscal year.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The term 'eligible dairy products' means cheddar cheese, butter, and nonfat dry milk.

''(2) The term 'reference price' means—

''(A) for cheddar cheese, the average National Cheese Exchange price for 40 pound blocks of cheddar cheese for the previous three months;

''(B) for butter the average Chicago Mercantile Exchange price for butter for the previous three months; and

''(C) for nonfat dry milk, the Western States price for nonfat dry milk for the previous three months.''.

## CHAPTER 2—DAIRY EXPORT PROGRAMS

### SEC. 1211. DAIRY EXPORT INCENTIVE PROGRAM.

(a) IN GENERAL.—Section 153(c) of the Food Security Act of 1985 (15 U.S.C. 713a–14(c)) is amended—

(1) by striking ''and'' at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting ''; and''; and

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

''(3) the maximum volume of dairy product exports allowable consistent with the obligations of the United States as a member of the World Trade Organization are exported under the program each year (minus the volume sold under section 1163 of

the Food Security Act of 1985 (7 U.S.C. 1731 note) during that year), except to the extent that the export of such a volume under the program would, in the judgment of the Secretary, exceed the limitations on the value set forth in subsection (f); and

''(4) payments may be made under the program for exports to any destination in the world for the purpose of market development, except a destination in a country with respect to which shipments from the United States are otherwise restricted by law.''.

(b) SOLE DISCRETION.—Section 153(b) of the Food Security Act of 1985 (15 U.S.C. 713a–14(b)) is amended by inserting ''sole'' before ''discretion''.

(c) MARKET DEVELOPMENT.—Section 153(e)(1) of the Food Security Act of 1985 (15 U.S.C. 713a–14(e)(1)) is amended—

(1) by striking ''and'' and inserting ''the''; and

(2) by inserting before the period the following: '', and any additional amount that may be required to assist in the development of world markets for United States dairy products''.

(d) MAXIMUM ALLOWABLE AMOUNTS.—Section 153 of the Food Security Act of 1985 (15 U.S.C. 713a–14) is amended by adding at the end the following:

"(f) REQUIRED FUNDING.—The Commodity Credit Corporation shall in each year use money and commodities for the program under this section in the maximum amount consistent with the obligations of the United States as a member of the World Trade Organization, minus the amount expended under section 1163 of the Food Security Act of 1985 (7 U.S.C. 1731 note) during that year. However, the Commodity Credit Corporation may not exceed the limitations specified in subsection (c)(3) on the volume of allowable dairy product exports.".

(e) CONFORMING AMENDMENT.—Section 153(a) of the Food Security Act of 1985 (15 U.S.C. 713a–14(a)) is amended by striking "2001" and inserting "2002".

**SEC. 1212. AUTHORITY TO ASSIST IN ESTABLISHMENT AND MAINTENANCE OF EXPORT TRADING COMPANY.**

The Secretary of Agriculture shall, consistent with the obligations of the United States as a member of the World Trade Organization, provide such advice and assistance to the United States dairy industry as may be necessary to enable that industry to establish and maintain an export trading company under the Export Trading Company Act of 1982 (15 U.S.C. 4001 et seq.) for the purpose of facilitating the international market develop-

ment for and exportation of dairy products produced in the United States.

**SEC. 1213. STANDBY AUTHORITY TO INDICATE ENTITY BEST SUITED TO PROVIDE INTERNATIONAL MARKET DEVELOPMENT AND EXPORT SERVICES.**

(a) INDICATION OF ENTITY BEST SUITED TO ASSIST INTERNATIONAL MARKET DEVELOPMENT FOR AND EXPORT OF UNITED STATES DAIRY PRODUCTS.—If—

(1) the United States dairy industry has not established an export trading company under the Export Trading Company Act of 1982 (15 U.S.C. 4001 et seq.) for the purpose of facilitating the international market development for and exportation of dairy products produced in the United States on or before June 30, 1996; or

(2) the quantity of exports of United States dairy products during the 12-month period preceding July 1, 1997 does not exceed the quantity of exports of United States dairy products during the 12-month period preceding July 1, 1996 by 1.5 billion pounds (milk equivalent, total solids basis);

the Secretary of Agriculture is directed to indicate which entity autonomous of the Government of the United States is best suited to facilitate the international market devel-

opment for and exportation of United States dairy products.

(b) FUNDING OF EXPORT ACTIVITIES.—The Secretary shall assist the entity in identifying sources of funding for the activities specified in subsection (a) from within the dairy industry and elsewhere.

(c) APPLICATION OF SECTION.—This section shall apply only during the period beginning on July 1, 1997 and ending on September 30, 2000.

**SEC. 1214. STUDY AND REPORT REGARDING POTENTIAL IMPACT OF URUGUAY ROUND ON PRICES, INCOME AND GOVERNMENT PURCHASES.**

(a) STUDY.—The Secretary of Agriculture shall conduct a study, on a variety by variety of cheese basis, to determine the potential impact on milk prices in the United States, dairy producer income, and Federal dairy program costs, of the allocation of additional cheese granted access to the United States as a result of the obligations of the United States as a member of the World Trade Organization.

(b) REPORT.—Not later than September 30, 1996, the Secretary shall report to the Committees on Agriculture of the Senate and the House of Representatives the results of the study conducted under this section.

(c) RULE OF CONSTRUCTION.—Any limitation imposed by Act of Congress on the conduct or completion of studies or reports to Congress shall not apply to the study and report required under this section unless such limitation explicitly references this section in doing so.

## CHAPTER 3—DAIRY PROMOTION PROGRAMS

### SEC. 1221. RESEARCH AND PROMOTION ACTIVITIES UNDER FLUID MILK PROMOTION ACT OF 1990.

(a) EXTENSION OF ORDER.—Section 1999O of the Fluid Milk Promotion Act of 1990 (subtitle H of title XIX of Public Law 101–624; 7 U.S.C. 6414(a)) is amended—

(1) by striking subsection (a); and

(2) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

(b) DEFINITION OF RESEARCH.—Paragraph (6) of section 1999C of such Act (7 U.S.C. 6402) is amended to read as follows:

''(6) RESEARCH.—The term 'research' means—

''(A) market research to support and increase the effectiveness of industry advertising, promotion, and educational activities; and

''(B) other research to expand sales of fluid milk products, including research regarding the development of new products, new prod-

uct characteristics, and improved technology in the production, manufacturing, or processing of milk and the products of milk.''.

(c) CONFORMING AMENDMENTS REGARDING MARKETING ORDERS.—Section 1999J(b) of such Act (7 U.S.C. 6409(b)) is amended—

(1) by striking paragraph (1);

(2) in paragraph (2), by striking ''(2) otherwise'' and inserting ''(1)''; and

(3) by redesignating paragraph (3) as paragraph (2).

(d) CLARIFICATION OF REFERENDUM REQUIREMENTS.—

(1) SUSPENSION OR TERMINATION.—Subsection (b) of section 1999O of such Act (7 U.S.C. 6414), as redesignated by subsection (a)(2), is amended—

(A) in paragraph (1), by striking ''all processors'' and inserting ''all fluid milk processors''; and

(B) in paragraph (2)(B), by striking ''all processors'' and inserting ''all fluid milk processors voting in the referendum''.

(2) CONFORMING AMENDMENT.—Section 1999N(b)(2) of such Act (7 U.S.C. 6413(b)(2)) is

amended by striking ''all processors'' and inserting ''all fluid milk processors voting in the referendum''.

**SEC. 1222. EXPANSION OF DAIRY PROMOTION PROGRAM TO COVER DAIRY PRODUCTS IMPORTED INTO THE UNITED STATES.**

(a) DECLARATION OF POLICY.—Section 110(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501(b)) is amended by inserting after ''commercial use'' the following: ''and dairy products imported into the United States''.

(b) DEFINITIONS.—

(1) MILK.—Subsection (d) of section 111 of such Act (7 U.S.C. 4502) is amended by inserting before the period at the end the following: ''or cow's milk imported into the United States in the form of dairy products intended for consumption in the United States''.

(2) DAIRY PRODUCTS.—Subsection (e) of such section is amended by inserting before the semicolon the following: ''and casein (except casein imported under sections 3501.90.20 (casein glue) and 3501.90.50 (other) of the Harmonized Tariff Schedule)''.

(3) RESEARCH.—Subsection (j) of such section is amended by inserting before the semicolon the fol-

lowing: ''or to reduce the costs associated with processing or marketing those products''.

(4) UNITED STATES.—Subsection (l) of such section is amended to read as follows:

''(l) the term 'United States' means the several States and the District of Columbia;''.

(5) IMPORTERS AND EXPORTERS.—Such section is further amended—

(A) in subsection (k), by striking ''and'' at the end of such subsection; and

(B) by adding at the end the following new subsections:

''(m) the term 'importer' means the first person to take title to dairy products imported into the United States for domestic consumption; and

''(n) the term 'exporter' means any person who exports dairy products from the United States.''.

(c) MEMBERSHIP OF BOARD.—Section 113(b) of such Act (7 U.S.C. 4504(b)) is amended—

(1) in the first sentence, by striking ''thirty-six members'' and inserting ''38 members, including one representative of importers and one representative of exporters to be appointed by the Secretary'';

(2) in the second sentence, by striking ''Members'' and inserting ''The remaining members''; and

(3) in the third sentence, by striking ''United States'' and inserting ''United States, including Alaska and Hawaii''.

(d) ASSESSMENT.—Section 113(g) of such Act (7 U.S.C. 4504(g)) is amended—

(1) by inserting ''(1)'' after ''(g)''; and

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

''(2) The order shall provide that each importer of dairy products intended for consumption in the United States shall remit to the Board, in the manner prescribed by the order, an assessment equal to 1.2 cents per pound of total milk solids contained in the imported dairy products, or 15 cents per hundredweight of milk contained in the imported dairy products, whichever is less. If an importer can establish that it is participating in active, ongoing qualified State or regional dairy product promotion or nutrition programs intended to increase the consumption of milk and dairy products, the importer shall receive credit in determining the assessment due from that importer for contributions to such programs of up to .8 cents per pound of total milk solids contained in the imported dairy products, or 10 cents per hundredweight of milk contained in the imported dairy products, whichever is less. The as-

sessment collected under this paragraph shall be used for the purpose specified in paragraph (1).''.

(e) RECORDS.—Section 113(k) of such Act (7 U.S.C. 4504(k)) is amended in the first sentence by inserting after ''commercial use,'' the following: ''each importer of dairy products,''.

(f) TERMINATION OR SUSPENSION OF ORDER.—Section 116(b) of such Act (7 U.S.C. 4507(b)) is amended—

(1) by inserting ''and importers'' after ''producers'' each place it appears;

(2) by striking ''who, during a representative period (as determined by the Secretary), have been engaged in the production of milk for commercial use''; and

(3) by adding at the end the following new sentences: ''A producer shall be eligible to vote in the referendum if the producer, during a representative period (as determined by the Secretary), has been engaged in the production of milk for commercial use. An importer shall be eligible to vote in the referendum if the importer, during a representative period (as determined by the Secretary), has been engaged in the importation of dairy products into the United States intended for consumption in the United States.''.

**SEC. 1223. PROMOTION OF UNITED STATES DAIRY PRODUCTS IN INTERNATIONAL MARKETS THROUGH DAIRY PROMOTION PROGRAM.**

Section 113(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(e)) is amended by adding at the end the following new sentence: ''For each of the fiscal years 1996 through 2000, the Board's budget shall provide for the expenditure of not less than 10 percent of the anticipated revenues available to the Board to develop international markets for, and to promote within such markets, the consumption of dairy products produced in the United States from milk produced in the United States.''.

**SEC. 1224. ISSUANCE OF AMENDED ORDER UNDER DAIRY PRODUCTION STABILIZATION ACT OF 1983.**

(a) IMPLEMENTATION OF AMENDMENTS.—To implement the amendments made by sections 1222 and 1223, the Secretary of Agriculture shall issue an amended dairy products promotion and research order under section 112 of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504) reflecting such amendments, and no other changes, in the order in existence on the date of the enactment of this Act.

(b) PROPOSAL OF AMENDED ORDER.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Agriculture shall publish a proposed dairy

products promotion and research order reflecting the amendments made by sections 1222 and 1223. The Secretary shall provide notice and an opportunity for public comment on the proposed order.

(c) ISSUANCE OF AMENDED ORDER.—After notice and opportunity for public comment are provided in accordance with subsection (b), the Secretary of Agriculture shall issue a final dairy products promotion and research order, taking into consideration the comments received and including in the order such provisions as are necessary to ensure that the order is in conformity with the amendments made by sections 1222 and 1223.

(d) EFFECTIVE DATE.—The final dairy products promotion and research order shall be issued and become effective not later than 120 days after publication of the proposed order.

(e) REFERENDUM ON AMENDMENTS.—Section 115 of Dairy Production Stabilization Act of 1983 (7 U.S.C. 4506) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection:

''(b) REFERENDUM.—Not later than 36 months after the issuance of the order reflecting the amendments made

by sections 1222 and 1223 of the Agricultural Reconciliation Act of 1995, the Secretary shall conduct a referendum under this section for the sole purpose of determining whether the requirements of such amendments shall be continued. The Secretary shall conduct the referendum among persons who have been producers or importers during a representative period as determined by the Secretary. The requirements of such amendments shall be continued only if the Secretary determines that such requirements have been approved by not less than a majority of the persons voting in the referendum. If continuation of the amendments is not approved, the Secretary shall issue a new order, within six months after the announcement of the results of the referendum, that is identical to the order in effect on the date of the enactment of the Agricultural Reconciliation Act of 1995. The new order shall become effective upon issuance and shall not be subject to referendum for approval.''.

## CHAPTER 4—VERIFICATION OF MILK RECEIPTS

### SEC. 1231. PROGRAM TO VERIFY RECEIPTS OF MILK.

(a) ESTABLISHMENT OF VERIFICATION PROGRAM.—Section 204 of the Agricultural Act of 1949 (7 U.S.C. 1446e), as amended by section 1201, is further amended by adding at the end the following new subsection:

"(k) VERIFICATION OF RECEIPTS OF MILK.—

"(1) VERIFICATION PROGRAM REQUIRED.—The Secretary shall establish a program through which the verification of receipts of all cow's milk marketed in the 48 contiguous States and the auditing of marketing agreements with respect to receipts of such milk may be accomplished. The Secretary shall prescribe regulations to establish the program required by this subsection.

"(2) ADMINISTRATIVE SERVICES.—The program shall provide a means by which (A) processors, associations of producers, and other persons engaged in the handling of milk and milk products file reports with the Secretary regarding receipts of milk, prices paid for milk, and the purposes for which milk was used by handlers, (B) authorized deductions from payments to producers, including assessments for research and promotion programs, are collected, (C) assurance of proper payment by handlers for milk purchased is achieved, and (D) the reports, records, and facilities of handlers are reviewed and inspected to assure their accuracy. The regulations shall provide for the publication of statistics regarding receipts, prices, and uses of milk. Statistics published by the Secretary shall include information re-

garding payments received by producers for milk on a component basis, including payments for milkfat, protein and other solids. The Secretary shall collect an assessment from handlers required to file reports under this paragraph to cover any expenses associated with the collection and publication of such statistics. Assessments shall be based on the relative volume of receipts of milk by each handler and shall not exceed the total cost of such expenses.

''(3) MARKETING SERVICES.—The program shall further provide a means by which the weighing, sampling, and testing of milk purchased from producers is accomplished and verified. This paragraph shall not apply to producers for whom such marketing services are rendered by a cooperative marketing association qualified under the provisions of the Act of February 18, 1922 (7 U.S.C. 291–292), commonly known as the 'Co-operative Marketing Associations Act'. An assessment may be levied on producers for whom such services are performed to cover the expenses of the Secretary or the cooperative marketing association providing the services. Assessments shall be based on the relative marketings of milk by each producer and shall not exceed the total cost of providing such services.

"(4) MARKETING AGREEMENTS.—Producers or associations of producers, including cooperative marketing associations qualified under the provisions of the Act of February 18, 1922 (7 U.S.C. 291–292), commonly known as the 'Co-operative Marketing Associations Act', may negotiate and enter into marketing agreements or other private contracts with handlers for the marketing and receipt of milk. Upon the request of either or both of the parties, the Secretary may perform an audit of the agreement or contract to assure compliance with its terms, except that the Secretary shall be reimbursed for any costs associated with the audit in the manner provided in the agreement or contract. If there is no provision for the reimbursement of the Secretary in the agreement or contract, the party or parties requesting the audit shall provide such reimbursement.

"(5) PROHIBITION ON MARKETING LIMITATIONS.—No marketing agreement or Government order or regulation applicable to milk and its products in any marketing area or jurisdiction shall prohibit or in any manner limit the marketing in that area of any milk or product of milk produced in any production area in the United States.

"(6) EFFECT ON EXISTING MARKETING ORDERS.—Effective July 1, 1996, the program established under this subsection shall supersede any Federal marketing order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, with respect to milk or its products.".

(b) TIME FOR ISSUANCE.—Not later than July 1, 1996, the Secretary of Agriculture shall issue final regulations under subsection (k) of section 204 of the Agricultural Act of 1949, as added by this section, to establish the verification program required by such subsection. The regulations shall take effect on that date.

(c) PROCESS.—In preparation for the issuance of the regulations under subsection (k) of section 204 of the Agricultural Act of 1949, as added by this section, the Secretary shall comply with the following:

(1) The Secretary shall issue proposed regulations not later than April 1, 1996.

(2) The Secretary shall provide for a comment period on the regulations, as proposed under paragraph (1). However, the comment period shall not exceed 60 days nor extend past May 31, 1996.

**SEC. 1232. VERIFICATION PROGRAM TO SUPERSEDE MULTIPLE EXISTING FEDERAL ORDERS.**

(a) TERMINATION OF MILK MARKETING ORDERS.—Section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by striking paragraphs (5) and (18) relating to milk and its products.

(b) PROHIBITION ON SUBSEQUENT ORDERS REGARDING MILK.—Paragraph (2) of such section is amended—

(1) by striking ''Milk, fruits'' and inserting ''Fruits''; and

(2) by inserting ''milk,'' after ''honey,'' in subparagraph (B).

(c) CONFORMING AMENDMENTS.—(1) Section 2(3) of such Act (7 U.S.C. 602(3) is amended by striking '', other than milk and its products,''.

(2) Section 8c of such Act (7 U.S.C. 608c) is amended—

(A) in paragraph (6), by striking '', other than milk and its products,'';

(B) in paragraph (7)(B), by striking ''(except for milk and cream to be sold for consumption in fluid form)'';

(C) in paragraph (11)(B), by striking ''Except in the case of milk and its products, orders'' and inserting ''Orders'';

(D) in paragraph (13)(A), by striking '', except to a retailer in his capacity as a retailer of milk and its products''; and

(E) in paragraph (17), by striking the second proviso, which relates to milk orders.

(3) Section 8d(2) of such Act (7 U.S.C. 608d(2)) is amended by striking the second sentence, which relates to information from milk handlers.

(4) Section 10(b)(2) of such Act (7 U.S.C. 610(b)(2)) is amended—

(A) by striking clause (i);

(B) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(C) in clause (i) (as so redesignated), by striking ''other commodity'' in the first sentence and inserting ''commodity''.

(5) Section 11 of such Act (7 U.S.C. 611) is amended by striking ''and milk, and its products,''.

(6) Section 715 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994 (Public Law 103–111; 107 Stat. 1079; 7 U.S.C. 608d note), is amended by striking

the third proviso, which relates to information from milk handlers.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1996.

## CHAPTER 5—MISCELLANEOUS PROVISIONS RELATED TO DAIRY

### SEC. 1241. EXTENSION OF TRANSFER AUTHORITY REGARDING MILITARY AND VETERANS HOSPITALS.

Subsections (a) and (b) of section 202 of the Agricultural Act of 1949 (7 U.S.C. 1446a) are amended by striking ''1995'' both places it appears and inserting ''2002''.

### SEC. 1242. EXTENSION OF DAIRY INDEMNITY PROGRAM.

Section 3 of Public Law 90–484 (7 U.S.C. 450*l*) is amended by striking ''1995'' and inserting ''2002''.

### SEC. 1243. EXTENSION OF REPORT REGARDING EXPORT SALES OF DAIRY PRODUCTS.

Section 1163(c) of the Food Security Act of 1985 is amended by striking ''1995'' and inserting ''2002''.

### SEC. 1244. STATUS OF PRODUCER-HANDLERS.

The legal status of producer-handlers of milk under the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, shall be the same after the amendments made by this title take effect as it was before the effective date of the amendments.

# Subtitle C—Other Commodities

**SEC. 1301. EXTENSION AND MODIFICATION OF PRICE SUPPORT AND QUOTA PROGRAMS FOR PEANUTS.**

(a) EXTENSION OF PRICE SUPPORT PROGRAM.—Section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c–3) is amended—

(1) in the section heading, by striking ''**1991 THROUGH 1997 CROPS OF**'';

(2) in subsections (a)(1), (b)(1), and (h), by striking ''1997'' each place it appears and inserting ''2002'';

(3) in subsection (g)(1)—

(A) by striking ''1997 crops'' the first place it appears and inserting ''2002 crops''; and

(B) by striking ''1997 crop'' both places it appears and inserting ''1997 through 2002 crops''; and

(4) in subsection (g)(2)(A)—

(A) by striking ''1997 crop'' in clause (i)(IV) and inserting ''1997 through 2002 crops''; and

(B) by striking ''1997'' in clause (ii)(II) and inserting ''2002''.

(b) CHANGES TO PRICE SUPPORT PROGRAM.—

(1) QUOTA SUPPORT RATE.—

(A) SUPPORT RATE FOR 1996 THROUGH 2002 CROPS.—Subsection (a)(2) of section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c–3) is amended to read as follows:

''(2) SUPPORT RATE.—The national average quota support rate for quota peanuts shall be equal to $610 per ton for each of the 1996 through 2002 crops of quota peanuts.''.

(B) EFFECT OF AMENDMENT ON CURRENT CROP.—The national average quota support rate in effect under section 108B(a)(2) of the Agricultural Act of 1949 (7 U.S.C. 1445c–3) on the day before the date of the enactment of this Act shall continue to apply with respect to the 1995 crop of quota peanuts.

(2) OFFERS FROM HANDLERS.—Subsection (a) of such section is amended—

(A) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(B) by inserting after paragraph (3) the following new paragraph:

''(4) OFFERS FROM HANDLERS.—The Secretary shall reduce the support rate by 15 percent for any producer on a farm who had available to the pro-

ducer an offer from a handler to purchase quota peanuts from the farm at a price equal to or greater than the applicable quota support rate.''.

(3) COVERING LOSSES.—Subsection (d)(2) of such section is amended to read as follows:

''(2) QUOTA LOAN POOLS.—Losses in quota area pools shall be covered using the following sources in the following order of priority:

''(A) TRANSFERS FROM ADDITIONAL LOAN POOLS.—The proceeds due any producer from any pool shall be reduced by the amount of any loss that is incurred with respect to peanuts transferred from an additional loan pool to a quota loan pool by such producer under section 358–1(b)(8) of the Agricultural Adjustment Act of 1938.

''(B) OTHER PRODUCERS IN SAME POOL.—Further losses in an area quota pool shall be offset by reducing the gain of any producer in such pool by the amount of pool gains attributed to the same producer from the sale of additional peanuts for domestic and export edible use.

''(C) USE OF MARKETING ASSESSMENTS.—The Secretary shall use funds collected under

subsection (g) (except funds attributable to handlers) to offset further losses in area quota pools. The Secretary shall transfer to the Treasury those funds collected under subsection (g) and available for use under this paragraph that the Secretary determines are not required to cover losses in area quota pools.

''(D) CROSS COMPLIANCE.—Further losses in area quota pools, other than losses incurred as a result of transfers from additional loan pools to quota loan pools under section 358–1(b)(8) of the Agricultural Adjustment Act of 1938, shall be offset by any gains or profits from quota pools in other production areas (other than separate type pools established under subsection (c)(2)(A) for Valencia peanuts produced in New Mexico) in such manner as the Secretary shall by regulation prescribe.

''(E) INCREASED ASSESSMENTS.—If use of the authorities provided in the preceding subparagraphs is not sufficient to cover losses in an area quota pool, the Secretary shall increase the marketing assessment established under subsection (g) by such an amount as the Secretary considers necessary to cover the losses.

The increased assessment shall apply only to quota peanuts marketed in the production area covered by that pool. Amounts collected under subsection (g) as a result of the increased assessment shall be retained by the Secretary to cover losses in that pool.''.

(c) EXTENSION OF NATIONAL POUNDAGE QUOTA PROGRAM.—Part VI of subtitle B of title III of the Agricultural Adjustment Act of 1938 is amended—

(1) in section 358–1 (7 U.S.C. 1358–1)—

(A) in the section heading, by striking ''**1991 THROUGH 1997 CROPS OF**'';

(B) in subsection (a)(3), by striking ''1990'' and inserting ''1990, for the 1991 through 1995 marketing years, and 1995, for the 1996 through 2002 marketing years'';

(C) in subsection (b)(1)(A)—

(i) by striking ''1997'' and inserting ''2002''; and

(ii) in clause (i), by inserting before the semicolon the following: '', in the case of the 1991 through 1995 marketing years, and the 1995 marketing year, in the case of the 1996 through 2002 marketing years''; and

(D) in subsections (b)(1)(B), (b)(2)(A), (b)(2)(C), (b)(3)(A), and (f), by striking ''1997'' each place it appears and inserting ''2002'';

(2) in section 358b (7 U.S.C. 1358b)—

(A) in the section heading, by striking ''**1991 THROUGH 1995 CROPS OF**''; and

(B) in subsection (c), by striking ''1995'' and inserting ''2002'';

(3) in section 358c(d) (7 U.S.C. 1358c(d)), by striking ''1995'' and inserting ''2002''; and

(4) in section 358e (7 U.S.C. 1359a)—

(A) in the section heading, by striking ''**1991 THROUGH 1997**'' and inserting ''**CERTAIN**''; and

(B) in subsection (i), by striking ''1997'' and inserting ''2002''.

(d) PRIORITIZED QUOTA REDUCTIONS.—Section 358–1(b)(2)(C) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1358–1(b)(2)(C)) is amended—

(1) by striking ''all the''; and

(2) by adding at the end the following new sentence: ''Rather than allocating the decrease among all the farms in a State, the Secretary shall allocate

the decrease among farms in the following order of priority:

''(i) Farms owned or controlled by municipalities, airport authorities, schools, colleges, refuges, and other public entities (not including universities for research purposes).

''(ii) Farms for which the quota holder is not a producer and resides in another State.

''(iii) Farms for which the quota holder, although a resident of the State, is not a producer.

''(iv) Other farms described in the first sentence of this subparagraph.''.

(e) ELIMINATION OF QUOTA FLOOR.—Section 358–1(a)(1) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1358–1(a)(1)) is amended by striking the second sentence.

(f) SPRING AND FALL TRANSFERS WITHIN A STATE.—Section 358b(a)(1) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1358b(a)(1)) is amended—

(1) by striking ''any such lease'' in the matter preceding the subparagraphs and inserting ''any such sale or lease''; and

(2) by striking ''in the fall or after the normal planting season—'' and subparagraphs (A) and (B) and inserting the following: ''in the spring (or before the normal planting season) or in the fall (or after the normal planting season) with the owner or operator of a farm located within any county in the same State. In the case of a fall transfer or a transfer after the normal planting season, the transfer may be made only if not less than 90 percent of the basic quota (the farm quota exclusive of temporary quota transfers), plus any poundage quota transferred to the farm under this subsection, has been planted or considered planted on the farm from which the quota is to be leased.''.

(g) TRANSFERS IN COUNTIES WITH SMALL QUOTAS.—Section 358b(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1358b(a)) is amended by adding at the end the following new paragraph:

''(4) TRANSFERS IN COUNTIES WITH SMALL QUOTAS.—Notwithstanding paragraphs (1) and (2), in the case of any county for which the poundage quota allocated to the county was less than 10,000 tons for the preceding year's crop, all or any part of a farm poundage quota for a farm in that county

may be transferred by sale or lease or otherwise to a farm in any other county in the same State.''.

(h) UNDERMARKETINGS.—

(1) ELIMINATION.—Subsection (b) of section 358–1 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1358–1) is amended by striking paragraphs (8) and (9).

(2) CONFORMING AMENDMENTS.—(A) Such subsection is further amended—

(i) in paragraph (1)(B), by striking ''including—'' and clauses (i) and (ii) and inserting ''including any increases resulting from the allocation of quotas voluntarily released for 1 year under paragraph (7).''; and

(ii) in paragraph (3)(B), by striking ''include—'' and clauses (i) and (ii) and inserting ''include any increase resulting from the allocation of quotas voluntarily released for 1 year under paragraph (7).''.

(B) Section 358b(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1358b(a)) is amended—

(i) in paragraph (1) (as amended by subsection (f)), by striking ''(including any applicable under marketings)'' both places it appears;

(ii) in paragraph (2), by striking ''(including any applicable under marketings)''; and

(iii) in paragraph (3), by striking ''(including any applicable undermarketings)''.

(i) LIMITATION ON PAYMENTS FOR DISASTER TRANSFERS.—Section 358–1(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1358–1(b)), as amended by subsection (h), is further amended by adding at the end the following new paragraph:

''(8) TRANSFER OF ADDITIONAL PEANUTS.—Additional peanuts on a farm from which the quota poundage was not harvested and marketed because of drought, flood, or any other natural disaster, or any other condition beyond the control of the producer, may be transferred to the quota loan pool for pricing purposes on such basis as the Secretary shall by regulation provide, except that the poundage of such peanuts so transferred shall not exceed the difference in the total peanuts meeting quality requirements for domestic edible use as determined by the Secretary marketed from the farm and the total farm poundage quota, excluding quota pounds transferred to the farm in the fall. Peanuts transferred under this paragraph shall be supported at a total of not more than 70 percent of the quota support

rate for the marketing years in which such transfers occur and such transfers for a farm shall not exceed 25 percent of the total farm quota pounds, excluding pounds transferred in the fall.''.

(j) TEMPORARY QUOTA ALLOCATION.—

(1) ANNUAL ALLOCATION.—Subsection (b)(2) of section 358–1 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1358–1) is amended—

(A) in subparagraph (A), by striking ''subparagraph (B) and subject to''; and

(B) by striking subparagraph (B) and inserting the following new subparagraph:

''(B) TEMPORARY QUOTA ALLOCATION.—

''(i) ALLOCATION RELATED TO SEED PEANUTS.—Temporary allocation of quota pounds for the marketing year only in which the crop is planted shall be made to producers for each of the 1996 through 2002 marketing years as provided in this subparagraph. The temporary quota allocation shall be equal to the pounds of seed peanuts planted on the farm, as may be adjusted under regulations prescribed by the Secretary. The temporary allocation of quota pounds under this paragraph shall

be in addition to the farm poundage quota otherwise established under this subsection and shall be credited for the applicable marketing year only, in total to the producer of the peanuts on the farm in a manner prescribed by the Secretary.

''(ii) EFFECT OF OTHER REQUIREMENTS.—Nothing in this section shall alter or change in any way the requirements regarding the use of quota and additional peanuts established by section 359a(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359a(b)), as added by section 804 of the Food, Agriculture, Conservation, and Trade Act of 1990.''.

(2) CONFORMING AMENDMENT.—Subsection (a)(1) of such section is amended by striking ''domestic edible, seed,'' and inserting ''domestic edible use''.

(k) SUSPENSION OF MARKETING QUOTAS AND ACREAGE ALLOTMENTS.—The following provisions of the Agricultural Adjustment Act of 1938 shall not apply to the 1996 through 2002 crops of peanuts:

(1) Subsections (a) through (j) of section 358 (7 U.S.C. 1358).

(2) Subsections (a) through (h) of section 358a (7 U.S.C. 1358a).

(3) Subsections (a), (b), (d), and (e) of section 358d (7 U.S.C. 1359).

(4) Part I of subtitle C of title III (7 U.S.C. 1361 et seq.).

(5) Section 371 (7 U.S.C. 1371).

(l) EXTENSION OF REPORTING AND RECORD-KEEPING REQUIREMENTS.—Section 373(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1373(a)) is amended by inserting after the first sentence the following new sentence: ''In the case of the 1996 through 2002 crops of peanuts, this subsection shall also apply to all producers engaged in the production of peanuts.''.

(m) SUSPENSION OF CERTAIN PRICE SUPPORT PROVISIONS.—Section 101 of the Agricultural Act of 1949 (7 U.S.C. 1441) shall not apply to the 1996 through 2002 crops of peanuts.

**SEC. 1302. AVAILABILITY OF LOANS FOR PROCESSORS OF SUGARCANE AND SUGAR BEETS.**

(a) SUGAR LOANS.—Section 206 of the Agricultural Act of 1949 (7 U.S.C. 1446g) is amended to read as follows:

**"SEC. 206. ASSURANCE OF ADEQUATE SUGAR SUPPLY.**

''(a) SUGARCANE PROCESSOR LOANS.—For the 1996 through 2002 crops of domestically grown sugarcane, the Secretary shall make loans available to sugarcane processors on raw cane sugar processed from such crops. Subject to subsection (c), loans under this subsection shall be made at a rate equal to the rate provided under this section, as in effect on the day before the date of the enactment of the Agricultural Reconciliation Act of 1995, for raw cane sugar produced from the 1995 crop of domestically grown sugarcane.

''(b) SUGAR BEETS.—For the 1996 through 2002 crops of domestically grown sugar beets, the Secretary shall make loans available to sugar beet processors on refined beet sugar processed from such crops. Subject to subsection (c), loans under this subsection shall be made at a rate equal to the rate provided under this section, as in effect on the day before the date of the enactment of the Agricultural Reconciliation Act of 1995, for refined beet sugar produced from the 1995 crop of domestically grown sugar beets.

''(c) REDUCTION IN LOAN RATES.—

''(1) REDUCTION REQUIRED.—The Secretary shall reduce the loan rate specified in subsection (a) for domestically grown sugarcane and subsection (b) for domestically grown sugar beets if the Secretary

determines that negotiated reductions in export subsidies and domestic subsidies provided for sugar of the European Union and other major sugar growing, producing, and exporting countries in the aggregate exceed the commitments made as part of the Agreement on Agriculture.

''(2) EXTENT OF REDUCTION.—The Secretary shall not reduce the loan rate under subsection (a) or (b) below a rate that provides an equal measure of support to that provided by the European Union and other major sugar growing, producing, and exporting countries, based on an examination of both domestic and export subsidies subject to reduction in the Agreement on Agriculture.

''(3) ANNOUNCEMENT OF REDUCTION.—The Secretary shall announce any loan rate reduction to be made under this subsection as far in advance as is practicable.

''(4) MAJOR SUGAR COUNTRIES DEFINED.—For purposes of this subsection, the term 'major sugar growing, producing, and exporting countries' means—

''(A) the countries of the European Union; and

"(B) the ten foreign countries not covered by subparagraph (A) that the Secretary determines produce the greatest amount of sugar.

"(5) AGREEMENT ON AGRICULTURE DEFINED.—For purposes of this subsection and subsection (d), the term 'Agreement on Agriculture' means the Agreement on Agriculture referred to in section 101(d)(2) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(2)).

"(d) LOAN TYPE; PROCESSOR ASSURANCES.—

"(1) RECOURSE LOANS.—Subject to paragraph (2), the Secretary shall carry out this section through the use of recourse loans.

"(2) SWITCH TO NONRECOURSE LOANS.—

"(A) IN GENERAL.—During any fiscal year in which the tariff rate quota for imports of sugar into the United States is set at, or is increased to, a level that exceeds the loan modification threshold, the Secretary shall carry out this section by making available nonrecourse loans. Any recourse loan previously made available by the Secretary under this section during such fiscal year shall be modified by the Secretary into a nonrecourse loan.

"(B) LOAN MODIFICATION THRESHOLD DEFINED.—For the purposes of this subsection, the term 'loan modification threshold' means—

"(i) for fiscal years 1996 and 1997, 1,257,000 short tons raw value; and

"(ii) for fiscal years after fiscal year 1997, 103 percent of the loan modification threshold for the previous fiscal year.

"(3) PROCESSOR ASSURANCES.—If the Secretary is required under paragraph (2) to make nonrecourse loans available during a fiscal year or to modify recourse loans into nonrecourse loans, the Secretary shall obtain from each processor that receives a loan under this section such assurances as the Secretary considers adequate that the processor will provide an appropriate minimum payment for sugar beets and sugarcane delivered by producers served by the processor. The Secretary may establish appropriate minimum payments for purposes of this paragraph.

"(4) ANNOUNCEMENT OF THRESHOLD.—As soon as practicable, but not later than September 1 of each fiscal year, the Secretary shall announce the loan modification threshold that shall apply under paragraph (2) for the subsequent fiscal year.

"(e) LENGTH OF LOANS.—Each loan made under this section shall be for a term of three months, and may be extended for additional three-month terms, except that—

"(1) no loan may have a cumulative term in excess of nine months or a term that extends beyond September 30 of the fiscal year in which the loan is made; and

"(2) a processor may terminate a loan and redeem the collateral for the loan at any time by payment in full of principal, interest, and fees then owing.

"(f) USE OF COMMODITY CREDIT CORPORATION.—The Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this section.

"(g) MARKETING ASSESSMENT.—

"(1) SUGARCANE.—Effective only for marketings of raw cane sugar during fiscal years 1996 through 2003, the first processor of sugarcane shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment for each pound of raw cane sugar, processed by the processor from domestically produced sugarcane or sugarcane molasses, that has been marketed. The assessment rate

per pound is equal to 1.5 percent of the loan rate for raw cane sugar under this section.

''(2) SUGAR BEETS.—Effective only for marketings of beet sugar during fiscal years 1996 through 2003, the first processor of sugar beets shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment for each pound of beet sugar, processed by the processor from domestically produced sugar beets or sugar beet molasses, that has been marketed. The assessment rate per pound is equal to 1.6083 percent of the loan rate for raw cane sugar under this section.

''(3) COLLECTION.—

''(A) TIMING.—Marketing assessments required under this subsection shall be collected on a monthly basis and shall be remitted to the Commodity Credit Corporation within 30 days after the end of each month. Any cane sugar or beet sugar processed during a fiscal year that has not been marketed by September 30 of that year shall be subject to assessment on that date. The sugar shall not be subject to a second assessment at the time that it is marketed.

''(B) MANNER.—Subject to subparagraph (A), marketing assessments shall be collected

under this subsection in the manner prescribed by the Secretary and shall be nonrefundable.

''(4) PENALTIES.—If any person fails to remit the assessment required by this subsection or fails to comply with such requirements for recordkeeping or otherwise as are required by the Secretary to carry out this subsection, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying—

''(A) the quantity of cane sugar or beet sugar involved in the violation; by

''(B) the loan rate in effect at the time of the violation.

''(5) ENFORCEMENT.—The Secretary may enforce this subsection in the courts of the United States.

''(6) DEFINITION OF MARKET.—For purposes of this subsection, the term 'market' means to sell or otherwise dispose of in commerce in the United States (including, with respect to any integrated processor and refiner, the movement of raw cane sugar into the refining process) and to deliver to a buyer.

''(h) INFORMATION REPORTING.—

"(1) DUTY OF PROCESSORS AND REFINERS TO REPORT.—All sugarcane processors, cane sugar refiners, and sugar beet processors shall furnish the Secretary, on a monthly basis, such information as the Secretary may require to administer sugar programs, including the quantity of purchases of sugarcane, sugar beets, and sugar, and production, importation, distribution, and stock levels of sugar.

"(2) DUTY OF PRODUCERS TO REPORT.—In order to efficiently and effectively carry out the program under this section, the Secretary may require a producer of sugarcane or sugar beets to report, in the manner prescribed by the Secretary, the producer's sugarcane or sugar beet yields and acres planted to sugarcane or sugar beets, respectively.

"(3) PENALTY.—Any person willfully failing or refusing to furnish the information, or furnishing willfully any false information, shall be subject to a civil penalty of not more than $10,000 for each such violation.

"(4) MONTHLY REPORTS.—Taking into consideration the information received under paragraph (1), the Secretary shall publish on a monthly basis composite data on production, imports, distribution, and stock levels of sugar.

"(i) SUGAR ESTIMATES.—

"(1) DOMESTIC REQUIREMENT.—Before the beginning of each fiscal year, the Secretary shall estimate the United States demand for sugar for that fiscal year, which shall be equal to—

"(A) the quantity of sugar, that will be consumed in the United States during the fiscal year (other than sugar imported for the production of polyhydric alcohol or to be refined and reexported in refined form or in sugar containing products); plus

"(B) the quantity of sugar that would provide for adequate carryover stocks; minus

"(C) the quantity of sugar that will be available from carry-in stocks.

"(2) QUARTERLY REESTIMATES.—The Secretary shall make quarterly reestimates of sugar consumption, stocks, production, and imports for a fiscal year no later than the beginning of each of the second through fourth quarters of the fiscal year.

"(j) REGULATIONS.—The Secretary shall issue such regulations as the Secretary determines necessary to carry out this section.".

(b) EFFECT ON EXISTING LOANS FOR SUGAR.—Section 206 of the Agricultural Act of 1949 (7 U.S.C. 1446g),

as in effect on the day before the date of the enactment of this Act, shall continue to apply with respect to the 1991 through 1995 crops of sugarcane and sugar beets.

(c) TERMINATION OF MARKETING QUOTAS AND ALLOTMENTS.—

(1) TERMINATION.—Part VII of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359aa–1359jj) is repealed.

(2) CONFORMING AMENDMENT.—Section 344(f)(2) of such Act (7 U.S.C. 1344(f)(2)) is amended by striking ''sugar cane for sugar; sugar beets for sugar;''.

**SEC. 1303. REPEAL OF OBSOLETE AUTHORITY FOR PRICE SUPPORT FOR COTTONSEED AND COTTONSEED PRODUCTS.**

(a) REPEAL.—Section 301(b) of the Disaster Assistance Act of 1988 (7 U.S.C. 1464 note) is amended by striking paragraph (1).

(b) CONFORMING REPEAL.—Section 420 of the Agricultural Act of 1949 (7 U.S.C. 1432) is repealed.

# Subtitle D—Miscellaneous Program Changes

**SEC. 1401. LIMITATIONS ON ASSISTANCE UNDER EMERGENCY LIVESTOCK FEED ASSISTANCE PROGRAM.**

Section 609 of the Emergency Livestock Feed Assistance Act of 1988 (7 U.S.C. 1471g) is amended by striking subsections (c) and (d) and inserting the following new subsection:

''(c) No person may receive benefits under this title attributable to lost production of a feed commodity due to a natural disaster if crop insurance protection or noninsured crop disaster assistance for the loss of feed produced on the farm is available to the person under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).''.

**SEC. 1402. CONSERVATION RESERVE PROGRAM.**

(a) LIMITATIONS ON ACREAGE ENROLLMENTS.—

(1) LIMITATION.—Section 1231(d) of the Food Security Act of 1985 (16 U.S.C. 3831(d)) is amended by striking ''38,000,000 acres'' and inserting ''36,400,000 acres''.

(2) PROHIBITION ON 1997 INCREASE.—Section 727 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Ap-

propriations Act, 1996, is amended by striking the proviso relating to enrollment of new acres in 1997.

(b) OPTIONAL CONTRACT TERMINATION BY PRODUCERS.—Section 1235 of such Act (16 U.S.C. 3835), is amended by adding at the end the following new subsection:

''(e) TERMINATION BY OWNER OR OPERATOR.—

''(1) NOTICE OF TERMINATION.—An owner or operator of land subject to a contract entered into under this subchapter may terminate the contract by submitting to the Secretary written notice of the intention of the owner or operator to terminate the contract.

''(2) EFFECTIVE DATE.—The contract termination shall take effect 60 days after the date on which the owner or operator submits the written notice under paragraph (1).

''(3) PRO-RATED RENTAL PAYMENT.—If a contract entered into under this subchapter is terminated under this subsection before the end of the fiscal year for which a rental payment is due, the Secretary shall provide a prorated rental payment covering the portion of the fiscal year during which the contract was in effect.

"(4) RENEWED ENROLLMENT.—The termination of a contract entered into under this subchapter shall not affect the ability of the owner or operator who requested such termination to submit a subsequent bid to enroll the land that was subject to the contract into the conservation reserve.

"(5) CONSERVATION REQUIREMENTS.—If land that was subject to a contract is returned to production of an agricultural commodity, the Secretary may impose conservation requirements under subtitle A on the use of the land that are similar to the requirements imposed on other lands subject to such subtitle, but in no case shall such requirements be more onerous that the requirements imposed on other lands.".

(c) LIMITATION ON RENTAL RATES.—Section 1234(c) of such Act (16 U.S.C. 3834) is amended by adding at the end the following new paragraph:

"(5) In the case of the extension of a contract, or a new contract covering land which was previously enrolled in the conservation reserve, annual rental payments under the new or extended contract may not exceed 75 percent of the annual rental payment under the previous contract.".

**SEC. 1403. CROP INSURANCE.**

(a) CONVERSION OF CATASTROPHIC RISK PROTECTION PROGRAM TO VOLUNTARY PROGRAM.—Subsection (b)(7) of section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by inserting after subparagraph (A) the following new subparagraph:

''(B) EXCEPTION TO MANDATORY PARTICIPATION REQUIREMENT.—Notwithstanding subparagraph (A), a producer may decline to obtain catastrophic risk protection beginning with spring-planted 1996 crops and in any subsequent crop year, yet remain eligible for any market transition contract or marketing assistance loan, the conservation reserve program, or any benefit described in section 371 of the Consolidated Farm and Rural Development Act, if the producer agrees in writing to waive any eligibility for emergency crop loss assistance in connection with losses to any crop for which the producer declines to obtain catastrophic risk protection.''.

(b) DELIVERY OF VOLUNTARY CATASTROPHIC PROTECTION.—Subsection (b)(4) of such section is amended by adding at the end the following new subparagraphs:

"(C) ELIMINATION OF SECRETARIAL OPTION.—For crop years beginning after the implementation of the exception under paragraph (7)(B) to the mandatory participation requirement, the option for delivery of catastrophic risk protection provided in subparagraph (A)(ii) shall not be available to the Secretary. All risk protection policies written by the Department prior to that date shall be transferred, including all fees collected for the crop year in which the private sector will assume the policies, in an orderly manner to the private sector for performance of all service and loss adjustment functions.

"(D) GUARANTEE OF PRIVATE SECTOR SERVICE.—In full consultation and cooperation with approved insurance providers, the Corporation shall develop a plan to ensure that each producer of an insured crop has the opportunity to be serviced by an approved insurance provider if insurance is available for that crop in that county. Not later than May 1, 1996, the

Corporation shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate the plan in the form it is to be implemented by the Secretary.''.

(c) ESTABLISHMENT OF THE OFFICE OF RISK MANAGEMENT.—

(1) ESTABLISHMENT.—The Department of Agriculture Reorganization Act of 1994 is amended by inserting after section 226 (7 U.S.C. 6932) the following new section:

**''SEC. 226A. OFFICE OF RISK MANAGEMENT.**

''(a) ESTABLISHMENT.—Subject to subsection (e), the Secretary shall establish and maintain in the Department an independent Office of Risk Management.

''(b) FUNCTIONS OF THE OFFICE OF RISK MANAGEMENT.—The Office of Risk Management shall have jurisdiction over the following functions:

''(1) Supervision of the Federal Crop Insurance Corporation.

''(2) Administration and oversight of all aspects, including delivery through local offices of the Department, of all programs authorized under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

''(3) Any pilot or other programs involving revenue insurance, risk management savings accounts, or the use of the futures market to manage risk and support farm income that may be established under the Federal Crop Insurance Act or other law.

''(4) Such other functions as the Secretary considers appropriate.

''(c) ADMINISTRATOR.—

''(1) The Office of Risk Management shall be headed by an Administrator who shall be appointed by the Secretary.

''(2) The Administrator of the Office of Risk Management shall also serve as Manager of the Federal Crop Insurance Corporation.

''(d) RESOURCES.—

''(1) FUNCTIONAL COORDINATION.—Certain functions of the Office of Risk Management, such as human resources, public affairs, and legislative affairs, may be provided by a consolidation of such functions under the Under Secretary of Agriculture for Farm and Foreign Agricultural Services.

''(2) MINIMUM PROVISIONS.—Notwithstanding paragraph (1) or any other provision of law or order of the Secretary, the Secretary shall provide the Office of Risk Management with human and capital

resources sufficient for the Office to carry out its functions in a timely and efficient manner.

''(3) FISCAL YEAR 1996 FUNDING.—Not less than $88,500,000 of the appropriation provided for the salaries and expenses of the Consolidated Farm Services Agency in the Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1996 shall be provided to the Office of Risk Management for the salaries and expenses of the Office.''.

(2) CONFORMING AMENDMENT.—Section 226(b) of such Act (7 U.S.C. 6932(b)) is amended by striking paragraph (2).

(d) RECONFIGURATION OF BOARD OF DIRECTORS.—Section 505 of the Federal Crop Insurance Act (7 U.S.C. 1505) is amended to read as follows:

**''SEC. 505. BOARD OF DIRECTORS.**

''(a) AUTHORITY.—The management of the Corporation shall be vested in a Board of Directors subject to the general supervision of the Secretary.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The Board shall consist of the Manager of the Corporation, the Under Secretary of Agriculture for Farm and Foreign Agricultural Services, one person who is an officer or em-

ployee of an approved insurance provider, one person who is a licensed crop insurance agent, one person experienced in the reinsurance business who is not otherwise employed by the Federal Government, and four active producers who are not otherwise employed by the Federal Government. The Secretary shall not be a member of the Board.

''(2) PRODUCER MEMBERS.—In appointing the four active producers who are not otherwise employed by the Federal Government, the Secretary shall ensure that three such members are policyholders and are from different geographic areas of the United States, in order that diverse agricultural interests in the United States are at all times represented on the Board. The Secretary shall ensure that the fourth active producer, who may also be a policyholder, receives a significant portion of crop income from crops covered by the noninsured crop disaster assistance program established under section 519.

''(c) APPOINTMENT.—

''(1) MANAGER.—The Administrator of the Office of Risk Management appointed by the Secretary under section 226A(c) of the Department of Agri-

culture Reorganization Act of 1994 shall serve as Manager of the Corporation.

''(2) TERMS OF OTHER MEMBERS.—Other than the Manager of the Corporation and the Under Secretary of Agriculture for Farm and Foreign Agricultural Services, the members of the Board shall be appointed by the Secretary for a term of three years. However, in the initial appointment of such members, the Secretary shall appoint two members for one year, two members for two years, and two members for three years in order to provide greater continuity to the Board.

''(3) SUCCESSION.—A member of the Board appointed under paragraph (2) may serve after the expiration of the term of office of such member until the successor for such member has taken office.

''(d) QUORUM.—Five of the members in office shall constitute a quorum for the transaction of the business of the Board.

''(e) IMPAIRMENT OF POWERS.—The powers of the Board to execute the functions of the Corporation shall be impaired at any time there are not six members of the Board in office. Any impairment of the powers of the Board shall also serve to impair the powers of the Man-

ager to act under any delegation of power provided under subsection (g).

''(f) COMPENSATION.—

''(1) EMPLOYEES OF THE DEPARTMENT.—The members of the Board who are employed in the Department shall receive no additional compensation for their services as members, but may be allowed necessary traveling and subsistence expenses when engaged in business of the Corporation outside of the District of Columbia.

''(2) NONEMPLOYEES OF THE FEDERAL GOVERNMENT.—The members of the Board who are not employed by the Federal Government shall be paid such compensation for their services as members as the Secretary shall determine, but such compensation shall not exceed the daily equivalent of the rate prescribed for positions a level V of the Executive Schedule under section 5316 of title 5, United States Code, when actually employed. Such members may also receive actual necessary traveling and subsistence expenses, or a per diem allowance in lieu of subsistence expenses, as authorized by section 5703 of such title for persons in Government service employed intermittently, when on the business of the Corporation away from their homes or regular places

of business. Any such compensation shall be paid from the insurance fund established under section 516(c).

''(g) CHIEF EXECUTIVE OFFICER.—The Manager of the Corporation shall be its chief executive officer, with such power and authority as may be conferred by the Board.''.

**SEC. 1404. REPEAL OF FARMER OWNED RESERVE PROGRAM.**

(a) REPEAL.—Section 110 of the Agricultural Act of 1949 (7 U.S.C. 1445e) is repealed.

(b) EFFECT OF REPEAL ON EXISTING LOANS.—The repeal of section 110 of the Agricultural Act of 1949 by subsection (a) shall not affect the validity or terms and conditions of any extended price support loan provided under such section before the date of the enactment of this Act.

**SEC. 1405. REDUCTION IN FUNDING LEVELS FOR EXPORT ENHANCEMENT PROGRAM.**

Section 301(e) of the Agricultural Trade Act of 1978 (7 U.S.C. 5651(e)) is amended by striking paragraph (1) and inserting the following new paragraph:

''(1) IN GENERAL.—To carry out the program established under this section, the Commodity Credit Corporation shall make available—

''(A) for each of the fiscal years 1991 through 1995, not more than $500,000,000 of the funds or commodities of the Commodity Credit Corporation;

''(B) for each of the fiscal years 1996 and 1997, not more than $400,000,000 of the funds or commodities of the Commodity Credit Corporation;

''(C) for fiscal year 1998, not more than $500,000,000 of the funds or commodities of the Commodity Credit Corporation;

''(D) for fiscal year 1999, not more than $550,000,000 of the funds or commodities of the Commodity Credit Corporation;

''(E) for fiscal year 2000, not more than $579,000,000 of the funds or commodities of the Commodity Credit Corporation; and

''(F) for each of the fiscal years 2001 and 2002, not more than $478,000,000 of the funds or commodities of the Commodity Credit Corporation.''.

**SEC. 1406. BUSINESS INTERRUPTION INSURANCE PROGRAM.**

(a) ESTABLISHMENT OF PROGRAM.—Not later than December 31, 1996, the Secretary of Agriculture shall im-

plement a program (to be known as the ''Business Interruption Insurance Program''), under which the producer of a program crop could elect to obtain revenue insurance coverage to ensure that the producer receives an indemnity payment if the producer suffers a loss of revenue. The nature and extent of the program and the manner of determining the amount of an indemnity payment shall be established by the Secretary.

(b) REPORT ON PROGRESS AND PROPOSED EXPANSION.—Not later than January 1, 1998, the Secretary shall submit to the Commission on the 21st Century Production Agriculture the data and results of the program through October 1, 1997. In addition, the Secretary shall submit information and recommendations to the Commission with respect to the program that will serve as the basis for the Secretary to offer revenue insurance to agricultural producers, at one or more levels of coverage, that—

(1) is in addition to, or in lieu of, catastrophic and higher levels of crop insurance;

(2) is offered through reinsurance arrangements with private insurance companies;

(3) is actuarially sound; and

(4) requires the payment of premiums and administrative fees by participating producers.

(c) PROGRAM CROP DEFINED.—For purposes of this section, the term ''program crop'' means a crop of wheat, corn, grain sorghums, oats, barley, upland cotton, or rice.

## Subtitle E—Commission on 21st Century Production Agriculture

**SEC. 1501. ESTABLISHMENT.**

There is hereby established a commission to be known as the ''Commission on 21st Century Production Agriculture'' (hereinafter in this title referred to as the ''Commission'').

**SEC. 1502. COMPOSITION.**

(a) MEMBERSHIP AND APPOINTMENT.—The Commission shall be composed of 11 members, appointed as follows:

(1) Three members shall be appointed by the President.

(2) Four members shall be appointed by the Chairman of the Committee on Agriculture of the House of Representatives in consultation with the ranking minority member of the Committee.

(3) Four members shall be appointed by the Chairman of the Committee on Agriculture, Nutrition, and Forestry of the Senate in consultation with the ranking minority member of the Committee.

(b) QUALIFICATIONS.—At least one of the members appointed under each of the paragraphs (1), (2), and (3) of subsection (a) shall be an individual who is primarily involved in production agriculture. All other members of the Commission shall be appointed from among individuals having knowledge and experience in agricultural production, marketing, finance, or trade.

(c) TERM OF MEMBERS; VACANCIES.—Members of the Commission shall be appointed for the life of the Commission. A vacancy on the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment was made.

(d) TIME FOR APPOINTMENT; FIRST MEETING.—The members of the Commission shall be appointed not later than October 1, 1997. The Commission shall convene its first meeting to carry out its duties under this title 30 days after six members of the Commission have been appointed.

(e) CHAIRMAN.—The chairman of the Commission shall be designated jointly by the Chairman of the Committee on Agriculture of the House of Representatives and the Chairman of the Committee on Agriculture, Nutrition, and Forestry of the Senate from among the members of the Commission.

**SEC. 1503. COMPREHENSIVE REVIEW OF PAST AND FUTURE OF PRODUCTION AGRICULTURE.**

(a) INITIAL REVIEW.—The Commission shall conduct a comprehensive review of changes in the condition of production agriculture in the United States since the date of the enactment of this Act and the extent to which such changes are the result of the amendments made by this Act. The review shall include the following:

(1) An assessment of the initial success of market transition contracts under section 102 of the Agricultural Act of 1949 in supporting the economic viability of farming in the United States.

(2) An assessment of the food security situation in the United States in the areas of trade, consumer prices, international competitiveness of United States production agriculture, food supplies, and humanitarian relief.

(3) An assessment of the changes in farmland values and agricultural producer incomes since the date of the enactment of this Act.

(4) An assessment of the extent to which regulatory relief for agricultural producers has been enacted and implemented, including the application of cost/benefit principles in the issuance of agricultural regulations.

(5) An assessment of the extent to which tax relief for agricultural producers has been enacted in the form of capital gains tax reductions, estate tax exemptions, and mechanisms to average tax loads over high and low income years.

(6) An assessment of the effect of any Government interference in agricultural export markets, such as the imposition of trade embargoes, and the degree of implementation and success of international trade agreements.

(7) An assessment of the likely affect of the sale, lease, or transfer of farm poundage quota for peanuts across State lines.

(b) SUBSEQUENT REVIEW.—The Commission shall conduct a comprehensive review of the future of production agriculture in the United States and the appropriate role of the Federal Government in support of production agriculture. The review shall include the following:

(1) An assessment of changes in the condition of production agriculture in the United States since the initial review conducted under subsection (a).

(2) Identification of the appropriate future relationship of the Federal Government with production agriculture after 2002.

(3) An assessment of the personnel and infrastructure requirements of the Department of Agriculture necessary to support the future relationship of the Federal Government with production agriculture.

(c) RECOMMENDATIONS.—In carrying out the subsequent review under subsection (b), the Commission shall develop specific recommendations for legislation to achieve the appropriate future relationship of the Federal Government with production agriculture identified under subsection (a)(2).

**SEC. 1504. REPORTS.**

(a) REPORT ON INITIAL REVIEW.—Not later than June 1, 1998, the Commission shall submit to the President, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing the results of the initial review conducted under section 1503(a).

(b) REPORT ON SUBSEQUENT REVIEW.—Not later than January 1, 2001, the Commission shall submit to the President and the congressional committees specified in subsection (a) a report containing the results of the subsequent review conducted under section 1503(b).

**SEC. 1505. POWERS.**

(a) HEARINGS.—The Commission may, for the purpose of carrying out this title, conduct such hearings, sit and act at such times, take such testimony, and receive such evidence, as the Commission considers appropriate.

(b) ASSISTANCE FROM OTHER AGENCIES.—The Commission may secure directly from any department or agency of the Federal Government such information as may be necessary for the Commission to carry out its duties under this title. Upon request of the chairman of the Commission, the head of the department or agency shall, to the extent permitted by law, furnish such information to the Commission.

(c) MAIL.—The Commission may use the United States mails in the same manner and under the same conditions as the departments and agencies of the Federal Government.

(d) ASSISTANCE FROM SECRETARY.—The Secretary of Agriculture shall provide to the Commission appropriate office space and such reasonable administrative and support services as the Commission may request.

**SEC. 1506. COMMISSION PROCEDURES.**

(a) MEETINGS.—The Commission shall meet on a regular basis (as determined by the chairman) and at the call of the chairman or a majority of its members.

(b) QUORUM.—A majority of the members of the Commission shall constitute a quorum for the transaction of business.

**SEC. 1507. PERSONNEL MATTERS.**

(a) COMPENSATION.—Each member of the Commission shall serve without compensation, but shall be allowed travel expenses including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, when engaged in the performance of Commission duties.

(b) STAFF.—The Commission shall appoint a staff director, who shall be paid at a rate not to exceed the maximum rate of basic pay under section 5376 of title 5, United States Code, and such professional and clerical personnel as may be reasonable and necessary to enable the Commission to carry out its duties under this title without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, or any other provision of law, relating to the number, classification, and General Schedule rates. No employee appointed under this subsection (other than the staff director) may be compensated at a rate to exceed the maximum rate applicable to level GS–15 of the General Schedule.

(c) DETAILED PERSONNEL.—Upon request of the chairman of the Commission, the head of any department or agency of the Federal Government is authorized to detail, without reimbursement, any personnel of such department or agency to the Commission to assist the Commission in carrying out its duties under this section. The detail of any such personnel may not result in the interruption or loss of civil service status or privilege of such personnel.

**SEC. 1508. TERMINATION OF COMMISSION.**

The Commission shall terminate upon submission of the final report required by section 1504.

# TITLE II—COMMITTEE ON BANKING AND FINANCIAL SERVICES

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

The table of contents for this title is as follows:

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

Subtitle B—Thrift Charter Conversion

Sec. 2200. Short title.

CHAPTER 1—BANK INSURANCE FUND AND SAVINGS ASSOCIATION INSURANCE FUND

Sec. 2201. Special assessment.
Sec. 2202. Assessments on insured depository institutions.

Sec. 2203. Merger of Bank Insurance Fund and Savings Association Insurance Fund after recapitalization of SAIF.
Sec. 2204. Refund of amounts in deposit insurance fund in excess of designated reserve amount.
Sec. 2205. Assessments authorized only if needed to maintain the reserve ratio of a deposit insurance fund.

CHAPTER 2—STATUS OF BANKS AND SAVINGS ASSOCIATIONS

Sec. 2221. Termination of Federal savings associations; treatment of State savings associations as banks for purposes of Federal banking law.
Sec. 2222. Treatment of certain activities and affiliations of bank holding companies resulting from this Act.
Sec. 2223. Transition provisions for activities of savings associations which convert into or become treated as banks.
Sec. 2224. Registration of bank holding companies resulting from conversions of savings associations to banks or treatment of savings associations as banks.
Sec. 2225. Additional transition provisions and special rules.
Sec. 2226. Technical and conforming amendments.
Sec. 2227. References to savings associations and State banks in Federal law.
Sec. 2228. Repeal of Home Owners' Loan Act.
Sec. 2229. Effective date; definitions.

CHAPTER 3—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY

Sec. 2241. Office of Thrift Supervision abolished.
Sec. 2242. Determination of transferred functions and employees.
Sec. 2243. Savings provisions.
Sec. 2244. References in Federal law to Director of the Office of Thrift Supervision.
Sec. 2245. Reconfiguration of board of directors of FDIC as a result of removal of Director of the Office of Thrift Supervision.

Subtitle C—Community Reinvestment Act Amendments

Sec. 2301. Expression of congressional intent.
Sec. 2302. Community Reinvestment Act exemption.
Sec. 2303. Self-certification of CRA compliance.
Sec. 2304. Community input and conclusive rating.
Sec. 2305. Special purpose financial institutions.
Sec. 2306. Increased incentives for lending to low- and moderate-income communities.
Sec. 2307. Prohibition on additional reporting under CRA.
Sec. 2308. Technical amendment.
Sec. 2309. Duplicative reporting.
Sec. 2310. CRA congressional oversight.
Sec. 2311. Consultation among examiners.
Sec. 2312. Limitation on regulations.

Subtitle D—Phase-Down of Oversight Board

Sec. 2401. Termination of authority of Oversight Board to employ staff.

# Subtitle A—Housing Provisions

## SEC. 2101. TERMINATION OF RTC AND FDIC AFFORDABLE HOUSING PROGRAMS.

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

"(17) TRANSFER OF AUTHORITY.—The Secretary shall assume, not later than December 31, 1995, and thereafter shall carry out, any remaining authority and responsibilities of the Corporation to recapture excess proceeds from resale of properties and to monitor and enforce low-income occupancy requirements or rent limitations under this subsection and shall assume any direct or contingent liability of the Corporation to carry out such authority and responsibilities.".

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

"(18) TERMINATION.—

"(A) IN GENERAL.—On and after the date of the enactment of the Seven-Year Balanced

Budget Reconciliation Act of 1995, the provisions of this subsection (other than paragraph (17)) shall not apply with respect to any eligible residential property or eligible condominium property.

''(B) SAVINGS PROVISION.—Notwithstanding subparagraph (A), the provisions of this subsection shall continue to apply on and after such date of enactment to any eligible residential property or eligible condominium property that—

''(i) has been sold or otherwise disposed of by the Corporation before such date of enactment; or

''(ii) is subject to a contract of sale or other disposition entered into before such date of enactment.''.

(c) TERMINATION OF AFFORDABLE HOUSING ADVISORY BOARD.—Section 14(b)(9) of the Resolution Trust Corporation Completion Act (12 U.S.C. 1831q note) is amended by striking ''September 30, 1998'' and inserting ''September 30, 1995''.

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

(1) REPEAL.—Section 40 of the Federal Deposit Insurance Act (12 U.S.C. 1831q) is hereby repealed.

(2) TRANSFER OF WINDUP AUTHORITY.—Notwithstanding paragraph (1)—

(A) effective December 31, 1995, the Secretary shall carry out any remaining authority and responsibilities of the Federal Deposit Insurance Corporation under section 40 of the Federal Deposit Insurance Act to recapture excess proceeds from resale of properties and to monitor and enforce low-income occupancy requirements or rent limitations under such section and shall assume any direct or contingent liability of the Corporation to carry out such authority and responsibilities; and

(B) the Federal Deposit Insurance Corporation shall consummate any sales of property under section 40 of such Act that were pending under contracts of sale on September 30, 1995.

(e) FDIC DISPOSITION OF ASSETS AS CONSERVATOR OR RECEIVER.—Section 11(d)(13)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(13)(E)) is amended—

(1) in clause (iii), by inserting ''and'' after the semicolon;

(2) in clause (iv), by striking ''; and'' and inserting a period; and

(3) by striking clause (v).

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

(1) in clause (iii), by inserting ''and'' after the semicolon;

(2) in clause (iv), by striking ''; and'' and inserting a period; and

(3) by striking clause (v).

**SEC. 2102. FORECLOSURE AVOIDANCE AND BORROWER ASSISTANCE.**

(a) FORECLOSURE AVOIDANCE.—The last sentence of section 204(a) of the National Housing Act (12 U.S.C. 1710(a)) is amended by inserting before the period the following: ''*: And provided further*, That the Secretary may pay insurance benefits to the mortgagee to recompense the mortgagee for its actions to provide an alternative to foreclosure of a mortgage that is in default, which actions may include such actions as special forbearance, loan modification, and deeds in lieu of foreclosure, all upon such terms and conditions as the mortgagee shall determine in the

mortgagee's sole discretion within guidelines provided by the Secretary, but which may not include assignment of a mortgage to the Secretary: *And provided further*, That for purposes of the preceding proviso, no action authorized by the Secretary and no action taken, nor any failure to act, by the Secretary or the mortgagee shall be subject to judicial review''.

(b) AUTHORITY TO ASSIST MORTGAGORS IN DEFAULT.—Section 230 of the National Housing Act (12 U.S.C. 1715u) is amended to read as follows:

''AUTHORITY TO ASSIST MORTGAGORS IN DEFAULT

''SEC. 230. (a) PAYMENT OF PARTIAL CLAIM.—The Secretary may establish a program for payment of a partial insurance claim to a mortgagee that agrees to apply the claim amount to payment of a mortgage on a 1- to 4-family residence that is in default. Any such payment under such program to the mortgagee shall be made in the Secretary's sole discretion and on terms and conditions acceptable to the Secretary, except that—

''(1) the amount of the payment shall be in an amount determined by the Secretary, which shall not exceed an amount equivalent to 12 monthly mortgage payments and any costs related to the default that are approved by the Secretary; and

"(2) the mortgagor shall agree to repay the amount of the insurance claim to the Secretary upon terms and conditions acceptable to the Secretary.

The Secretary may pay the mortgagee, from the appropriate insurance fund, in connection with any activities that the mortgagee is required to undertake concerning repayment by the mortgagor of the amount owed to the Secretary.

"(b) ASSIGNMENT.—

"(1) PROGRAM AUTHORITY.—The Secretary may establish a program for assignment to the Secretary, upon request of the mortgagee, of a mortgage on a 1- to 4-family residence insured under this Act.

"(2) PROGRAM REQUIREMENTS.—The Secretary may accept assignment of a mortgage under a program under this subsection only if—

"(A) the mortgage was in default;

"(B) the mortgagee has modified the mortgage to cure the default and provide for mortgage payments within the reasonable ability of the mortgagor to pay at interest rates not exceeding current market interest rates; and

"(C) the Secretary arranges for servicing of the assigned mortgage by a mortgagee

(which may include the assigning mortgagee) through procedures that the Secretary has determined to be in the best interests of the appropriate insurance fund.

''(3) PAYMENT OF INSURANCE BENEFITS.—Upon accepting assignment of a mortgage under the program under this subsection, the Secretary may pay insurance benefits to the mortgagee from the appropriate insurance fund in an amount that the Secretary determines to be appropriate, but which may not exceed the amount necessary to compensate the mortgagee for the assignment and any losses and expenses resulting from the mortgage modification.

''(c) PROHIBITION OF JUDICIAL REVIEW.—No decision by the Secretary to exercise or forego exercising any authority under this section shall be subject to judicial review.''.

(c) SAVINGS PROVISION.—Any mortgage for which the mortgagor has applied to the Secretary of Housing and Urban Development, before the date of the enactment of this Act, for assignment pursuant to section 230(b) of the National Housing Act shall continue to be governed by the provisions of such section, as in effect immediately before such date of enactment.

(d) APPLICABILITY OF OTHER LAWS.—No provision of the National Housing Act or any other law shall be construed to require the Secretary of Housing and Urban Development to provide an alternative to foreclosure for mortgagees with mortgages on 1- to 4-family residences insured by the Secretary under the National Housing Act, or to accept assignments of such mortgages.

**SEC. 2103. REFORM OF HUD-OWNED MULTIFAMILY PROPERTY DISPOSITION PROGRAM.**

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

**"SEC. 203. MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY HOUSING PROJECTS.**

''(a) IN GENERAL.—The Secretary of Housing and Urban Development may manage and dispose of (1) multifamily housing projects that are owned by the Secretary or that are subject to mortgages held by the Secretary, and (2) mortgages on multifamily housing projects that are held by the Secretary, without regard to any other provision of law.

''(b) AUTHORITY TO DELEGATE.—The Secretary of Housing and Urban Development may delegate to one or more entities the authority to carry out some or all of the

functions and responsibilities of the Secretary in connection with the foreclosure of mortgages on multifamily housing projects held by the Secretary.

''(c) DEFINITION.—For purposes of this section, the term 'multifamily housing project' means any multifamily rental housing project which is, or prior to acquisition by the Secretary was, assisted or insured under the National Housing Act, or was subject to a loan under section 202 of the Housing Act of 1959.''.

(b) CONFORMING AMENDMENTS.—

(1) NONDISCRIMINATION AGAINST CERTIFICATE AND VOUCHER HOLDERS.—Section 183(c) of the Housing and Community Development Act of 1987 (42 U.S.C. 1437f note) is amended by striking ''section 203(i)(2) of the Housing and Community Development Amendments of 1978, as amended by section 181(h) of this Act'' and inserting ''section 203(b) of the Housing and Community Development Amendments of 1978 (as in effect before October 1, 1995)''.

(2) LIHPRH ACT OF 1990.—Section 212(c) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4102(c)) is amended by striking the last sentence.

(3) HOPE HOMEOWNERSHIP PROGRAM.—Section 427 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12877) is amended by striking ''subject to—'' and all that follows and inserting ''subject to the Low-Income Housing Preservation and Resident Homeownership Act of 1990.''.

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

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

(A) by striking subparagraph (B); and

(B) by striking ''(A)''.

(6) PREVENTING MORTGAGE DEFAULTS ON INSURED MULTIFAMILY PROJECTS.—Section 103(h)(2)(B) of the Multifamily Housing Property Disposition Reform Act of 1994 (12 U.S.C. 1715z–1a note) is amended by inserting ''(as in effect before October 1, 1995)'' after ''1978''.

**SEC. 2104. RECAPTURE OF RURAL HOUSING LOAN SUBSIDIES BY RURAL HOUSING AND COMMUNITY DEVELOPMENT SERVICE.**

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

**SEC. 2105. REDUCTION OF SECTION 8 ANNUAL ADJUSTMENT FACTORS FOR UNITS WITHOUT TENANT TURNOVER.**

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

# Subtitle B—Thrift Charter Conversion

**SEC. 2200. SHORT TITLE.**

This subtitle may be cited as the ''Thrift Charter Conversion Act of 1995''.

## CHAPTER 1—BANK INSURANCE FUND AND SAVINGS ASSOCIATION INSURANCE FUND

**SEC. 2201. SPECIAL ASSESSMENT.**

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

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

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

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

(4) by striking ''SPECIAL ASSESSMENTS.—In addition to'' and inserting ''SPECIAL ASSESSMENTS.—

''(A) IN GENERAL.—In addition to''; and

(5) by adding at the end the following new subparagraphs:

''(B) SINGLE ADDITIONAL SPECIAL ASSESSMENT WITH RESPECT TO CERTAIN ACCOUNTS.—

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

''(I) Each Savings Association Insurance Fund member (including any Savings Association Insurance

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

''(II) Each Bank Insurance Fund member which has deposits which are treated, under section 5(d)(3), as deposits which are insured by the Savings Association Insurance Fund.

''(ii) AMOUNT OF ASSESSMENT.—The assessment imposed under clause (i) shall be in an amount equal to such percentage of the Savings Association Insurance Fund assessment base (of the institutions subject to such assessment) as of March 31, 1995, as the Board of Directors determines, in the Board of Directors' discretion, to be necessary in order for the reserve ratio of the Savings Association Insurance Fund to meet the designated reserve ratio on the 1st business day of January, 1996.

''(iii) DEPOSIT OF ASSESSMENT.—Notwithstanding any other provision of law, the proceeds of any assessment imposed under clause (i) shall be deposited in the Savings Association Insurance Fund.

"(iv) DATE PAYMENT DUE.—The special assessment imposed under this subparagraph shall be—

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

"(II) paid to the Corporation on the later of the due date or such other date as the Corporation may prescribe which may not be later than the end of the 60-day period beginning on the date of the Thrift Charter Conversion Act of 1995.

"(v) SAVINGS ASSOCIATION INSURANCE FUND ASSESSMENT BASE DEFINED.—For purposes of this subparagraph, the term Savings Association Insurance Fund assessment base means—

"(I) the assessment base of Savings Association Insurance Fund members on which assessments are imposed under the risk-based assessment system established pursuant to paragraph (1); and

"(II) in the case of an institution described in clause (i)(II), the ad-

justed attributable deposit amount determined under subparagraph (C) of section 5(d)(3) for purposes of subparagraph (B)(i) of such section.

''(C) SPECIAL RULES FOR CERTAIN EXEMPT INSTITUTIONS.—

''(i) IN GENERAL.—The Board of Directors may exempt any weak insured depository institution from the payment of the assessment imposed under subparagraph (B)(i) if the exemption would reduce risk to the Savings Association Insurance Fund.

''(ii) CONTINUATION OF ASSESSMENT RATES APPLICABLE AS OF JUNE 30, 1995.—Notwithstanding any other provision of this subsection or any determination by the Corporation pursuant to paragraph (2), the semiannual assessment rate applicable under paragraph (2) during the period beginning on January 1, 1996, and ending on December 31, 1999, with respect to any insured depository institution which receives an exemption under clause (i) shall be the semiannual assessment rate which

would be applicable to such institution under paragraph (2) if such assessment rate were calculated in the manner in which semiannual assessment rates for Savings Association Insurance Fund members were determined by the Corporation under such paragraph as of June 30, 1995.

''(iii) SPECIAL RULE FOR OAKAR BANKS.—If an insured depository institution to which clause (ii) applies is an institution described in subparagraph (B)(i)(II), section 5(d)(3) (as in effect on September 13, 1995) shall continue to apply with respect to such institution for purposes of clause (ii) without regard to the repeal of such section by section 2202(c) of the Thrift Charter Conversion Act of 1995.

''(iv) DEPOSIT OF ASSESSMENT.—Assessments imposed under paragraph (2) in accordance with clause (i) on depository institutions to which such clause applies shall be deposited—

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

"(II) after such merger, in the deposit insurance fund.

"(v) GUIDELINES.—

"(I) GUIDELINES REQUIRED.—Not later than 30 days after the date of the enactment of the Thrift Charter Conversion Act of 1995, the Board of Directors shall prescribe guidelines containing the criteria to be used by the Board of Directors in making any determination under clause (i).

"(II) PUBLICATION.—The guidelines prescribed under subclause (I) shall be published in the Federal Register.

"(D) PRO RATA PAYMENT OF SPECIAL ASSESSMENT BY EXEMPT INSTITUTIONS AUTHORIZED.—In the case of any depository institution which receives an exemption under subpara-

graph (C)(i) from the special assessment imposed under subparagraph (B) and any successor to such institution, subparagraph (C)(ii) shall cease to apply with respect to such institution as of the date on which the institution makes a payment to the Corporation, on such terms as the Board of Directors may prescribe, in an amount equal to the product of—

''(i) 12.5 percent of the product of—

''(I) the Savings Association Insurance Fund assessment base of the institution which would have been used in the calculation of the amount of such special assessment if the institution had not received the exemption from such assessment; and

''(II) the percentage rate calculated by the Board of Directors under subparagraph (B)(ii) for use in determining the amount of the special assessment for depository institutions which did not receive an exemption under subparagraph (C); and

''(ii) the whole number of full semiannual periods which begin after the date

of such payment and end before January 1, 2000.

''(E) ASSESSMENT FOR CERTAIN DEPOSITS.—

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

''(ii) MINIMUM RATE.—Notwithstanding clause (i), any rate assessed under such clause may not be less than ⅔ of the assessment rate imposed under subparagraph (B).

''(iii) FACTORS.—In setting any assessment rate under clause (i), the Corporation shall consider the following factors:

''(I) The extent to which deposits treated under section 5(d)(3) as deposits insured by the Savings Association Insurance Fund do not reflect the

actual amount of deposits insured by such fund because of the growth attribution rule contained in clause (iii) of such section.

''(II) The ability of an insured depository institution to demonstrate with deposit data the amount of actual deposits which should be treated as deposits insured by the Savings Association Insurance Fund notwithstanding the growth attribution rule referred to in subclause (I).

''(iv) NO NET BUDGET EFFECT.—Notwithstanding any other provision of this subparagraph, the Corporation shall not set any assessment rate under clause (i) that would result in an increased budget outlay or a decrease in offsetting receipts under this paragraph.''.

**SEC. 2202. ASSESSMENTS ON INSURED DEPOSITORY INSTITUTIONS.**

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

(1) in the portion of paragraph (2) which precedes subparagraph (A)—

(A) by striking ''each Savings Association Insurance Fund member'' and inserting ''each insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act)''; and

(B) by striking ''such members'' and inserting ''such institutions''; and

(2) by striking '', except that—'' and all that follows through the end of the paragraph and inserting '', except that the Financing Corporation shall have first priority to make the assessment.''.

(b) ASSESSMENT RATES FOR SAIF MEMBERS MAY NOT BE LESS THAN ASSESSMENT RATES FOR BIF MEMBERS.—Section 7(b)(2)(F) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(F)) is amended—

(1) by striking ''and'' at the end of clause (i);

(2) by striking the period at the end of clause (ii) and inserting ''; and''; and

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

''(iii) notwithstanding any other provision of this subsection, assessment rates for Savings Association Insurance Fund

members may not be less than assessment rates for Bank Insurance Fund members.''.

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

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 7(b)(2)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(D)) is amended by striking ''Savings Association Insurance Fund members'' and inserting ''members of a deposit insurance fund''.

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

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

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

**SEC. 2203. MERGER OF BANK INSURANCE FUND AND SAVINGS ASSOCIATION INSURANCE FUND AFTER RECAPITALIZATION OF SAIF.**

(a) ESTABLISHMENT OF DEPOSIT INSURANCE FUND.—

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

''(5) DEPOSIT INSURANCE FUND.—

''(A) ESTABLISHMENT.—There is established a fund to be known as the deposit insurance fund which shall—

''(i) be maintained and administered by the Corporation; and

''(ii) initially consist of the assets and liabilities of the Bank Insurance Fund and Savings Association Insurance Fund which have been merged by the Corporation into the deposit insurance fund pursuant to section 2203(a)(2) of the Thrift Charter Conversion Act of 1995, other than any assets of the Savings Association Insurance Fund which have been deposited in the special reserve of the deposit insurance

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

''(B) USES.—The deposit insurance fund shall be available to the Corporation for use in carrying out the insurance purposes of the Corporation in accordance with this Act with respect to insured depository institutions.

''(C) DEPOSITS.—All amounts assessed against insured depository institutions by the Corporation shall be deposited into the deposit insurance fund.''.

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

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

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

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

''(6) SPECIAL RESERVE OF THE DEPOSIT INSURANCE FUND.—

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

''(i) be maintained and administered by the Corporation; and

''(ii) initially consist of amounts deposited in the special reserve pursuant to section 2203(b)(2) of the Thrift Charter Conversion Act of 1995.

''(B) EMERGENCY USE OF SPECIAL RESERVE.—

''(i) USE AUTHORIZED.—Subject to clause (ii) and notwithstanding subparagraph (C), the Corporation may, in the sole discretion of the Board of Directors, transfer amounts from the special reserve for deposit in the deposit insurance fund for use in accordance with paragraph (5)(B).

"(ii) CONDITIONS ON TRANSFER.—The Board of Directors may authorize a transfer under clause (i) only if—

"(I) the Board of Directors determines that the reserve ratio of the deposit insurance fund is less than 50 percent of the designated reserve ratio; and

"(II) the Board of Directors finds that the reserve ratio of the deposit insurance will likely be less than the designated reserve ratio of the fund for each of the 4 calendar quarters beginning after the date of such determination.

"(C) NO REFUNDS OR OTHER USES AUTHORIZED.—Except as provided in subparagraph (B), the Corporation may not make any payment from the special reserve, make any refund or provide any credit to any insured depository institution with respect to any amount in the special reserve, or use any amount in the special reserve for any other purpose (including the use of any such amount as security for the

repayment of any obligation of the Corporation).

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

(2) TRANSFER AND DEPOSIT BY CORPORATION.—If, at the time of the merger of the Bank Insurance Fund and the Savings Association Insurance Fund pursuant to subsection (a)(2), the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, the Corporation shall transfer from such fund to the special reserve of the deposit insurance fund established by the amendment made by paragraph (1) an amount equal to the amount which causes the reserve ratio of the Savings Association Insurance Fund to exceed the designated reserve ratio.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 3(y) of the Federal Deposit Insurance Act (12 U.S.C. 1813(y)) is amended by striking ''the Bank Insurance Fund or the Savings Association Insurance Fund, as appropriate'' and insert-

ing ''the deposit insurance fund established under section 11(a)(5)''.

(2) Section 11(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)) is amended by striking paragraphs (4)(A) and (7).

(3) Section 5(d)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(1)) is amended—

(A) in subparagraph (A), by striking ''reserve ratios'' and all that follows through the period and inserting ''the reserve ratio of the deposit insurance fund.'';

(B) by striking subparagraph (B); and

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

(4) Section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended by striking subsection (l).

(5) Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is amended—

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

(B) in clauses (i) and (iv) of subparagraph (A), by striking ''each deposit insurance fund'' and inserting ''the deposit insurance fund'';

(C) in subparagraph (A)(iii), by striking ''a deposit insurance fund'' and inserting ''the deposit insurance fund''; and

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

''(F) RESERVE RATIO DEFINED.—For purposes of this subsection, the term 'reserve ratio' means the ratio of the net worth of the deposit insurance fund to the aggregate estimated insured deposits held in all insured depository institutions.''.

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

(A) in subparagraph (A) by striking ''any deposit insurance fund'' and inserting ''the deposit insurance fund''; and

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

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

(A) in clause (i)—

(i) by inserting ''or'' after the semicolon at the end of subclause (I);

(ii) by striking subclause (II); and

(iii) by striking ''; and'' at the end of subclause (III) and inserting a period; and

(B) by striking clause (ii).

(8) Section 11(a)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)(B)) is amended by striking ''Bank Insurance Fund and the Savings Association Insurance Fund'' and inserting ''deposit insurance fund''.

(9) Paragraph (1) of section 11(f) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f)) is amended by striking ''depositor, except that—'' and all that follows through the period at the end of the paragraph and inserting ''depositor.''.

(10) Section 11(i)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1821(i)(3)) is amended—

(A) by striking subparagraph (B); and

(B) in subparagraph (C), by striking ''subparagraphs (A) and (B)'' and inserting ''subparagraph (A)''.

(11) Section 11A(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1821a(a)(3)) is amended by striking ''Bank Insurance Fund, the Savings Association Insurance Fund,'' and inserting ''deposit insurance fund''.

(12) Section 11A(f) of the Federal Deposit Insurance Act (12 U.S.C. 1821a(f)) is amended by striking ''Savings Association Insurance Fund'' and inserting ''deposit insurance fund''.

(13) Section 13(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1823(a)(1)) is amended by striking ''Bank Insurance Fund, the Savings Association Insurance Fund,'' and inserting ''deposit insurance fund, the special reserve of the deposit insurance fund,''.

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

(A) by striking ''appropriate insurance fund'' and inserting ''deposit insurance fund'';

(B) by striking ''the members of the insurance fund (of which such institution is a member)'' and inserting ''insured depository institutions'';

(C) by striking ''each member's'' and inserting ''each insured depository institution's''; and

(D) by striking ''the member's'' each place such term appears and inserting ''the institution's''.

(15) Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)) is amended by striking paragraph (11).

(16) Section 13(h) of the Federal Deposit Insurance Act (12 U.S.C. 1823(h)) is amended by striking ''Bank Insurance Fund'' and inserting ''deposit insurance fund''.

(17) Section 14(a) of the Federal Deposit Insurance Act (12 U.S.C. 1824(a)) is amended—

(A) by striking ''Bank Insurance Fund or the Savings Association Insurance Fund'' and inserting ''deposit insurance fund''; and

(B) by striking ''each such fund'' and inserting ''the fund''.

(18) Section 14(b) of the Federal Deposit Insurance Act (12 U.S.C. 1824(b)) is amended by striking ''Bank Insurance Fund or Savings Association Insurance Fund'' and inserting ''deposit insurance fund''.

(19) Section 14(c) of the Federal Deposit Insurance Act (12 U.S.C. 1824(c)) is amended by striking paragraph (3).

(20) Section 14 of the Federal Deposit Insurance Act (12 U.S.C. 1824) is amended by striking subsection (d).

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

(A) by striking ''Bank Insurance Fund or Savings Association Insurance Fund, respectively,'' and inserting ''deposit insurance fund'';

(B) by striking ''Bank Insurance Fund or Savings Association Insurance Fund, respectively;'' and inserting ''deposit insurance fund;''; and

(C) by striking ''Bank Insurance Fund or the Savings Association Insurance Fund, respectively,'' and inserting ''deposit insurance fund,''.

(22) Section 17(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1827(a)(1)) is amended by striking ''Bank Insurance Fund, the Savings Association Insurance Fund,'' each place such term appears and inserting ''deposit insurance fund''.

(23) Section 17(d) of the Federal Deposit Insurance Act (12 U.S.C. 1827(d)) is amended by striking ''Bank Insurance Fund, the Savings Association Insurance Fund,'' each place such term appears and inserting ''deposit insurance fund''.

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

amended by striking ''BIF, SAIF,'' and inserting ''THE DEPOSIT INSURANCE FUND''.

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

(26) Section 24(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(e)(2)) is amended—

(A) in subparagraph (A), by striking ''of which such banks are members''; and

(B) in subparagraph (B)(ii), by striking ''of which such bank is a member''.

(27) Section 24(f)(6)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(f)(6)(B)) is amended by striking ''of which such bank is a member''.

(28) Section 31 of the Federal Deposit Insurance Act (12 U.S.C. 1831h) is hereby repealed.

(29) Section 36(i)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1831m(i)(3)) is amended by striking ''affected''.

(30) Section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) is amended by striking subsection (o).

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

"(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—To the extent the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, each Federal home loan bank shall pay to the Funding Corporation each calendar year an amount equal to 23.7 percent of the bank's net earnings for the year for which such amount is required to be paid.".

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

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

Subsection (e) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817(e)) is amended to read as follows:

"(e) REFUNDS.—

"(1) OVERPAYMENTS.—In the case of any payment of an assessment by an insured depository in-

stitution in excess of the amount due to the Corporation, the Corporation may—

''(A) refund the amount of the excess payment to the insured depository institution; or

''(B) credit such excess amount toward the payment of subsequent semiannual assessments until such credit is exhausted.

''(2) BALANCE IN INSURANCE FUND IN EXCESS OF DESIGNATED RESERVE.—

''(A) IN GENERAL.—Subject to subparagraph (B), if as of the end of any semiannual period the amount of the actual reserves in—

''(i) the Bank Insurance Fund (until the merger of such fund into the deposit insurance fund pursuant to section 2203(a)(2) of the Thrift Charter Conversion Act of 1995); or

''(ii) the deposit insurance fund (after the establishment of such fund under section 2203(a)(1) of such Act),

exceeds the balance required to meet the designated reserve ratio applicable with respect to such fund, such excess amount shall be refunded to members of the fund by the Corporation on such basis as the Board of Directors

determines to be appropriate, taking into account the factors considered under the risk-based assessment system.

''(B) REFUND NOT TO EXCEED PREVIOUS SEMIANNUAL ASSESSMENT.—The amount of any refund under this paragraph to any member of a deposit insurance fund for any semiannual period may not exceed the total amount of assessments paid by such member to the insurance fund with respect to such period.''.

**SEC. 2205. ASSESSMENTS AUTHORIZED ONLY IF NEEDED TO MAINTAIN THE RESERVE RATIO OF A DEPOSIT INSURANCE FUND.**

(a) IN GENERAL.—Section 7(b)(2)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)(i)) is amended in the portion of such section preceding subclause (I) by inserting ''when necessary, and only to the extent necessary'' after ''insured depository institutions''.

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

''(iii) LIMITATION ON ASSESSMENT.—The Board of Directors shall not set semiannual assessments with respect to a de-

posit insurance fund in excess of the amount needed—

''(I) to maintain the reserve ratio of the fund at the designated reserve ratio; or

''(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio.''.

## CHAPTER 2—STATUS OF BANKS AND SAVINGS ASSOCIATIONS

### SEC. 2221. TERMINATION OF FEDERAL SAVINGS ASSOCIATIONS; TREATMENT OF STATE SAVINGS ASSOCIATIONS AS BANKS FOR PURPOSES OF FEDERAL BANKING LAW.

(a) TERMINATION OF FEDERAL SAVINGS ASSOCIATION CHARTERS.—

(1) IN GENERAL.—Each Federal savings association shall—

(A) convert to a national bank charter;

(B) convert to a State depository institution charter; or

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

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

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

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

(C) cease to exist as a Federal savings association as of such date.

(3) PROHIBITION ON NEW CHARTERS OF FEDERAL SAVINGS ASSOCIATIONS.—The Director of the Office of Thrift Supervision may not grant any charter for a Federal savings association for which an application was received after the date of the enactment of this Act.

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

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

(A) by striking paragraph (2) of subsection (a) and inserting the following new paragraph:

''(2) STATE BANK.—

''(A) IN GENERAL.—The term 'State bank' means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), building and loan association, savings and loan association, homestead association, cooperative bank, or other banking institution—

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

''(ii) which—

''(I) is incorporated under the laws of any State;

''(II) is organized and operating according to the laws of the State in which such institution is chartered or organized; or

''(III) is operating under the Code of Law for the District of Columbia (except a national bank).

''(B) CERTAIN INSURED BANKS INCLUDED.—The term 'State bank' includes any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

''(C) CERTAIN UNINSURED BANKS EXCLUDED.—The term 'State bank' does not include any cooperative bank or other unincorporated bank the deposits of which were not insured by the Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.''; and

(B) in subsection (q)—

(i) by inserting ''and'' after the semicolon at the end of paragraph (2);

(ii) by striking ''; and'' at the end of paragraph (3) and inserting a period; and

(iii) by striking paragraph (4).

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

(A) by striking subparagraph (E) of subsection (a)(5); and

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

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

**SEC. 2222. TREATMENT OF CERTAIN ACTIVITIES AND AFFILIATIONS OF BANK HOLDING COMPANIES RESULTING FROM THIS ACT.**

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

''(k) TREATMENT OF COMPANIES RESULTING FROM SAVINGS AND LOAN HOLDING COMPANIES.—

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

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

''(A) maintain or enter into any nonbanking affiliation which such company was authorized to maintain or enter into as of September 22, 1995, or was authorized to maintain following a merger of insured depository institution subsidiaries pursuant to an application filed no later than such date; and

''(B) engage, directly or through any affiliate described in subparagraph (A) which is not a bank, in any activity in which such company or any affiliate described in subparagraph (A) was authorized to engage as of September 22, 1995, or in which such company was authorized to engage following a merger of insured depository institution subsidiaries pursuant to an application filed no later than such date,

if the requirements of paragraph (4) are met.

''(2) QUALIFIED BANK HOLDING COMPANY DEFINED.—For purposes of this subsection, the term 'qualified bank holding company' means—

''(A) any company which—

"(i) as of September 13, 1995, is a savings and loan holding company and is not a bank holding company; and

"(ii) becomes a bank holding company after such date; and

"(B) any bank holding company which as of September 13, 1995—

"(i) is a savings and loan holding company; and

"(ii) is exempt from this section pursuant to an order issued by the Board under subsection (d).

"(3) NO LOSS OF SUBSECTION (d) EXEMPTION.—No qualified bank holding company described in paragraph (2)(B) shall lose the grounds for the exemption under subsection (d) because a savings association which such company controlled, directly or indirectly, as of September 13, 1995, becomes a bank after such date so long as such bank continues to meet the requirements of subparagraphs (A) and (B) of paragraph (4).

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

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

''(A) any insured depository institution controlled by such company which, as of the day before the company first meets the definition of a qualified bank holding company, was subject to the requirements contained in section 10(m) of the Home Owners' Loan Act, as in effect on such date, (and regulations in effect on such date under such section) for treatment as a qualified thrift lender under such section fails to meet such requirements;

''(B) any insured depository institution controlled by such company fails to comply with any limitation or restriction on the type or amounts of loans or investments of the institution to which such institution was subject as of the date of the enactment of the Thrift Charter Conversion Act of 1995; or

''(C) the company or any subsidiary of the company acquires more than 5 percent of the shares or assets of any bank or insured institution after September 13, 1995.

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

holding company if, after September 13, 1995, any person acquires, directly or indirectly, control of the company or the company is the subject of any merger, consolidation, or other similar transaction.

''(6) PROHIBITION ON CERTAIN INSURED DEPOSITORY INSTITUTIONS IDENTIFYING THEMSELVES AS NATIONAL BANKS.—

''(A) IN GENERAL.—Notwithstanding the requirement of section 5134 of the Revised Statutes of the United States—

''(i) the name of an insured depository institution subsidiary of a qualified bank holding company which—

''(I) as of the date of the enactment of the Thrift Charter Conversion Act of 1995, is a savings and loan holding company described in section 10(c)(3) of the Home Owners' Loan Act (as in effect on such date); and

''(II) is subject to the restrictions contained in paragraph (3),

may not include the term 'national'; and

''(ii) such insured depository institution may not be identified as a national bank on any sign displayed by the institu-

tion or in any advertisement or other publication of the institution.

''(B) DEPOSITORY INSTITUTION NOT LIABLE FOR FRAUDULENT MISREPRESENTATION FOR NOT REPRESENTING ITSELF AS A NATIONAL BANK.—An insured depository institution which is subject to subparagraph (A) shall not be liable for any civil or criminal penalty under any Federal or State consumer protection law, or in any criminal or civil action, for fraudulently misrepresenting the nature of the charter of the institution, for falsely advertising the status of the institution, for making a false statement with respect to the status of the institution, or for any similar offense by reason of the institution's compliance with such subparagraph.

''(7) ENFORCEMENT.—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this subsection with respect to any qualified bank holding company and any bank controlled by such company under section 8 of the Federal Deposit Insurance Act.''.

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

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

**SEC. 2224. REGISTRATION OF BANK HOLDING COMPANIES RESULTING FROM CONVERSIONS OF SAVINGS ASSOCIATIONS TO BANKS OR TREATMENT OF SAVINGS ASSOCIATIONS AS BANKS.**

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

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

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

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

''(2) does not acquire, directly or indirectly, ownership or control of any additional insured depository institution or other company in connection with such conversion or treatment.

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

''(1) the regulation of such companies by the Director of the Office of Thrift Supervision before the date of the enactment of the Thrift Charter Conversion Act of 1995; and

''(2) the safety and soundness of insured depository institution subsidiaries of such companies.''.

**SEC. 2225. ADDITIONAL TRANSITION PROVISIONS AND SPECIAL RULES.**

(a) MUTUAL NATIONAL BANKS AUTHORIZED; CONVERSION OF MUTUAL SAVINGS ASSOCIATIONS INTO NATIONAL BANKS.—

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

**"SEC. 5133A. MUTUAL NATIONAL BANKS.**

''(a) IN GENERAL.—Notwithstanding the paragraph designated the ''Third'' of section 5134, the Comptroller of the Currency may charter national banks organized in the mutual form either de novo or through a conversion of any stock national or State bank (as defined in section 3 of the Federal Deposit Insurance Act) or any State mutual bank or credit union, subject to regulations prescribed by the Comptroller of the Currency in accordance with this section.

''(b) REGULATIONS.—

''(1) TRANSITION RULES.—National banks organized in the mutual form shall be subject to the regulations of the Director of the Office of Thrift Supervision governing corporate organization, governance, and conversion of mutual institutions, as in effect on September 13, 1995, including parts 543,

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

''(2) REGULATIONS OF THE COMPTROLLER.—The Comptroller of the Currency shall prescribe appropriate regulations for national banks organized in the mutual form, effective as of the end of the 3-year period referred to in paragraph (1).

''(3) APPLICABILITY OF CAPITAL STOCK REQUIREMENTS.—The Comptroller of the Currency shall prescribe regulations regarding the manner in which requirements of title LXII of the Revised Statutes of the United States with respect to capital stock, and limitations imposed on national banks under such title based on capital stock, shall apply to national banks organized in mutual form pursuant to subsection (a).

''(c) CONVERSIONS.—

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

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

''(2) CONVERSIONS TO STATE BANKS.—Any national mutual bank may convert to a State bank charter in accordance with regulations prescribed by the Comptroller of the Currency and applicable State law.''.

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

''(g) MUTUAL BANK HOLDING COMPANIES.—

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

''(A) chartering an interim national bank, the stock of which is to be wholly owned, except as otherwise provided in this section, by the national mutual bank; and

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

ities, including all of the bank's insured liabilities, to the interim national bank.

''(2) DIRECTORS AND CERTAIN ACCOUNT HOLDERS' APPROVAL OF PLAN REQUIRED.—A reorganization is not authorized under this subsection unless—

''(A) a plan providing for such reorganization has been approved by a majority of the board of directors of the national mutual bank; and

''(B) in the case of a national mutual bank in which holders of accounts and obligors exercise voting rights, such plan has been submitted to and approved by a majority of such individuals at a meeting held at the call of the directors in accordance with the procedures prescribed by the bank's charter and bylaws.

''(3) NOTICE TO THE BOARD; DISAPPROVAL PERIOD.—

''(A) NOTICE REQUIRED.—

''(i) IN GENERAL.—At least 60 days before taking any action described in paragraph (1), a national mutual bank seeking to establish a mutual holding company shall provide written notice to the Board.

"(ii) CONTENTS OF NOTICE.—The notice shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

"(B) TRANSACTION ALLOWED IF NOT DISAPPROVED.—Unless the Board within such 60-day notice period disapproves the proposed holding company formation, or extends for another 30 days the period during which such disapproval may be issued, the national mutual bank providing such notice may proceed with the transaction, if the requirements of paragraph (2) have been met.

"(C) GROUNDS FOR DISAPPROVAL.—The Board may disapprove any proposed holding company formation only if—

"(i) such disapproval is necessary to prevent unsafe or unsound practices;

"(ii) the financial or management resources of the national mutual bank involved warrant disapproval;

"(iii) the national mutual bank fails to furnish the information required under subparagraph (A); or

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

''(D) RETENTION OF CAPITAL ASSETS.—In connection with the transaction described in paragraph (1), a national mutual bank may, subject to the approval of the Board, retain capital assets at the holding company level to the extent that the capital retained at the holding company is in excess of the amount of capital required in order for the interim national bank to meet all relevant capital standards established by the Comptroller of the Currency for national banks.

''(4) OWNERSHIP.—

''(A) IN GENERAL.—Persons having ownership rights in the national mutual bank under section 5133A of the Revised Statutes of the United States (including paragraph 575.5 of chapter V of title 12 of the Code of Federal Regulations, as in effect on September 13, 1995, and applicable to national mutual banks pursuant to such section) or State law shall have the same ownership rights with respect to the mutual holding company.

"(B) HOLDERS OF CERTAIN ACCOUNTS.—Holders of savings, demand, or other accounts of—

"(i) a national bank chartered as part of a transaction described in paragraph (1); or

"(ii) a mutual bank acquired pursuant to paragraph (5)(B),

shall have the same ownership rights with respect to the mutual holding company as persons described in subparagraph (A) of this paragraph.

"(5) PERMITTED ACTIVITIES.—A mutual holding company may engage only in the following activities:

"(A) Investing in the stock of a national or State bank.

"(B) Acquiring a mutual bank through the merger of such bank into a national bank subsidiary of such holding company or an interim national bank subsidiary of such holding company.

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

"(D) Investing in a corporation the capital stock of which is available for purchase by a national mutual bank under Federal law or under the law of any State where the home office of any subsidiary bank is located.

"(E) Engaging in the activities permitted under section 4(c).

"(6) LIMITATIONS ON CERTAIN ACTIVITIES OF ACQUIRED HOLDING COMPANIES.—

"(A) NEW ACTIVITIES.—If a mutual holding company acquires or merges with another holding company under paragraph (5)(C), the holding company acquired or the holding company resulting from such merger or acquisition may only invest in assets and engage in activities which are authorized under paragraph (5).

"(B) GRACE PERIOD FOR DIVESTING PROHIBITED ASSETS OR DISCONTINUING PROHIBITED ACTIVITIES.—Not later than 2 years following a merger or acquisition described in paragraph (5)(C), the acquired holding company or the holding company resulting from such merger or acquisition shall—

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

"(ii) cease any activity which is an activity in which a mutual holding company may not engage under paragraph (5).

"(7) CHARTERING AND OTHER REQUIREMENTS.—

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

"(B) OTHER REQUIREMENTS.—Unless the context otherwise requires, a mutual holding company shall be subject to the other requirements of this Act regarding regulation of holding companies.

"(8) CAPITAL IMPROVEMENT.—

"(A) PLEDGE OF STOCK OF SAVINGS ASSOCIATION SUBSIDIARY.—This section shall not prohibit a mutual holding company from pledging all or a portion of the stock of a national bank chartered as part of a transaction described in paragraph (1) to raise capital for such bank.

"(B) ISSUANCE OF NONVOTING SHARES.—No provision of this Act shall be construed as prohibiting a national bank chartered as part of a transaction described in paragraph (1) from issuing any nonvoting shares or less than 50 percent of the voting shares of such bank to any person other than the mutual holding company.

"(9) INSOLVENCY AND LIQUIDATION.—

"(A) IN GENERAL.—Notwithstanding any provision of law, upon—

"(i) the default of any national bank—

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

"(II) which was chartered in a transaction described in paragraph (1);

"(ii) the default of a mutual holding company; or

"(iii) a foreclosure on a pledge by a mutual holding company described in paragraph (8)(A),

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

have the authority to liquidate the assets of, and satisfy the liabilities of, such mutual holding company pursuant to title 11, United States Code.

''(B) DISTRIBUTION OF NET PROCEEDS.—Except as provided in subparagraph (C), the net proceeds of any liquidation of any mutual holding company pursuant to subparagraph (A) shall be transferred to persons who hold ownership interests in such mutual holding company.

''(C) RECOVERY BY CORPORATION.—If the Corporation incurs a loss as a result of the default of any savings association subsidiary of a mutual holding company which is liquidated pursuant to subparagraph (A), the Corporation shall succeed to the ownership interests of the depositors of such savings association in the mutual holding company, to the extent of the Corporation's loss.

''(10) STATE MUTUAL BANK HOLDING COMPANY.—

''(A) IN GENERAL.—Notwithstanding any provision of Federal law, a State bank operating in mutual form may reorganize so as to form a holding company under State law.

"(B) REGULATION OF STATE MUTUAL HOLDING COMPANY.—A corporation organized as a holding company in accordance with subparagraph (A) shall be regulated on the same terms and be subject to the same limitations as any other holding company which controls a bank.

"(11) REGULATIONS.—

"(A) TRANSITION RULES.—Mutual bank holding companies organized under this subsection shall be subject to the regulations of the Director of the Office of Thrift Supervision governing corporate organization, governance, and conversion of mutual institutions, as in effect on September 13, 1995, including part 575 of chapter V of title 12 of the Code of Federal Regulations (as in effect on such date), during the 3-year period beginning on the date of the enactment of the Thrift Charter Conversion Act of 1995.

"(B) REGULATIONS OF THE BOARD.—The Board shall prescribe appropriate regulations for mutual holding companies, effective at the end of the 3-year period referred to in subparagraph (A).

"(12) DEFINITIONS.—For purposes of this subsection—

"(A) MUTUAL HOLDING COMPANY.—The term 'mutual holding company' means a corporation organized as a holding company under this subsection.

"(B) DEFAULT.—The term 'default' means an adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed.

"(C) NATIONAL MUTUAL BANK.—The term 'national mutual bank' means a national bank organized in mutual form under section 5133A of the Revised Statutes of the United States.".

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

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

(4) CONVERSIONS OF MUTUAL SAVINGS ASSOCIATIONS TO MUTUAL NATIONAL BANKS BY OPERATION OF LAW.—Notwithstanding any other provision of Federal or State law, any savings association (as defined in section 3 of the Federal Deposit Insurance Act (as in effect on September 13, 1995)) which is organized in mutual form as of the date of the enactment of this Act may become a national mutual bank by operation of law if the association—

(A) files the articles of association and organization certificate with the Comptroller of the Currency before January 1, 1998, in accordance with chapter one of title LXII of the Revised Statutes of the United States; and

(B) provides such other document or information as the Comptroller of the Currency may prescribe in regulations consistent with this section and section 5133A of the Revised Statutes of the United States (as added by paragraph (1) of this subsection).

(5) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.)

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

''5133A. Mutual national banks.''.

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

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

(2) after such date converts from a Federal savings association to a national bank,

shall continue to be subject to the prohibition under such section on voluntary withdrawal from such membership as though such bank were still a Federal savings association until the bank ceases to be a national bank.

(c) BRANCHES.—

(1) IN GENERAL.—Notwithstanding any provision of the Federal Deposit Insurance Act, the Bank Holding Company Act of 1956, or any other Federal or State law, any depository institution which—

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

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

this subsection, is treated as a bank as of such date under the Federal Deposit Insurance Act, and any depository institution or bank holding company which acquires such depository institution, may continue, after the depository institution becomes or commences to be treated as a bank, to operate any branch which the savings association operated as a branch on September 13, 1995.

(2) NO ADDITIONAL BRANCHES.—Paragraph (1) shall not be construed as authorizing the establishment, acquisition, or operation of any additional branch of a depository institution in any State by virtue of the operation by such institution of a branch in such State pursuant to such paragraph except to the extent such establishment, acquisition, or operation is permitted under the Federal Deposit Insurance Act, Bank Holding Company Act of 1956, and any other applicable Federal or State law without regard to such branch.

(d) TRANSITION PROVISION RELATING TO LIMITATIONS ON LOANS TO 1 BORROWER.—Section 5200 of the Revised Statutes of the United States (12 U.S.C. 84) is amended by adding at the end the following new subsection:

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

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

(a) AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—

(1) Section 3(z) of the Federal Deposit Insurance Act (12 U.S.C. 1813(z)) is amended by striking "the Director of the Office of Thrift Supervision,".

(2) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by striking paragraph (9).

(3) Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) is amended by striking subsection (k).

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

(A) in subparagraph (B), by inserting ''and'' after the semicolon;

(B) in subparagraph (C), by striking ''; and'' and inserting a period; and

(C) by striking subparagraph (D).

(5) Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by striking subsection (m).

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

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

(1) Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by striking subsections (i) and (j).

(2) Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended by striking the sentence preceding the penultimate sentence.

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

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

(B) in paragraph (2)(A)(ii)—

(i) by striking ''or a savings association'' where such term appears in the portion of such paragraph which precedes subclause (I);

(ii) by inserting ''and'' at the end of subclause (VI);

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

(iv) by striking ''(V), and (VIII)'', where such term appears in the portion of such paragraph which appears after the end of subclause (VII), and inserting ''and (V)''; and

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

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

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

(B) in paragraph (3)(A), by striking ''any Federal savings association'' and all that fol-

lows through the period at the end of such paragraph and inserting ''such association was authorized to engage under this section as of September 15, 1995.''.

(c) OTHER TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

(i) by striking '', and other nonfederally chartered housing creditors,''; and

(ii) by inserting ''and in order to permit other nonfederally chartered housing creditors to make, purchase, and enforce alternative mortgage transactions,'' after ''enforcing alternative mortgage transactions, ''; and

(B) in paragraph (1), by inserting ''(as such term is defined in section 3(a) of the Federal Deposit Insurance Act)'' after ''with respect to banks''.

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

(A) in the portion of paragraph (8)(A) which precedes clause (i), by striking ''A diversified savings'' and all that follows through ''with respect to'' and inserting ''A depository institution holding company which, as of September 13, 1995, and at all times thereafter, is a diversified savings and loan holding company (as defined in section 10(1)(F) of Home Owners' Loan Act, as such section is in effect on such date) with respect to''; and

(B) by striking paragraph (9).

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

(A) by inserting ''and'' after the semicolon at the end of clause (v); and

(B) by striking clause (vi).

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

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

Effective January 1, 1998, any reference in any Federal banking law to—

(1) the term ''savings association'' shall be deemed to be a reference to a bank as defined in section 3(a) of the Federal Deposit Insurance Act; and

(2) the term ''State bank'' shall be deemed to include any depository institution included in the definition of such term in section 3(a)(2) of such Act.

**SEC. 2228. REPEAL OF HOME OWNERS' LOAN ACT.**

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

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

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

(b) DEFINITIONS.—For purposes of this chapter, the terms ''appropriate Federal banking agency'', ''bank holding company'', ''depository institution'', ''Federal savings association'', ''insured depository institution'', ''savings association'', and ''State bank'' have the same meanings as in section 3 of the Federal Deposit Insurance Act (as in effect on the date of the enactment of this Act).

## CHAPTER 3—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY

### SEC. 2241. OFFICE OF THRIFT SUPERVISION ABOLISHED.

Effective January 1, 1998, the Office of Thrift Supervision and the position of Director of the Office of Thrift Supervision are hereby abolished.

### SEC. 2242. DETERMINATION OF TRANSFERRED FUNCTIONS AND EMPLOYEES.

(a) ALL OFFICE OF THRIFT SUPERVISION EMPLOYEES SHALL BE TRANSFERRED.—All employees of the Office of Thrift Supervision shall be identified for transfer under subsection (b) to the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System.

(b) FUNCTIONS AND EMPLOYEES TRANSFERRED.—

(1) IN GENERAL.—The Director of the Office of Thrift Supervision, the Comptroller of the Currency, the Chairperson of the Federal Deposit Insurance Corporation, and the Chairman of the Board of Governors of the Federal Reserve System shall jointly determine the functions or activities of the Office of Thrift Supervision, and the number of employees of such Office necessary to perform or support such functions or activities, which are transferred from the Office to the Office of the Comptroller of the

Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System, as the case may be.

(2) ALLOCATION OF EMPLOYEES.—The Comptroller of the Currency, the Chairperson of the Federal Deposit Insurance Corporation, and the Chairman of the Board of Governors of the Federal Reserve System shall allocate the employees of the Office of Thrift Supervision consistent with the number determined pursuant to paragraph (1) in a manner which such Comptroller, Chairperson, and Chairman, in their sole discretion, deem equitable, except that, within work units, the agency preferences of individual employees shall be accommodated as far as possible.

(c) DISPOSITION OF AFFAIRS.—

(1) IN GENERAL.—In winding up the affairs of the Office of Thrift Supervision, the Director of the Office of Thrift Supervision shall consult and cooperate with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System, as the case may be, to facilitate the orderly transfer of the functions to such Comptroller, Corporation, or Board.

(2) CONTINUING AUTHORITY OF DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—Except as provided in paragraph (1), no provision of this subtitle shall be construed as affecting the authority vested in the Director of the Office of Thrift Supervision before the date of enactment of this Act which is necessary to carry out the duties of the position until the date upon which the position of Director of the Office of Thrift Supervision is abolished.

(3) CONTINUATION OF AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, or any successor to any such agency, department, or instrumentality, which was providing support services to the Director of the Office of Thrift Supervision on the day before the date such position is abolished shall—

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

tem, as the case may be, shall be substituted for the Director of the Office of Thrift Supervision as a party to the arrangement; and

(B) consult with the Comptroller, the Corporation, or the Board to coordinate and facilitate a prompt and reasonable transition.

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

**SEC. 2243. SAVINGS PROVISIONS.**

(a) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—No provision of this title shall be construed as affecting the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, or any person, which existed on the day before the date upon which the position of Director of the Office of Thrift Supervision and the Office of Thrift Supervision are abolished.

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

the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System, as the case may be, shall be substituted as a party to any such action or proceeding.

(c) CONTINUATION OF ADMINISTRATIVE RULES.—All orders, resolutions, determinations, regulations, interpretative rules, other interpretations, guidelines, procedures, supervisory and enforcement actions, and other advisory material (other than any regulation implementing or prescribed pursuant to section 3(f) of the Home Owners' Loan Act (as in effect on September 13, 1995)) which—

(1) have been issued, made, prescribed, or permitted to become effective by the Office of Thrift Supervision, and

(2) are in effect on December 31, 1996, (or become effective after such date pursuant to the terms of the order, resolution, determination, rule, other interpretation, guideline, procedure, supervisory or enforcement action, and other advisory material, as in effect on such date), shall—

(A) continue in effect according to the terms of such orders, resolutions, determinations, regulations, interpretative rules, other interpretations, guidelines, procedures, super-

visory or enforcement actions, or other advisory material;

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

(C) be enforceable by or against the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System until modified, terminated, set aside, or superseded in accordance with applicable law by the Comptroller, Corporation, or Board, by any court of competent jurisdiction, or by operation of law.

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

(A) the Director of the Office of Thrift Supervision shall be deemed to be a reference to the Secretary of the Treasury; and

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

insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act).

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

(1) IN GENERAL.—For purposes of adjustable rate mortgage instruments that are in effect as of the date of enactment of this Act, any reference in the instrument to the Director of the Office of Thrift Supervision or Savings Association Insurance Fund members shall be treated as a reference to the Secretary of the Treasury or insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), as appropriate.

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

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

(B) determined by the Secretary of the Treasury, pursuant to paragraph (4), to be substantially similar to the index which is no longer calculated or made available,

may be substituted by the holder of any such adjustable rate mortgage instrument upon notice to the borrower.

(3) AGENCY ACTION REQUIRED TO PROVIDE CONTINUED AVAILABILITY OF INDEXES.—Promptly after the enactment of this subsection, the Secretary of the Treasury, the Chairperson of the Federal Deposit Insurance Corporation, and the Comptroller of the Currency shall take such action as may be necessary to assure that the indexes prepared by the Director of the Office of Thrift Supervision immediately prior to the enactment of this subsection and used to calculate the interest rate on adjustable rate mortgage instruments continue to be available.

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

(A) the new index is based upon data substantially similar to that of the original index; and

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

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

Effective January 1, 1998, any reference in any Federal law to the Director of the Office of Thrift Supervision or the Office of Thrift Supervision shall be deemed to be a reference to the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act).

**SEC. 2245. RECONFIGURATION OF BOARD OF DIRECTORS OF FDIC AS A RESULT OF REMOVAL OF DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.**

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

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

''(A) 1 of whom shall be the Comptroller of the Currency; and

''(B) 2 of whom shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 2(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1812(a)(2)) is amended—

(A) by striking ''February 28, 1993'' and inserting ''January 1, 1998''; and

(B) by striking ''3'' and inserting ''2''.

(2) Section 2(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1812(d)(2)) is amended—

(A) by striking ''or the office of Director of the Office of Thrift Supervision'';

(B) by striking ''or such Director'';

(C) by striking ''or the Acting Director of the Office of Thrift Supervision, as the case may be''; and

(D) by striking ''or Director''.

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

(d) DESIGNATION OF ABOLISHED POSITION.—Unless there is a vacancy in the position of an appointed member of the Board of Directors as of January 1, 1998, the

President, consistent with the requirements of section 2(a)(2) of the Federal Deposit Insurance Act, shall designate which of the 3 positions of appointed member of such Board of Directors shall be abolished pursuant to the amendment made by subsection (a).

## Subtitle C—Community Reinvestment Act Amendments

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

Subsection (b) of section 802 of the Community Reinvestment Act of 1977 (12 U.S.C. 2901) is amended to read as follows:

''(b) It is the purpose of this title to require each appropriate Federal financial supervisory agency to use its authority, when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions. When examining financial institutions, a supervisory agency shall not impose additional burden, recordkeeping, or reporting upon such institutions.''.

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

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

**"SEC. 809. TREATMENT OF SMALL FINANCIAL INSTITUTIONS.**

''(a) IN GENERAL.—In lieu of being evaluated under section 806A and receiving a written evaluation under section 807, an eligible regulated financial institution shall make a notice, signed by the president, available to the public that—

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

''(2) states that the institution helps meet the credit needs of the local communities in which the institution operates, including low- and moderate-income neighborhoods.

''(b) ELIGIBLE REGULATED FINANCIAL INSTITUTIONS.—

''(1) IN GENERAL.—A regulated financial institution shall be eligible for purposes of subsection (a) if the institution and any bank holding company which controls such institution have aggregate assets of not more than $100,000,000.

''(2) ANNUAL ADJUSTMENT.—The dollar amount in paragraph (1) shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban

Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

''(c) EXEMPTION FROM OTHER REQUIREMENTS.—A regulated financial institution which has complied with the notice requirements of subsection (a) shall not be subject to section 804 and any regulations prescribed under section 806.''.

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

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

''(c) SELF-CERTIFICATION OF CRA COMPLIANCE.—

''(1) CERTIFICATION.—In lieu of being evaluated under section 806A and receiving a written evaluation under section 807, a qualifying financial institution may elect to self-certify to the appropriate Federal financial supervisory agency that such institution is in compliance with the goals of this title.

''(2) QUALIFYING INSTITUTION.—

''(A) IN GENERAL.—For purposes of paragraph (1), the term 'qualifying institution' means a financial institution which—

''(i) has not more than $250 million in assets;

"(ii) has not been found to have engaged in a pattern or practice of illegal discrimination under the Fair Housing Act or the Equal Credit Opportunity Act for the preceding 5-year calendar period; and

"(iii) received rating under section 807(b)(2) of 'satisfactory' or 'outstanding' in the most recent evaluation of such institution under this title.

"(B) ANNUAL ADJUSTMENT.—The dollar amount in subparagraph (A) shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

"(3) PUBLIC NOTICE.—

"(A) IN GENERAL.—A qualifying institution shall maintain in every branch a public notice stating that—

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

"(ii) the institution maintains—

''(I) at the main office of such institution, a public file which contains a copy of the self-certification to the appropriate Federal financial supervisory agency; and

''(II) a map delineating the community served by the institution;

''(iii) a list of the types of credit and services that the institution provides to the community served by the institution;

''(iv) such other information that the institution believes demonstrates the institution's record of helping to meet the credit needs of its community; and

''(v) every public comment or letter to the institution (and any response by the institution) received within the previous 2-year period about the record of the institution of helping to meet the credit needs of its community.

''(B) PUBLIC FILE.—A qualifying institution shall maintain a public file containing the contents described in this paragraph at the institution's main office.

''(4) RATING.—

"(A) IN GENERAL.—A qualifying institution shall be deemed to have a rating of a 'satisfactory record of meeting community credit needs' for the purposes of this section and section 806A(c).

"(B) PUBLICATION.—Each Federal financial supervisory agency shall publish in the Federal Register once each month a list of institutions that have self-certified during the previous month.

"(C) PUBLICATION CONSTITUTES DISCLOSURE.—Publication of the name of the institution in the Federal Register as having self-certified shall constitute disclosure of the rating of the institution to the public for purposes of sections 806A and 807.

"(5) REGULATORY REVIEW.—

"(A) ASSESSMENT.—During each examination for safety and soundness, a qualifying institution's supervisory agency shall, as part of the agency's review of the institution's loans, assess whether the institution's basis for its self-certification is reasonable based on the public notice and the information contained in the public file pursuant to paragraph (3).

"(B) EXAMINATION IF SELF-CERTIFICATION IS NOT REASONABLE.—If the agency determines that the institution's basis for the institution's self-certification is not reasonable, the agency shall schedule an examination of the institution for the purpose of assessing the institution's record of helping to meet the credit needs of its community.

"(C) REVOCATION OF SELF-CERTIFICATION.—If an assessment pursuant to subparagraph (B) results in a less than 'satisfactory' rating, the agency shall revoke the institution's self-certification and substitute a written evaluation as provided under section 807.

"(D) PERIOD OF INELIGIBILITY FOR SELF-CERTIFICATION.—An institution whose self-certification has been revoked may not self-certify pursuant to this subsection during the 5 years succeeding the year in which the self-certification is revoked.

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

''(6) PROHIBITION ON ADDITIONAL REQUIREMENTS.—No appropriate Federal financial supervisory agency may impose any additional requirements, whether by regulation or otherwise, relating to the self-certification procedure under this subsection.''.

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

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

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

**''SEC. 806A. COMMUNITY INPUT AND CONCLUSIVE RATING.**

''(a) PUBLICATION OF EXAM SCHEDULE AND OPPORTUNITY FOR COMMENT.—

''(1) PUBLICATION OF NOTICE.—Each appropriate Federal financial supervisory agency shall—

''(A) publish in the Federal Register, 30 days before the beginning of a calendar quarter, a listing of institutions scheduled for evaluation for compliance with this title during such calendar quarter; and

"(B) provide opportunity for written comments from the community on the performance, under this title, of each institution scheduled for evaluation.

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

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

"(b) EVALUATION.—The appropriate Federal financial supervisory agency shall—

"(1) evaluate the institution in accordance with the standards contained in section 804; and

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

"(c) RECONSIDERATION OF RATING.—

"(1) REQUEST FOR RECONSIDERATION.—A reconsideration of an institution's rating referred to in section 807(b)(1)(C), may be requested within 30 days of the rating's disclosure to the public.

"(2) PROCEDURES FOR REQUEST.—Any such request shall be made in writing and filed with the appropriate Federal financial supervisory agency,

and may be filed by the institution or a member of the community.

''(3) BASIS FOR REQUEST.—Any request for reconsideration under this subsection shall be based on significant issues of a substantive nature which are relevant to the delineated community of the institution and, in the case of a request by a member of the community, shall be limited to issues previously raised in comments submitted pursuant to subsection (a).

''(4) COMPLETION OF REVIEW.—The appropriate Federal financial supervisory agency shall complete any requested reconsideration within 30 days of the filing of the request.

''(d) CONCLUSIVE RATING.—

''(1) IN GENERAL.—An institution's rating shall become conclusive on the later of—

''(A) 30 days after the rating is disclosed to the public; or

''(B) the completion of any requested reconsideration by the Federal financial supervisory agency.

''(2) RATING CONCLUSIVE OF MEETING COMMUNITY CREDIT NEEDS.—An institution's rating shall be the conclusive assessment of the institution's

record of meeting the credit needs of its community for purposes of section 804 until the institution's next rating, developed pursuant to an examination, becomes conclusive.

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

''(4) RULE OF CONSTRUCTION.—Notwithstanding any other provision of law, no provision of this section shall be construed as granting a cause of action to any person.''.

(c) OVERALL EVALUATION OF INSTITUTION.—Paragraph (2) of section 804(a) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(a)) is amended to read as follows:

''(2) take such record into account in the overall evaluation of the condition of the institution by the appropriate Federal financial supervisory agency.''.

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

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

''(d) SPECIAL PURPOSE INSTITUTIONS.—

"(1) IN GENERAL.—In conducting assessments pursuant to this section at any special purpose institution, the appropriate Federal financial supervisory agency shall—

"(A) consider the nature of business such institution is involved in; and

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

"(2) STANDARDS.—Each appropriate Federal financial supervisory agency shall develop standards under which special purpose institutions may be deemed to have complied with the requirements of this title which are consistent with the specific nature of such businesses.".

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

"(5) SPECIAL PURPOSE INSTITUTIONS.—The term 'special purpose institution' means a financial institution that does not generally accept deposits from the public in amounts of less than $100,000,

such as wholesale, credit card, and trust institutions.''.

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

(a) IN GENERAL.—Section 804(b) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(b)) is amended to read as follows:

''(b) POSITIVE CONSIDERATION OF CERTAIN LOANS AND INVESTMENTS.—In assessing and taking into account the records of a regulated financial institution under subsection (a), the appropriate Federal financial supervisory agency shall—

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

''(A) any minority depository institution or women's depository institution (as such terms are defined in section 808(b)) or any low-income credit union;

''(B) any joint venture or other entity or project which promotes the public welfare in any distressed community (as defined by such agency) whether or not the distressed community is located in the local community in which

the regulated financial institution is chartered to do business; and

''(C) targeted low- and moderate-income communities, including real property loans to such communities; and

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

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

''(B) community development corporations in extending credit and other financial services principally to low- and moderate-income persons and small businesses to the extent that such community development corporations help meet the credit needs of the local communities served by the majority-owned institution.''.

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

"(6) STATE BANK SUPERVISOR.—The term 'State bank supervisor' has the same meaning as in section 3(r) of the Federal Deposit Insurance Act.".

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

"(D) the Director of the Office of Thrift Supervision with respect to any savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and any savings and loan holding company (other than a company which is a bank holding company);".

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

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

**"SEC. 806. REGULATIONS.**

"(a) IN GENERAL.—

"(1) PUBLICATION REQUIREMENT.—Regulations to carry out the purposes of this title shall be published by each appropriate Federal financial supervisory agency.

''(2) PROHIBITION ON ADDITIONAL RECORDKEEPING.—Regulations prescribed and policy statements, commentary, examiner guidance, or other supervisory material issued under this title shall not impose any additional recordkeeping on a financial institution.

''(3) PROHIBITION ON LOAN DATA COLLECTION.—No loan data may be required to be collected and reported by a financial institution and no such data may be made public by any Federal financial supervisory agency under this title.''.

**SEC. 2308. TECHNICAL AMENDMENT.**

Section 807(b)(1)(B) of the Community Reinvestment Act (12 U.S.C. 2906) is amended by striking ''The information'' and inserting ''In the case of a regulated financial institution that maintains domestic branches in 2 or more States, the information''.

**SEC. 2309. DUPLICATIVE REPORTING.**

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

''(3) SPECIAL RULE.—This subsection shall not apply to members receiving a grade of 'outstanding' or 'satisfactory' under section 807 of the Community Reinvestment Act of 1977.''.

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

(a) SENSE OF CONGRESS RELATING TO AGGRESSIVE OVERSIGHT.—It is the sense of the Congress that the appropriate committees of the House of Representatives and the Senate should exercise aggressive oversight of the adoption and implementation of any regulation by any appropriate Federal financial supervisory agency under the Community Reinvestment Act of 1977 after the date of the enactment of this Act.

(b) AGENCY REPORTS REQUIRED.—

(1) IN GENERAL.—Each appropriate Federal financial supervisory agency shall submit a report to the Congress by December 31, 1996, and by December 31, 1997, on the implementation of all regulations prescribed by such agency under the Community Reinvestment Act of 1977 after the date of the enactment of this Act.

(2) REQUIREMENTS RELATING TO PREPARATION OF REPORTS.—In preparing each report required under paragraph (1), each appropriate Federal financial supervisory agency shall—

(A) solicit and include comments from regulated financial institutions with respect to the regulations which are the subject of the report; and

(B) include quantifiable measures of the cost savings achieved under the regulations which are the subject of the report and the effectiveness of such regulations in achieving the purposes of the Community Reinvestment Act of 1977.

(3) DEFINITIONS.—For purposes of this section, the terms ''appropriate Federal financial supervisory agency'' and ''regulated financial institution'' have the same meanings as in section 803 of the Community Reinvestment Act of 1977.

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

Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by adding at the end the following new subsection:

''(j) CONSULTATION AMONG EXAMINERS.—

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

''(A) consult on examination activities with respect to any depository institution; and

''(B) achieve an agreement and resolve any inconsistencies on the recommendations to be

given to such institution as a consequence of any examinations.

''(2) EXAMINER-IN-CHARGE.—Each agency shall consider appointing an examiner-in-charge with respect to a depository institution to ensure consultation on examination activities among all of the agency's examiners involved in examinations of such institution.''.

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

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

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

''(1) require any regulated financial institution to—

''(A) make any loan or enter into any other agreement on the basis of any discriminatory criteria prohibited under any law of the United States; or

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

son that would jeopardize the safety and soundness of such institution; or

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

''(c) ENCOURAGE LOANS TO CREDITWORTHY BORROWERS.—Regulations prescribed under this title shall encourage regulated financial institutions to make loans and extend credit to all creditworthy persons, consistent with safety and soundness.''.

# Subtitle D—Phase-Down of Oversight Board

## SEC. 2401. TERMINATION OF AUTHORITY OF OVERSIGHT BOARD TO EMPLOY STAFF.

(a) IN GENERAL.—Section 21A(a) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)) is amended by adding at the end the following new paragraph:

''(17) PHASED-DOWN OPERATION OF OVERSIGHT BOARD FOLLOWING TERMINATION OF CORPORATION.—

''(A) TERMINATION OF AUTHORITY TO EMPLOY STAFF.—Except as provided in subparagraph (B), the authority of the Thrift Depositor Protection Oversight Board under paragraph (5) to establish officer and employee positions,

to compensate officers and employees of the Board, to provide other benefits for officers and employees of the Board, and to utilize staff of any other department or agency shall terminate as of December 31, 1995.

''(B) LIMITED AUTHORITY FOR DETAILING STAFF FROM OTHER AGENCIES.—If the Thrift Depositor Protection Oversight Board determines that any staff is required to carry out the functions of the Board after the authority to employ staff terminates under subparagraph (A), the Board shall—

''(i) utilize employees of any other department or agency in accordance with paragraph (5)(F) to carry out the staff functions which have been determined to be necessary; and

''(i) submit a report to the Congress containing—

''(I) the number of staff positions which the Board has determined are necessary to carry out the Board's functions after the termination of the Corporation;

''(II) a justification for such determination; and

''(III) an estimate of the length of the period for which such staff positions will be required.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subparagraphs (B), (C), (D), and (E) of section 21A(a)(5) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(5)) are each amended by inserting ''subject to paragraph (17)(A),'' after the closing parenthesis of the subparagraph designation.

(2) Section 21A(a)(5)(F) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(5)(F)) is amended by inserting ''subject to subparagraphs (A) and (B) of paragraph (17) and'' after ''(F)''.

# TITLE III—COMMITTEE ON COMMERCE

## Subtitle A—Communications

### CHAPTER 1—SPECTRUM AUCTIONS

**SEC. 3001. SPECTRUM AUCTIONS.**

(a) EXTENSION AND EXPANSION OF AUCTION AUTHORITY.—

(1) AMENDMENTS.—Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended—

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

''(1) GENERAL AUTHORITY.—If, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are accepted for any initial license or construction permit which will involve an exclusive use of the electromagnetic spectrum, then the Commission shall grant such license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection.

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

''(A) that, as the result of the Commission carrying out the obligations described in paragraph (6)(E), are not mutually exclusive;

''(B) for public safety radio services, including non-Government uses that protect the safety of life, health, and property and that are not made commercially available to the public; or

''(C) for initial licenses or construction permits for new terrestrial digital television

services assigned by the Commission to existing terrestrial broadcast licensees to replace their current television licenses.''; and

(B) by striking ''1998'' in paragraph (11) and inserting ''2002''.

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

(3) EFFECTIVE DATE.—The amendment made by paragraph (1)(A) shall not apply with respect to any license or permit for which the Federal Communications Commission has accepted mutually exclusive applications on or before the date of enactment of this Act.

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

(1) IN GENERAL.—The Federal Communications Commission shall complete all actions necessary to permit the assignment, by September 30, 2002, by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) of licenses for the use of bands of frequencies that—

(A) individually span not less than 25 megahertz, unless a combination of smaller bands can, notwithstanding the provisions of

paragraph (7) of such section, reasonably be expected to produce greater receipts;

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

(C) are located below 3 gigahertz; and

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

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

(ii) been identified by the Secretary of Commerce pursuant to section 113 of the National Telecommunications and Information Administration Organization Act.

The Commission shall conduct the competitive bidding for not less than one-half of such aggregate spectrum by September 30, 2000.

(2) CRITERIA FOR REASSIGNMENT.—In making available bands of frequencies for competitive bidding pursuant to paragraph (1), the Commission shall—

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

(B) take into account the cost to incumbent licensees of relocating existing uses to

other bands of frequencies or other means of communication;

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

(D) comply with the requirements of international agreements concerning spectrum allocations.

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

(A) the Commission is not able to provide for the effective relocation of incumbent licensees to bands of frequencies that are available to the Commission for assignment; and

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

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

(ii) allocated for Federal Government use, but that could be reallocated pursuant to part B of the National Telecommunications and Information Administration Organization Act (as amended by this Act).

(c) IDENTIFICATION AND REALLOCATION OF FREQUENCIES.—The National Telecommunications and Infor-

mation Administration Organization Act (47 U.S.C. 901 et seq.) is amended—

(1) in section 113, by adding at the end the following new subsection:

''(f) ADDITIONAL REALLOCATION REPORT.—If the Secretary receives a notice from the Commission pursuant to section 3001(b)(3) of the Seven-Year Balanced Budget Reconciliation Act of 1995, the Secretary shall prepare and submit to the President and the Congress a report recommending for reallocation for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), bands of frequencies that are suitable for the uses identified in the Commission's notice.'';

(2) in section 114(a)(1), by striking ''(a) or (d)(1)'' and inserting ''(a), (d)(1), or (f)''.

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

(e) MODIFICATION OF AUCTION POLICY TO PRESERVE AUCTION VALUE OF SPECTRUM.—The voluntary negotiation period for relocating fixed microwave licensees to frequency bands other than those allocated for licensed emerging technology services (including licensed personal communications services), established by the Commission's Third Report and Order in ET Docket No. 92–9, shall expire one year after the date of acceptance by the Commission of applications for such licensed emerging technology services. The mandatory negotiation period for relocating fixed microwave licensees to frequency bands other than those allocated for licensed emerging technology services (including licensed personal communications services), established in such Third Report and Order, shall expire two years after the date of acceptance by the Commission of applications for such licensed emerging technology services.

(f) IDENTIFICATION AND REALLOCATION OF AUCTIONABLE FREQUENCIES.—The National Telecommunications and Information Administration Organization Act (47 U.S.C. 901 et seq.) is amended—

(1) in section 113(b)—

(A) by striking the heading of paragraph (1) and inserting ''INITIAL REALLOCATION REPORT'';

(B) by inserting ''in the first report required by subsection (a)'' after ''recommend for reallocation'' in paragraph (1);

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

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

''(3) SECOND REALLOCATION REPORT.—In accordance with the provisions of this section, the Secretary shall recommend for reallocation in the second report required by subsection (a), for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), a single frequency band that spans not less than an additional 20 megahertz, that is located below 3 gigahertz, and that meets the criteria specified in paragraphs (1) through (5) of subsection (a).''; and

(2) in section 115—

(A) in subsection (b), by striking ''the report required by section 113(a)'' and inserting ''the initial reallocation report required by section 113(a)''; and

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

''(c) ALLOCATION AND ASSIGNMENT OF FREQUENCIES IDENTIFIED IN THE SECOND REALLOCATION REPORT.—With respect to the frequencies made available for reallocation pursuant to section 113(b)(3), the Commission shall, not later than 1 year after receipt of the second reallocation report required by such section, prepare, submit to the President and the Congress, and implement, a plan for the allocation and assignment under the 1934 Act of such frequencies. Such plan shall propose the immediate allocation and assignment of all such frequencies in accordance with section 309(j).''.

## CHAPTER 2—FEDERAL COMMUNICATIONS COMMISSION AUTHORIZATION

### SEC. 3011. SHORT TITLE.

This chapter may be cited as the ''Federal Communications Commission Authorization Act of 1995''.

### SEC. 3012. EXTENSION OF AUTHORITY.

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

### ''SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated for the administration of this Act by the Commission $186,000,000 for fiscal year 1996, together with such sums as may be necessary for increases resulting from adjustments in sal-

ary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for fiscal year 1996. Of the sum appropriated in each fiscal year under this section, a portion, in an amount determined under sections 8(b) and 9(b), shall be derived from fees authorized by sections 8 and 9.''.

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

''(2) The Commission shall submit to the appropriate committees of Congress, and publish in the Federal Register, semiannual reports specifying the reimbursements which the Commission has accepted under section 1353 of title 31, United States Code.''.

(c) COMMUNICATIONS SUPPORT FROM OLDER AMERICANS.—Section 6(a) of the Federal Communications Commission Authorization Act of 1988 (47 U.S.C. 154 note) is amended by striking ''fiscal years 1992 and 1993'' and inserting ''fiscal year 1996''.

**SEC. 3013. APPLICATION FEES.**

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

''(b)(1) For fiscal year 1996 and each fiscal year thereafter, the Commission shall, by regulation, modify

the application fees by proportionate increases or decreases so as to result in estimated total collections for the fiscal year equal to—

''(A) $40,000,000; plus

''(B) an additional amount, specified in an appropriation Act for the Commission for that fiscal year to be collected and credited to such appropriation, not to exceed the amount by which the necessary expenses for the costs described in paragraph (5) exceeds $40,000,000.

''(2) In making adjustments pursuant to this paragraph the Commission may round such fees to the nearest $5.00 in the case of fees under $100, or to the nearest $20 in the case of fees of $100 or more. The Commission shall transmit to the Congress notification of any adjustment made pursuant to this paragraph immediately upon the adoption of such adjustment.

''(3) The Commission is authorized to continue to collect fees at the prior year's rate until the effective date of fee adjustments or amendments made pursuant to paragraphs (1) and (4).

''(4) The Commission shall, by regulation, add, delete, or reclassify services, categories, applications, or other filings subject to application fees to reflect additions, deletions, or changes in the nature of its services or au-

thorization of service processes as a consequence of Commission rulemaking proceedings or changes in law.

''(5) Any modified fees established under paragraph (4) shall be derived by determining the full-time equivalent number of employees performing application activities, adjusted to take into account other expenses that are reasonably related to the cost of processing the application or filing, including all executive and legal costs incurred by the Commission in the discharge of these functions, and other factors that the Commission determines are necessary in the public interest. The Commission shall—

''(A) transmit to the Congress notification of any proposed modification made pursuant to this paragraph immediately upon adoption of such proposal; and

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

''(6) Increases or decreases in application fees made pursuant to this subsection shall not be subject to judicial review.''.

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

''(e) Of the moneys received from fees authorized under this section—

''(1) $40,000,000 shall be deposited in the general fund of the Treasury to reimburse the United States for amounts appropriated for use by the Commission in carrying out its functions under this Act; and

''(2) the remainder shall be deposited as an offsetting collection in, and credited to, the account providing appropriations to carry out the functions of the Commission.''.

(c) SCHEDULE OF APPLICATION FEES FOR PCS.—The schedule of application fees in section 8(g) of such Act is amended by adding, at the end of the portion under the heading ''COMMON CARRIER SERVICES'', the following new item:

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

(d) VANITY CALL SIGNS.—

(1) LIFETIME LICENSE FEES.—

(A) AMENDMENT.—The schedule of application fees in section 8(g) of such Act is further amended by adding, at the end of the portion under the heading ''PRIVATE RADIO SERVICES'', the following new item:

| | |
|---|---|
| ''11. Amateur vanity call signs | 150.00''. |

(B) TREATMENT OF RECEIPTS.—Moneys received from fees established under the amendment made by this subsection shall be deposited as an offsetting collection in, and credited to, the account providing appropriations to carry out the functions of the Commission.

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

''Amateur vanity call-signs ..... 7''.

**SEC. 3014. REGULATORY FEES.**

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

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

(1) in paragraph (4)(B), by striking ''90 days'' and inserting ''45 days''; and

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

"(5) EFFECTIVE DATE OF ADJUSTMENTS.—The Commission is authorized to continue to collect fees at the prior year's rate until the effective date of fee adjustments or amendments made pursuant to paragraph (2) or (3).".

(c) REGULATORY FEES FOR SATELLITE TV OPERATIONS.—The schedule of regulatory fees in section 9(g) of such Act is amended, in the fees applicable to the Mass Media Bureau, by inserting after each of the items pertaining to construction permits in the fees applicable to VHF commercial and UHF commercial TV the following new item:

"Terrestrial television satellite operations ..... 500".

(d) GOVERNMENTAL ENTITIES USE FOR COMMON CARRIER PURPOSES.—Section 9(h) of such Act is amended by adding at the end the following new sentence: "The exceptions provided by this subsection for governmental entities shall not be applicable to any services that are provided on a commercial basis in competition with another carrier.".

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

(1) in section 9, by striking subsection (i); and

(2) by inserting after section 9 the following new section:

**"SEC. 10. ACCOUNTING SYSTEM AND ADJUSTMENT INFORMATION.**

''(a) ACCOUNTING SYSTEM REQUIRED.—The Commission shall develop accounting systems for the purposes of making the adjustments authorized by sections 8 and 9. The Commission shall annually prepare and submit to the Congress an analysis of such systems and shall annually afford interested persons the opportunity to submit comments concerning the allocation of the costs of performing the functions described in section 8(a)(5) and 9(a)(1) in making such adjustments in the schedules required by sections 8 and 9.

''(b) INFORMATION REQUIRED IN CONNECTION WITH ADJUSTMENT OF APPLICATION AND REGULATORY FEES.—

''(1) SCHEDULE OF REQUESTED AMOUNTS.—No later than May 1 of each calendar year, the Commission shall prepare and transmit to the Committees of Congress responsible for the Commission's authorization and appropriations a detailed schedule of the amounts requested by the President's budget to be appropriated for the ensuing fiscal year for the activities described in sections

8(a)(5) and 9(a)(1), allocated by bureaus, divisions, and offices of the Commission.

''(2) EXPLANATORY STATEMENT.—If the Commission anticipates increases in the application fees or regulatory fees applicable to any applicant, licensee, or unit subject to payment of fees, the Commission shall submit to the Congress by May 1 of such calendar year a statement explaining the relationship between any such increases and either (A) increases in the amounts requested to be appropriated for Commission activities in connection with such applicants, licensees, or units subject to payment of fees, or (B) additional activities to be performed with respect to such applicants, licensees, or units.

''(3) DEFINITION.—For purposes of this subsection, the term 'amount requested by the President's budget' shall include any adjustments to such requests that are made by May 1 of such calendar year. If any such adjustment is made after May 1, the Commission shall provide such Committees with updated schedules and statements containing the information required by this subsection within 10 days after the date of any such adjustment.''.

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

(a) AUTHORITY TO DESIGNATE ENTITIES TO INSPECT.—Section 4(f)(3) of the Communications Act of 1934 (47 U.S.C. 154(f)(3)) is amended by inserting before the period at the end the following: ''*: And provided further*, That, in the alternative, an entity designated by the Commission may make the inspections referred to in this paragraph''.

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

''(b) Every ship of the United States that is subject to this part shall have the equipment and apparatus prescribed therein inspected at least once each year by the Commission or an entity designated by the Commission. If, after such inspection, the Commission is satisfied that all relevant provisions of this Act and the station license have been complied with, the fact shall be certified to on the station license by the Commission. The Commission shall make such additional inspections at frequent intervals as the Commission determines may be necessary to ensure compliance with the requirements of this Act. The Commission may, upon a finding that the public interest could be served thereby—

''(1) waive the annual inspection required under this section for a period of up to 90 days for the sole

purpose of enabling a vessel to complete its voyage and proceed to a port in the United States where an inspection can be held; or

''(2) waive the annual inspection required under this section for a vessel that is in compliance with the radio provisions of the Safety Convention and that is operating solely in waters beyond the jurisdiction of the United States, provided that such inspection shall be performed within 30 days of such vessel's return to the United States.''.

(c) INSPECTION BY OTHER ENTITIES.—Section 385 of such Act (47 U.S.C. 385) is amended by inserting ''or an entity designated by the Commission'' after ''The Commission''.

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

Section 5(c)(1) of the Communications Act of 1934 (47 U.S.C. 155(c)(1)) is amended by striking the last sentence and inserting the following: ''Except for cases involving the authorization of service in the Instructional Television Fixed Service, or as otherwise provided in this Act, nothing in this paragraph shall authorize the Commission to provide for the conduct, by any person or persons other than persons referred to in paragraph (2) or (3) of section 556(b) of title 5, United States Code, of any hearing to which such section applies.''.

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

Section 203(d) of the Communications Act of 1934 (47 U.S.C. 203(d)) is amended by inserting after the first sentence the following new sentences: ''The Commission may, after affording interested parties an opportunity to comment, reject a proposed tariff filing in whole or in part, if the filing or any part thereof is patently unlawful. In evaluating whether a proposed tariff filing is patently unlawful, the Commission may consider additional information filed by the carrier or any interested party and shall presume the facts alleged by the carrier to be true.''.

**SEC. 3018. REFUND AUTHORITY.**

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

**''SEC. 230. REFUND AUTHORITY.**

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

persons as the Commission determines reasonably represent the persons from whom amounts were improperly received by reason of such violation. No refunds shall be required under this section unless—

''(1) the Commission issues an order advising the carrier of its potential refund liability and provides the carrier with an opportunity to file written comments as to why refunds should not be required; and

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

In the case of a continuing violation, a violation shall be considered to occur on each date that the violation is repeated.''.

**SEC. 3019. LICENSING OF AVIATION AND MARITIME SERVICES BY RULE.**

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

''(e)(1) Notwithstanding any license requirement established in this Act, if the Commission determines that such authorization serves the public interest, convenience, and necessity, the Commission may by rule authorize the operation of radio stations without individual licenses in the following radio services: (A) the aviation radio service for aircraft stations operated on domestic flights when

such aircraft are not otherwise required to carry a radio station; and (B) the maritime radio service for ship stations navigated on domestic voyages when such ships are not otherwise required to carry a radio station.

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

''(3) For purposes of this subsection, the terms 'aircraft station' and 'ship station' shall have the meanings given them by the Commission by rule.''.

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

(a) FUNDING AVAILABILITY.—Section 309(j)(8)(B) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(B)) is amended by adding at the end the following new sentence: ''Such offsetting collections are authorized to remain available until expended.''.

(b) ESCROW OF DEPOSITS.—Section 309(j)(8) of such Act is further amended by adding at the end the following new subparagraph:

''(C) ESCROW OF DEPOSIT.—The Commission is authorized, based on the competitive bidding methodology selected, to provide for the deposit of moneys for bids in an interest-bearing account until such time as the Commission

accepts a deposit from the high bidder. All interest earned on bid moneys received from the winning bidder shall be deposited into the general fund of the Treasury. All interest earned on bid moneys deposited from unsuccessful bidders, less any applicable fees and penalties, shall be paid to those bidders.''.

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

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

(1) by striking ''or'' at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting ''; or''; and

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

''(8) for failure to comply with any requirement of this Act or the Commission's rules that imperils the safety of life.''.

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

(1) by striking ''or'' at the end of subparagraph (C);

(2) by striking the semicolon at the end of subparagraph (D) and inserting ''; or''; and

(3) by adding after subparagraph (D) the following new subparagraph:

''(E) failed to comply with any requirement of this Act or the Commission's rules that imperils the safety of life;''.

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

Section 4(f)(1) of the Communications Act of 1934 (47 U.S.C. 154) is amended by adding at the end thereof the following: ''The Commission may also procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, relating to appointments in the Federal Service, at rates of compensation for individuals not to exceed the daily rate equivalent to the maximum rate payable for senior-level positions under section 5276 of title 5, United States Code.''.

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

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

(1) by striking ''or'' at the end of subparagraph (A);

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

(3) by redesignating subparagraph (B) as subparagraph (C); and

(4) by inserting after subparagraph (A) the following new subparagraph:

''(B) such person is a common carrier and the required notice of apparent liability is issued more than 5 years after the date the violation charged occurred; or''.

**SEC. 3024. UTILIZATION OF FM BAND FOR ASSISTIVE DEVICES FOR HEARING IMPAIRED INDIVIDUALS.**

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

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

(2) the impact on such compliance of the vulnerability of such devices to harmful interference from radio licensees; and

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

**SEC. 3025. TECHNICAL AMENDMENT.**

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

(1) in subparagraph (A), by striking ''allocated to the domestic cellular radio telecommunications service'' and inserting ''utilized to provide commercial mobile service (as defined in section 332(d))''; and

(2) in subparagraph (C), by striking ''cellular'' and inserting ''commercial mobile service''.

## Subtitle B—Nuclear Regulatory Commission Annual Charge

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

Section 6101(a)(3) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214(a)(3)) is amended by striking ''September 30, 1998'' and inserting ''September 30, 2002''.

## Subtitle C—United States Enrichment Corporation

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

(a) SHORT TITLE.—This subtitle may be cited as the ''USEC Privatization Act''.

(b) REFERENCE.—Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of,

a section or other provision, the reference shall be considered to be made to a section or other provision of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

**SEC. 3036. PRODUCTION FACILITY.**

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

**SEC. 3037. DEFINITIONS.**

Section 1201 (42 U.S.C. 2297) is amended—

(1) in paragraph (4), by inserting before the period the following: ''and any successor corporation established through privatization of the Corporation'';

(2) by redesignating paragraphs (10) through (13) as paragraphs (14) through (17), respectively, and by inserting after paragraph (9) the following new paragraphs:

''(10) The term 'low-level radioactive waste' has the meaning given such term in section 102(9) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021b(9)).

''(11) The term 'mixed waste' has the meaning given such term in section 1004(41) of the Solid Waste Disposal Act (42 U.S.C. 6903(41)).

''(12) The term 'privatization' means the transfer of ownership of the Corporation to private investors pursuant to chapter 25.

''(13) The term 'privatization date' means the date on which 100 percent of ownership of the Corporation has been transferred to private investors.'';

(3) by inserting after paragraph (17) (as redesignated) the following new paragraph:

''(18) The term 'transition date' means July 1, 1993.'';

(4) by redesignating the unredesignated paragraph (14) as paragraph (19); and

(5) by adding the following new paragraphs after paragraph (19):

''(20) The term 'gaseous diffusion plants' means the Paducah Gaseous Diffusion Plant at Paducah, Kentucky and the Portsmouth Gaseous Diffusion Plant at Piketon, Ohio.

''(21) The term 'private corporation' means the corporation established under section 1503.

''(22) The term 'Russian HEU agreement' means the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposi-

tion of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 18, 1993.

''(23) The term 'Suspension Agreement' means the Agreement to Suspend the Antidumping Investigation on Uranium from the Russian Federation, as amended.''.

**SEC. 3038. EMPLOYEES OF THE CORPORATION.**

(a) PARAGRAPHS (1) AND (2).—Section 1305(e) (42 U.S.C. 2297b–4(e)) is amended by striking paragraphs (1) and (2) and inserting in thereof the following:

''(1) IN GENERAL.—

''(A) Privatization shall not diminish the accrued, vested pension benefits of employees of the Corporation's operating contractor at the two gaseous diffusion plants.

''(B) In the event that the private corporation terminates or changes the contractor at either or both of the gaseous diffusion plants, the plan sponsor or other appropriate fiduciary of the pension plan covering employees of the prior operating contractor shall arrange for the transfer of all plan assets and liabilities relating to accrued pension benefits of such plan's participants and beneficiaries from such plan to a

pension plan sponsored by the new contractor or the private corporation, as the case may be.

''(C) Any employer (including the private corporation or any contractor of the private corporation) at a gaseous diffusion plant shall abide by the terms of any unexpired collective bargaining agreement covering employees in bargaining units at the plant and in effect on the privatization date until the expiration of the agreement.

''(D) In the event of a plant closing or mass layoff (as such terms are defined in section 2101(a) (2) and (3) of title 29, United States Code) at either of the gaseous diffusion plants, the Secretary of Energy shall treat such plant as a Department of Energy defense nuclear facility and any person employed by an operating contractor on the privatization date at either plant as a Department of Energy employee for purposes of sections 3161 through 3163 of the National Defense Authorization Act for Fiscal Year 1993 (42 U.S.C. 7274h–7274j).

''(E) The Department of Energy and the private corporation shall continue to fund post-retirement health benefits for persons employed

by an operating contractor at either of the gaseous diffusion plants at substantially the same level of coverage as eligible retirees are entitled to receive on the privatization date, consistent with clauses (i) through (iii), except that the Department of Energy, the private corporations and the operating contractor shall have the right to implement cost-saving measures, including (but not limited to) preferred provider organizations, managed care programs, mandatory second opinions before surgery or other medical procedures, and mandatory use of generic drugs, that do not materially diminish the overall quality of the medical care provided—

''(i) persons eligible for this coverage shall be limited to persons who retired from active employment at one of the gaseous diffusion plants as of the privatization date, as vested participants in a pension plan maintained either by the Corporation's operating contractor or by a contractor employed prior to July 1, 1993, by the Department of Energy to operate either of the gaseous diffusion plants and persons who, as of the privatization date, are em-

ployed by the Corporation's operating contractor and are vested participants in a pension plan maintained either by the Corporation's operating contractor or by a contractor employed prior to July 1, 1993, by the Department of Energy to operate either of the gaseous diffusion plants;

''(ii) for persons who retired from employment with an operating contractor prior to July 1, 1993, the Department of Energy shall fund the entire cost of postretirement health benefits; and

''(iii) for persons who retire from employment with an operating contractor after July 1, 1993, the Department of Energy and the private corporation shall fund the cost of postretirement health benefits in proportion to the retired persons' years and months of service at a gaseous diffusion plant under their respective management.''.

(b) PARAGRAPH (4).—Paragraph (4) of section 1305(e) (42 U.S.C. 2297b–4(e)(4)) is amended—

(1) by striking ''AND DETAILEES'' in the heading;

(2) by striking the first sentence;

(3) in the second sentence, by inserting ''from other Federal employment'' after ''transfer to the Corporation''; and

(4) by striking the last sentence.

**SEC. 3039. MARKETING AND CONTRACTING AUTHORITY.**

(a) MARKETING AUTHORITY.—Section 1401(a) (42 U.S.C. 2297c(a)) is amended effective on the privatization date (as defined in section 1201(13) of the Atomic Energy Act of 1954)—

(1) by amending the subsection heading to read ''MARKETING AUTHORITY.—''; and

(2) by striking the first sentence.

(b) TRANSFER OF CONTRACTS.—Section 1401(b) (42 U.S.C. 2297c(b)) is amended—

(1) in paragraph (2)(B), by adding at the end the following: ''The privatization of the Corporation shall not affect the terms of, or the rights or obligations of the parties to, any such power purchase contract.''; and

(2) by adding at the end the following:

''(3) EFFECT OF TRANSFER.—

''(A) As a result of the transfer pursuant to paragraph (1), all rights, privileges, and benefits under such contracts, agreements, and

leases, including the right to amend, modify, extend, revise, or terminate any of such contracts, agreements, or leases were irrevocably assigned to the Corporation for its exclusive benefit.

''(B) Notwithstanding the transfer pursuant to paragraph (1), the United States shall remain obligated to the parties to the contracts, agreements, and leases transferred pursuant to paragraph (1) for the performance of the obligations of the United States thereunder during the term thereof. The Corporation shall reimburse the United States for any amount paid by the United States in respect of such obligations arising after the privatization date to the extent such amount is a legal and valid obligation of the Corporation then due.

''(C) After the privatization date, upon any material amendment, modification, extension, revision, replacement, or termination of any contract, agreement, or lease transferred under paragraph (1), the United States shall be released from further obligation under such contract, agreement, or lease, except that such action shall not release the United States from

obligations arising under such contract, agreement, or lease prior to such time.''.

(c) PRICING.—Section 1402 (42 U.S.C. 2297c–1) is amended to read as follows:

**''SEC. 1402. PRICING.**

''The Corporation shall establish prices for its products, materials, and services provided to customers on a basis that will allow it to attain the normal business objectives of a profitmaking corporation.''.

(d) LEASING OF GASEOUS DIFFUSION FACILITIES OF DEPARTMENT.—Effective on the privatization date (as defined in section 1201(13) of the Atomic Energy Act of 1954), section 1403 (42 U.S.C. 2297c–2) is amended by adding at the end the following:

''(h) LOW-LEVEL RADIOACTIVE WASTE AND MIXED WASTE.—

''(1) RESPONSIBILITY OF THE DEPARTMENT; COSTS.—

''(A) With respect to low-level radioactive waste and mixed waste generated by the Corporation as a result of the operation of the facilities and related property leased by the Corporation pursuant to subsection (a) or as a result of treatment of such wastes at a location other than the facilities and related property

leased by the Corporation pursuant to subsection (a) the Department, at the request of the Corporation, shall—

''(i) accept for treatment or disposal of all such wastes for which treatment or disposal technologies and capacities exist, whether within the Department or elsewhere; and

''(ii) accept for storage (or ultimately treatment or disposal) all such wastes for which treatment and disposal technologies or capacities do not exist, pending development of such technologies or availability of such capacities for such wastes.

''(B) All low-level wastes and mixed wastes that the Department accepts for treatment, storage, or disposal pursuant to subparagraph (A) shall, for the purpose of any permits, licenses, authorizations, agreements, or orders involving the Department and other Federal agencies or State or local governments, be deemed to be generated by the Department and the Department shall handle such wastes in accordance with any such permits, licenses, authorizations, agreements, or orders. The De-

partment shall obtain any additional permits, licenses, or authorizations necessary to handle such wastes, shall amend any such agreements or orders as necessary to handle such wastes, and shall handle such wastes in accordance therewith.

''(C) The Corporation shall reimburse the Department for the treatment, storage, or disposal of low-level radioactive waste or mixed waste pursuant to subparagraph (A) in an amount equal to the Department's costs but in no event greater than an amount equal to that which would be charged by commercial, State, regional, or interstate compact entities for treatment, storage, or disposal of such waste.

''(2) AGREEMENTS WITH OTHER PERSONS.—The Corporation may also enter into agreements for the treatment, storage, or disposal of low-level radioactive waste and mixed waste generated by the Corporation as a result of the operation of the facilities and related property leased by the Corporation pursuant to subsection (a) with any person other than the Department that is authorized by applicable laws and regulations to treat, store, or dispose of such wastes.''.

(e) LIABILITIES.—

(1) Subsection (a) of section 1406 (42 U.S.C. 2297c–5(a)) is amended—

(A) by inserting ''AND PRIVATIZATION'' after ''TRANSITION'' in the heading; and

(B) by adding at the end the following: ''As of the privatization date, all liabilities attributable to the operation of the Corporation from the transition date to the privatization date shall be direct liabilities of the United States.''.

(2) Subsection (b) of section 1406 (42 U.S.C. 2297c–5(b)) is amended—

(A) by inserting ''AND PRIVATIZATION'' after ''TRANSITION'' in the heading; and

(B) by adding at the end the following: ''As of the privatization date, any judgment entered against the Corporation imposing liability arising out of the operation of the Corporation from the transition date to the privatization date shall be considered a judgment against the United States.''.

(3) Subsection (d) of section 1406 (42 U.S.C. 2297c–5(d)) is amended—

(A) by inserting ''AND PRIVATIZATION'' after ''TRANSITION'' in the heading; and

(B) by striking ''the transition date'' and inserting ''the privatization date (or, in the event the privatization date does not occur, the transition date)''.

(f) TRANSFER OF URANIUM.—

(1) AMENDMENT.—Title II (42 U.S.C. 2297 et seq.) is amended by redesignating section 1408 as section 1409 and by inserting after section 1407 the following:

**''SEC. 1408. URANIUM TRANSFERS AND SALES.**

''(a) TRANSFERS AND SALES BY THE SECRETARY.—The Secretary shall not provide enrichment services or transfer or sell any uranium (including natural or enriched uranium in any form) to any person except as provided in this section.

''(b) RUSSIAN HEU.—

''(1) TRANFERS.—Prior to December 31, 1996, the United States Executive Agent under the Russian HEU Agreement shall transfer to the Secretary without charge an amount of uranium hexafluoride equivalent to the natural uranium component of low-enriched uranium derived from at least 18 metric tons of highly enriched uranium purchased from the

Russian Executive Agent under the Russian HEU Agreement. The quantity of such uranium hexafluoride delivered to the Secretary shall be based on a tails assay of 0.30 U235. Title to uranium hexafluoride delivered to the Secretary pursuant to this paragraph shall transfer to the Secretary upon delivery of such material to the Secretary. Uranium hexafluoride delivered to the Secretary pursuant to this paragraph shall be deemed to be of Russian origin.

''(2) CONTRACTS.—Within 7 years of the date of enactment of the USEC Privatization Act, the Secretary shall enter into contracts to sell the uranium hexafluoride transferred to the Secretary pursuant to paragraph (1). Such uranium hexafluoride shall be sold—

''(A) at any time for use in the United States for the purpose of overfeeding;

''(B) at any time for use outside the United States; and

''(C) for consumption by end users in the United States not prior to January 1, 2002, in volumes not to exceed 3 million pounds U3O8 equivalent per year.

"(3) URANIUM HEXAFLUORIDE.—With respect to all low-enriched uranium that is delivered to the United States Executive Agent under the Russian HEU Agreement after January 1, 1997, the United States Executive Agent shall, upon request of the Russian Executive Agent, deliver to the Russian Executive Agent an amount of uranium hexafluoride equivalent to the natural uranium component of such low-enriched uranium simultaneously with the delivery of such low-enriched uranium. The quantity of such uranium hexafluoride delivered to the Russian Executive Agent shall be based on a tails assay of 0.30 U235. Title to uranium hexafluoride delivered to the Russian Executive Agent pursuant to this paragraph shall transfer to the Russian Executive Agent upon delivery of such material to the Russian Executive Agent at a North American facility designated by the Russian Executive Agent. Uranium hexafluoride delivered to the Russian Executive Agent pursuant to this paragraph shall be deemed to be of Russian origin. Such uranium hexafluoride may be sold to any person or entity consistent with the limitations on delivery to end users set forth in this subsection. Nothing in this

subsection shall restrict the sale of the conversion component of such uranium hexafluoride.

''(4) INDEPENDENT PARTY.—In the event that the Russian Executive Agent does not request delivery of the natural uranium component of any low-enriched uranium, as contemplated in paragraph (3), within 90 days of the date such low-enriched uranium is delivered to the United States Executive Agent, then the United States Executive Agent shall engage an independent party through a competitive selection process to auction an amount of uranium hexafluoride equivalent to the natural uranium component of such low-enriched uranium. Such independent party shall sell such uranium hexafluoride to any person or entity consistent with the limitations set forth in this subsection. The independent entity shall pay to the Russian Executive Agent the proceeds of any such auction less all transaction and other administrative costs. The quantity of such uranium hexafluoride auctioned shall be based on a tails assay of 0.30 U235. Title to uranium hexafluoride auctioned pursuant to this paragraph shall transfer to the buyer of such material upon delivery of such material to the buyer. Uranium hexafluoride auc-

tioned pursuant to this paragraph shall be deemed to be of Russian origin.

''(5) CONSUMPTION.—Except as provided in paragraphs (6) and (7), uranium hexafluoride delivered to the Secretary under paragraph (1) or the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4), may not be delivered for consumption by end users in the United States prior to January 1, 1998 and thereafter only in accordance with the following schedule:

| **"Year** | **Annual Maximum Deliveries to End Users (millions lbs. $U_3O_8$ equivalent)** |
|---|---|
| 1998 | 2 million lbs. $U_3O_8$ equivalent |
| 1999 | 4 million lbs. $U_3O_8$ equivalent |
| 2000 | 6 million lbs. $U_3O_8$ equivalent |
| 2001 | 8 million lbs. $U_3O_8$ equivalent |
| 2002 | 10 million lbs. $U_3O_8$ equivalent |
| 2003 | 12 million lbs. $U_3O_8$ equivalent |
| 2004 | 14 million lbs. $U_3O_8$ equivalent |
| 2005 and each year thereafter | 16 million lbs. $U_3O_8$ equivalent |

''(6) MATCHED SALES.—Uranium hexafluoride delivered to the Secretary under paragraph (1) or the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4) may be sold at any time as Russian-origin natural uranium in a sale with an equal portion of U.S.-origin natural uranium pursuant to the Suspension Agreement and in such case shall not be counted against the annual maximum deliveries set forth in paragraph (5).

"(7) OVERFEEDING.—Uranium hexafluoride delivered to the Secretary under paragraph (1) or the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4) may be sold at any time for use in the United States for the purpose of overfeeding in the operations of enrichment facilities.

"(c) TRANSFERS TO THE CORPORATION.—(1) Before the privatization date, the Secretary may transfer to the Corporation without charge the low enriched uranium from up to 50 metric tons of highly enriched uranium and up to 7,000 metric tons of natural uranium, subject to the restrictions in subsection (b)(2).

"(2) The Corporation (or its successor) may not deliver for commercial end use—

"(A) any of the natural uranium transferred under this subsection before January 1, 1998;

"(B) more than 10 percent of the natural uranium (by uranium hexafluoride equivalent content) transferred under this subsection or more than 4 million pounds, whichever is less, in any calendar year after 1997; or

"(C) more than 800,000 separative work units of low-enriched uranium transferred under this subsection in any calendar year.

"(d) INVENTORY SALES.—(1) In addition to the transfers authorized under subsection (b), the Secretary may, from time to time, sell natural and low-enriched uranium (including low-enriched uranium derived from highly enriched uranium) from the Department of Energy s stockpile.

"(2) Except as provided in subsections (b) and (d), no sale or transfer of natural or low-enriched uranium shall be made unless—

"(A) the President determines that the material is not necessary to national security needs,

"(B) the Secretary determines that the sale of the material will not have an adverse impact on the domestic uranium mining and enrichment industries, taking into account the sales of uranium under the Russian HEU Agreement and the Suspension Agreement, and

"(C) the price paid to the Secretary will not be less than the fair market value of the material.

"(e) GOVERNMENT TRANSFERS.—Notwithstanding subsection (c), the Secretary may transfer or sell low-enriched uranium—

"(1) to a federal agency if the material is transferred for the use of the receiving agency without

any resale or transfer to another entity and the material does not meet commercial specifications;

''(2) to any person for national security purposes, as determined by the Secretary; or

''(3) to any state or local agency or nonprofit, charitable, or educational institution for use other than the generation of electricity for commercial use.''.

(2) CONFORMING AMENDMENT.—The table of contents for chapter 24 is amended by redesignating the item relating to section 1408 as the item relating to section 1409 and by inserting after the item for section 1407 the following:

''Sec. 1408. Uranium transfers and sales.''.

**SEC. 3040. PRIVATIZATION OF THE CORPORATION.**

(a) ESTABLISHMENT OF PRIVATE CORPORATION.—Chapter 25 (42 U.S.C. 2297d et seq.) is amended by adding at the end the following new section:

**''SEC. 1503. ESTABLISHMENT OF PRIVATE CORPORATION.**

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—In order to facilitate privatization, the Corporation may provide for the establishment of a private corporation organized under the laws of any of the several States. Such corporation shall have among its purposes the following:

"(A) To help maintain a reliable and economical domestic source of uranium enrichment services.

"(B) To undertake any and all activities as provided in its corporate charter.

"(2) AUTHORITIES.—The corporation established pursuant to paragraph (1) shall be authorized to—

"(A) enrich uranium, provide for uranium to be enriched by others, or acquire enriched uranium (including low-enriched uranium derived from highly enriched uranium);

"(B) conduct, or provide for conducting, those research and development activities related to uranium enrichment and related processes and activities the corporation considers necessary or advisable to maintain itself as a commercial enterprise operating on a profitable and efficient basis;

"(C) enter into transactions regarding uranium, enriched uranium, or depleted uranium with—

"(i) persons licensed under section 53, 63, 103, or 104 in accordance with the licenses held by those persons;

''(ii) persons in accordance with, and within the period of, an agreement for cooperation arranged under section 123; or

''(iii) persons otherwise authorized by law to enter into such transactions;

''(D) enter into contracts with persons licensed under section 53, 63, 103, or 104, for as long as the corporation considers necessary or desirable, to provide uranium or uranium enrichment and related services;

''(E) enter into contracts to provide uranium or uranium enrichment and related services in accordance with, and within the period of, an agreement for cooperation arranged under section 123 or as otherwise authorized by law; and

''(F) take any and all such other actions as are permitted by the law of the jurisdiction of incorporation of the corporation.

''(3) TRANSFER OF ASSETS.—For purposes of implementing the privatization, the Corporation may transfer some or all of its assets and obligations to the corporation established pursuant to this section, including—

''(A) all of the Corporation's assets and obligations, including all of the Corporation's rights, duties, and obligations accruing subsequent to the privatization date under contracts, agreements, and leases entered into by the Corporation before the privatization date, including all uranium enrichment contracts and power purchase contracts;

''(B) all funds in accounts of the Corporation held by the Treasury or on deposit with any bank or other financial institution;

''(C) all of the Corporation's rights, duties, and obligations, accruing subsequent to the privatization date, under the power purchase contracts covered by section 1401(b)(2)(B);

''(D) all of the Corporation's rights, duties, and obligations, accruing subsequent to the privatization date, under the lease agreement between the Department and the Corporation executed by the Department and the Corporation pursuant to section 1403; and

''(E) all of the Corporation's records, including all of the papers and other documentary materials, regardless of physical form or char-

acteristics, made or received by the Corporation.

''(4) MERGER OR CONSOLIDATION.—For purposes of implementing the privatization, the Corporation may merge or consolidate with the corporation established pursuant to subsection (a)(1) if such action is contemplated by the plan for privatization approved by the President under section 1502(b). The Board shall have exclusive authority to approve such merger or consolidation and to take all further actions necessary to consummate such merger or consolidation, and no action by or in respect of shareholders shall be required. The merger or consolidation shall be effected in accordance with, and have the effects of a merger or consolidation under, the laws of the jurisdiction of incorporation of the surviving corporation, and all rights and benefits provided under this title to the Corporation shall apply to the surviving corporation as if it were the Corporation.

''(b) OSHA REQUIREMENTS.—For purposes of the regulation of radiological and nonradiological hazards under the Occupational Safety and Health Act of 1970, the corporation established pursuant to subsection (a)(1) shall be treated in the same manner as other employers

licensed by the Nuclear Regulatory Commission. Any interagency agreement entered into between the Nuclear Regulatory Commission and the Occupational Safety and Health Administration governing the scope of their respective regulatory authorities shall apply to the corporation as if the corporation were a Nuclear Regulatory Commission licensee.

''(c) LEGAL STATUS OF PRIVATE CORPORATION.—

''(1) NOT FEDERAL AGENCY.—The Corporation established pursuant to subsection (a)(1) shall not be an agency, instrumentality, or establishment of the United States Government and shall not be a Government corporation or Government-controlled corporation.

''(2) NO RECOURSE AGAINST UNITED STATES.—Obligations of the Corporation established pursuant to subsection (a)(1) shall not be obligations of, or guaranteed as to principal or interest by, the Corporation or the United States, and the obligations shall so plainly state.

''(3) NO CLAIMS COURT JURISDICTION.—No action under section 1491 of title 28, United States Code, shall be allowable against the United States based on the actions of the Corporation established pursuant to subsection (a)(1).

''(d) BOARD OF DIRECTOR'S ELECTION AFTER PUBLIC OFFERING.—In the event that the privatization is implemented by means of a public offering, an election of the members of the board of directors of the Corporation by the shareholders shall be conducted before the end of the 1-year period beginning the date shares are first offered to the public pursuant to such public offering.

''(e) ADEQUATE PROCEEDS.—The Secretary of Energy shall not allow the privatization of the Corporation unless before the sale date the Secretary determines that the estimated sum of the gross proceeds from the sale of the Corporation will be an adequate amount.''.

(b) OWNERSHIP LIMITATIONS.—Chapter 25 (as amended by subsection (a)) is amended by adding at the end the following new section:

**''SEC. 1504. OWNERSHIP LIMITATIONS.**

''(a) SECURITIES LIMITATION.—In the event that the privatization is implemented by means of a public offering, during a period of 3 years beginning on the privatization date, no person, directly or indirectly, may acquire or hold securities representing more than 10 percent of the total votes of all outstanding voting securities of the Corporation.

''(b) APPLICATION.—Subsection (a) shall not apply—

''(1) to any employee stock ownership plan of the Corporation,

''(2) to underwriting syndicates holding shares for resale, or

''(3) in the case of shares beneficially held for others, to commercial banks, broker-dealers, clearing corporations, or other nominees.

''(c) ACQUISITIONS.—No director, officer, or employee of the Corporation may acquire any securities, or any right to acquire securities, of the Corporation—

''(1) in the public offering of securities of the Corporation in the implementation of the privatization,

''(2) pursuant to any agreement, arrangement, or understanding entered into before the privatization date, or

''(3) before the election of directors of the Corporation under section 1503(d) on any terms more favorable than those offered to the general public.''.

(c) EXEMPTION FROM LIABILITY.—Chapter 25 (as amended by subsection (b)) is amended by adding at the end the following new section:

**''SEC. 1505. EXEMPTION FROM LIABILITY.**

''(a) IN GENERAL.—No director, officer, employee, or agent of the Corporation shall be liable, for money dam-

ages or otherwise, to any party if, with respect to the subject matter of the action, suit, or proceeding, such person was fulfilling a duty, in connection with any action taken in connection with the privatization, which such person in good faith reasonably believed to be required by law or vested in such person.

''(b) EXCEPTION.—The privatization shall be subject to the Securities Act of 1933 and the Securities Exchange Act of 1934. The exemption set forth in subsection (a) shall not apply to claims arising under such Acts or under the Constitution or laws of any State, territory, or possession of the United States relating to transactions in securities, which claims are in connection with a public offering implementing the privatization.

''(c) SECURITIES LAWS APPLICABLE.—Any offering or sale of securities by the Corporation established pursuant to section 1503(a)(1) shall be subject to the Securities Act of 1933, the Securities Exchange Act of 1934 and the provisions of the Constitution and laws of any State, territory, or possession of the United States relating to transactions in securities.''.

(d) RESOLUTION OF CERTAIN ISSUES.—Chapter 25 (as amended by subsection (c)) is amended by adding at the end the following new section:

**"SEC. 1506. RESOLUTION OF CERTAIN ISSUES.**

''(a) CORPORATION ACTIONS.—Notwithstanding any provision of any agreement to which the Corporation is a party, the Corporation shall not be considered to be in breach, default, or violation of any such agreement because of any provision of this chapter or any action the Corporation is required to take under this chapter.

''(b) RIGHT TO SUE WITHDRAWN.—The United States hereby withdraws any stated or implied consent for the United States, or any agent or officer of the United States, to be sued by any person for any legal, equitable, or other relief with respect to any claim arising out of, or resulting from, acts or omissions under this chapter.''.

(e) CONFORMING AMENDMENT.—The table of contents for chapter 25 is amended by inserting after the item for section 1502 the following:

''Sec. 1503. Establishment of Private Corporation.
''Sec. 1504. Ownership Limitations.
''Sec. 1505. Exemption from Liability.
''Sec. 1506. Resolution of Certain Issues.''.

(f) Section 193 (42 U.S.C. 2243) is amended by adding at the end the following:

''(f) LIMITATION.—If the privatization of the United States Enrichment Corporation results in the Corporation being—

''(1) owned, controlled, or dominated by a foreign corporation or a foreign government, or

''(2) otherwise inimical to the common defense or security of the United States,

any license held by the Corporation under sections 53 and 63 shall be terminated.''.

(g) PERIOD FOR CONGRESSIONAL REVIEW.—Section 1502(d) (42 U.S.C. 2297d–1(d)) is amended by striking ''less than 60 days after notification of the Congress'' and inserting ''less than 60 days after the date of the report to Congress by the Comptroller General under subsection (c)''.

**SEC. 3041. PERIODIC CERTIFICATION OF COMPLIANCE.**

Section 1701(c)(2) (42 U.S.C. 2297f(c)(2)) is amended by striking ''ANNUAL APPLICATION FOR CERTIFICATE OF COMPLIANCE.—The Corporation shall apply at least annually to the Nuclear Regulatory Commission for a certificate of compliance under paragraph (1).'' and inserting ''PERIODIC APPLICATION FOR CERTIFICATE OF COMPLIANCE.—The Corporation shall apply to the Nuclear Regulatory Commission for a certificate of compliance under paragraph (1) periodically, as determined by the Nuclear Regulatory Commission, but not less than every 5 years.''.

**SEC. 3042. LICENSING OF OTHER TECHNOLOGIES.**

Subsection (a) of section 1702 (42 U.S.C. 2297f–1(a)) is amended by striking ''other than'' and inserting ''including''.

**SEC. 3043. CONFORMING AMENDMENTS.**

(a) REPEALS IN ATOMIC ENERGY ACT OF 1954 AS OF THE PRIVATIZATION DATE.—

(1) REPEALS.—As of the privatization date (as defined in section 1201(13) of the Atomic Energy Act of 1954), the following sections (as in effect on such privatization date) of the Atomic Energy Act of 1954 are repealed:

(A) Section 1202.

(B) Sections 1301 through 1304.

(C) Sections 1306 through 1316.

(D) Sections 1404 and 1405.

(E) Section 1601.

(F) Sections 1603 through 1607.

(2) CONFORMING AMENDMENT.—The table of contents of such Act is amended by repealing the items referring to sections repealed by paragraph (1).

(b) STATUTORY MODIFICATIONS.—As of such privatization date, the following shall take effect:

(1) For purposes of title I of the Atomic Energy Act of 1954, all references in such Act to the

''United States Enrichment Corporation'' shall be deemed to be references to the corporation established pursuant to section 1503 of the Atomic Energy Act of 1954 (as added by section 3036(a)).

(2) Section 1018(1) of the Energy Policy Act of 1992 (42 U.S.C. 2296b–7(1)) is amended by striking ''the United States'' and all that follows through the period and inserting ''the corporation referred to in section 1201(4) of the Atomic Energy Act of 1954.''.

(3) Section 9101(3) of title 31, United States Code, is amended by striking subparagraph (N), as added by section 902(b) of Public Law 102–486.

(c) REVISION OF SECTION 1305.—As of such privatization date, section 1305 of the Atomic Energy Act of 1954 (42 U.S.C 2297b–4) is amended—

(1) by repealing subsections (a), (b), (c), and (d), and

(2) in subsection (e)—

(A) by striking the subsection designation and heading,

(B) by redesignating paragraph (1) (as added by section 3038(a)) as subsection (a), striking ''IN GENERAL.—'' and inserting ''IN GENERAL.—'', redesignating subparagraphs (A)

through (E) as paragraphs (1) through (5) (redesignating in such paragraph, clauses (i) through (iii) as subparagraphs (A) through (C)), striking ''clauses (i) through (iii)'' in paragraph (5) and inserting ''subparagraphs (A) through (C)'', and by moving the margins 2-ems to the left,

(C) by striking paragraph (3), and

(D) by redesignating paragraph (4) (as amended by section 3038(b)) as subsection (b), and by moving the margins 2-ems to the left.

## Subtitle D—Waste Isolation Pilot Project

**SEC. 3045. SHORT TITLE AND REFERENCE.**

(a) SHORT TITLE.—This subtitle may be cited as the ''Waste Isolation Pilot Plant Land Withdrawal Amendment Act''.

(b) REFERENCE.—Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Waste Isolation Pilot Plant Land Withdrawal Act (Public Law 102–579).

**SEC. 3046. DEFINITIONS.**

Paragraphs (18) and (19) of section 2 are repealed.

**SEC. 3047. TEST PHASE AND RETRIEVAL PLANS.**

Section 5 is repealed.

**SEC. 3048. TEST PHASE ACTIVITIES.**

Section 6 is amended—

(1) by repealing subsections (a) and (b),

(2) by repealing paragraph (1) of subsection (c),

(3) by repealing subparagraph (A) of paragraph (2) of subsection (c),

(4) by redesignating subsection (c) as subsection (a), by striking the subsection heading and the matter before paragraph (1) and inserting ''STUDY.—The following study shall be conducted:'', by striking ''(2) REMOTE-HANDLED WASTE.—'', by striking ''(B) STUDY.—'', and by redesignating clauses (i), (ii), and (iii) as paragraphs (1), (2), and (3), respectively, and moving them 4-ems to the left, and

(5) by redesignating subsection (d) as subsection (b).

**SEC. 3049. DISPOSAL OPERATIONS.**

Section 7(b) is repealed.

**SEC. 3050. ENVIRONMENTAL PROTECTION AGENCY DISPOSAL REGULATIONS.**

(a) SECTION 8(d)(1).—Section 8(d)(1) is amended by striking subparagraphs (B), (C), and (D) and by adding after subparagraph (A) the following:

> ''(B) COMMENTS OF ADMINISTRATOR.—Within 2 months of receipt of the application under subparagraph (A), the Administrator shall provide the Secretary with any comments on the Secretary's application. Within one month of the receipt of such comments, the Secretary shall, to the extent practicable, incorporate the Administrator's comments in the Secretary's application. The comments of the Administrator provided to the Secretary should also be transmitted to the appropriate committees of jurisdiction in the House of Representatives and the Senate.''.

(b) SECTION 8(d) (2), (3).—Section 8(d) is amended by striking paragraphs (2) and (3), by striking ''(1) COMPLIANCE WITH DISPOSAL REGULATIONS.—'', and by redesignating subparagraphs (A) and (B) of paragraph (1), as amended by subsection (a), as paragraphs (1) and (2), respectively, and moving them 2-ems to the left.

(c) SECTION 8(f).—Subsection (f) of section 8 is amended—

(1) by amending the subsection heading to read ''PERIODIC REVIEW'', and

(2) by amending paragraph (2) to read as follows:

''(2) REVIEW BY THE ADMINISTRATOR.—The Administrator shall, not later than 6 months after receiving a submission under paragraph (1), comment on whether or not the WIPP facility continues to be in compliance with the final disposition regulations.''.

(d) SECTION 8(g).—Section 8(g) is amended to read as follows:

''(g) ENGINEERED AND NATURAL BARRIERS, ETC.—The Secretary should determine whether or not engineered barriers or natural barriers, or both, will be required at WIPP consistent with regulations published as part 191 of 40 C.F.R.''.

**SEC. 3051. COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS.**

(a) SECTION 9(a)(1).—Section 9(a)(1) is amended by adding after and below subparagraph (H) the following:

''With respect to transuranic mixed waste designated by the Secretary for disposal at WIPP, such waste is exempt from the land disposal restrictions published at part 268 of 40 C.F.R. because compliance

with the environmental radiation protection standards published at part 191 of 40 C.F.R. renders compliance with the land disposal restrictions unnecessary to achieve desired environmental protection and a no migration variance is not required for disposal of transuranic mixed waste at WIPP.''.

(b) SECTION 9(b).—Subsection (b) of section 9 is repealed.

(c) SECTIONS 9(c), (d).—Subsections (c) and (d) of section 9 are repealed.

**SEC. 3052. RETRIEVABILITY.**

Section 10 is amended to read as follows:

**''SEC. 10. TRANSURANIC WASTE.**

''It is the intent of Congress that a decision will be made by the Secretary with respect to the disposal of transuranic waste no later than March 31, 1997.''.

**SEC. 3053. DECOMMISSIONING OF WIPP.**

Section 13 is amended—

(1) by repealing subsection (a), and

(2) in subsection (b), by striking ''(b) MANAGEMENT PLAN FOR THE WITHDRAWAL AFTER DECOMMISSIONING.—Within 5 years after the date of the enactment of this Act, the'' and inserting ''The''.

**SEC. 3054. ECONOMIC ASSISTANCE AND MISCELLANEOUS PAYMENTS.**

Section 15(a) is amended—

(1) by striking ''to the Secretary for payments to the State $20,000,000 for each of the 15 fiscal years beginning with the fiscal year in which the transport of transuranic waste to WIPP is initiated'' and inserting ''to the State $20,000,000 for each of the 15 fiscal years beginning with the date of the enactment of the Waste Isolation Pilot Plant Land Withdrawal Amendment Act'', and

(2) by adding at the end the following: ''An appropriation to the State shall be in addition to any appropriation for WIPP.''.

**SEC. 3055. NON-DEFENSE WASTE.**

Section 7(a) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following:

''(3) NONDEFENSE WASTE.—Within the capacity prescribed by paragraph (4), WIPP may receive transuranic waste from the Secretary which did not result from a defense activity.''.

# Subtitle E—Strategic Petroleum Reserve

**SEC. 3071. LEASE OF EXCESS STRATEGIC PETROLEUM RESERVE CAPACITY.**

(a) AMENDMENT.—Part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 151 et seq.) is amended by adding at the end the following new section:

''USE OF UNDERUTILIZED FACILITIES

''SEC. 168. (a) AUTHORITY.—Notwithstanding any other provision of this title, the Secretary, by lease or otherwise, for any term and under such other conditions as the Secretary considers necessary or appropriate, may store in underutilized Strategic Petroleum Reserve facilities petroleum product owned by a foreign government or its representative.

''(b) CONDITIONS OF WITHDRAWAL.—The lessee or occupier of facilities under subsection (a) may not withdraw petroleum product from those facilities more frequently than once every 5 years, unless an earlier drawdown is required to comply with the terms of the International Energy Agreement or to respond to a national energy emergency involving the disruption of more than 5 percent of the lessee's or occupier's imports.

''(c) PRIORITY ACCESS.—When a drawdown of the reserve is ordered pursuant to section 161, the United

States shall have priority access, over a lessee or occupier of facilities under subsection (a), to distribution facilities, including pipelines and terminals.

''(d) STATUS OF STORED PETROLEUM PRODUCT.—Petroleum product stored under this section is not part of the Reserve, and may be exported from the United States.''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of part B of title I of the Energy Policy and Conservation Act is amended by adding at the end the following new item:

''Sec. 168. Use of underutilized facilities.''.

# TITLE IV—COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

## SEC. 4000. TABLE OF CONTENTS.

The table of contents for this title is as follows:

TITLE IV—ECONOMIC AND EDUCATIONAL OPPORTUNITIES

Subtitle A—Higher Education

Sec. 4001. Short title; effective date.
Sec. 4002. Termination of direct lending.
Sec. 4003. Elimination of grace period interest subsidies.
Sec. 4004. Plus program reductions.
Sec. 4005. Loan transfer fee.
Sec. 4006. Lender fees to guaranty agencies.
Sec. 4007. Additional loan program changes.
Sec. 4008. Use of reserve funds to purchase defaulted loans.
Sec. 4009. Extension of period a guaranty agency must hold a defaulted loan.
Sec. 4010. Privatization of College Construction Loan Insurance Association.
Sec. 4011. Eligible institution.
Sec. 4012. Extension of program duration.

Subtitle B—Service Contract Repeal

Sec. 4101. Service Contract Act of 1965.

Subtitle C—Provisions Relating to the Employee Retirement Income Security Act of 1974

Sec. 4201. Waiver of minimum period for joint and survivor annuity explanation before annuity starting date.

# Subtitle A—Higher Education

**SEC. 4001. SHORT TITLE; EFFECTIVE DATE.**

(a) SHORT TITLE.—This subtitle may be cited as the ''Higher Education Program Efficiency Act of 1995''.

(b) EFFECTIVE DATE.—Except as otherwise provided therein, the amendments made by this subtitle shall take effect on January 1, 1996.

**SEC. 4002. TERMINATION OF DIRECT LENDING.**

(a) TERMINATION OF AUTHORITY.—

(1) PROGRAM AUTHORITY.—Section 451(a) of the Higher Education Act of 1965 (20 U.S.C. 1087a(a)) is amended by inserting ''and ending June 30, 1996'' after ''period beginning July 1, 1994''.

(2) TERMINATION OF FUNDING.—Section 452 of such Act (20 U.S.C. 1087b) is amended by adding at the end the following new subsection:

''(e) TERMINATION OF FUNDING.—The Secretary shall not provide funds under this section for loans for any academic year beginning on or after July 1, 1996. The Secretary shall not pay any fees pursuant to subsection (b) of this section on or after January 1, 1996.''.

(3) TERMINATION OF AUTHORITY TO ENTER NEW AGREEMENTS.—Section 453(a) of such Act (20 U.S.C. 1087c(a)) is amended—

(A) in paragraph (1), by inserting ''and ending before July 1, 1996'' after ''academic years beginning on or after July 1, 1994'';

(B) in paragraph (2)—

(i) by inserting ''and'' after the semicolon at the end of subparagraph (A);

(ii) by striking the semicolon at the end of subparagraph (B) and inserting a period; and

(iii) by striking subparagraphs (C) and (D); and

(C) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3).

(b) ADMINISTRATIVE COST AMENDMENTS.—Section 458 of such Act (20 U.S.C. 1087h) of such Act is amended—

(1) by striking subsection (d);

(2) by redesignating subsections (b) and (c) as subsections (f) and (g), respectively; and

(3) by striking subsection (a) and inserting the following:

''(a) IN GENERAL.—

"(1) DIRECT ADMINISTRATIVE COSTS.—Each fiscal year there shall be available to the Secretary of Education, from funds not otherwise appropriated, funds to be obligated for the subsidy costs of direct administrative costs under this part, subject to subsection (b) of this section.

"(2) INDIRECT ADMINISTRATIVE COSTS.—There shall also be available from funds available from funds not otherwise appropriated, funds to be obligated for indirect administrative costs under this part and part B, subject to subsection (c) of this section, not to exceed (from such funds not otherwise appropriated) $260,000,000 in fiscal year 1994, $345,000,000 in fiscal year 1995, $110,000,000 in fiscal year 1996 (of which $40,000,000 shall be available for administrative cost allowances for guaranty agencies for October through December of 1995), and $70,000,000 in each of the fiscal years 1997 through 2002.

"(3) REDUCTION.—The amount authorized to be made available for fiscal year 1997 under paragraph (2) shall be reduced by the amount of any unobligated unexpended funds available to carry out this subsection for any fiscal year prior to fiscal year 1996.

"(b) SUBSIDY COSTS.—For purposes of this section, 'subsidy cost' means the estimated long-term cost to the Federal Government of direct administrative expenses calculated on a net present value basis.

"(c) DIRECT ADMINISTRATIVE EXPENSES.—For purposes of this section, 'direct administrative expenses' shall consist of the cost of—

"(1) activities related to credit extension, loan origination, loan servicing, management of contractors, and payments to contractors, other government entities, and program participants;

"(2) collection of delinquent loans; and

"(3) write-off and closeout of loans.

"(d) INDIRECT ADMINISTRATIVE EXPENSES.—For purposes of this section, 'indirect administrative expenses' shall consist of the cost of—

"(1) personnel engaged in developing program regulations, policy, and administrative guidelines;

"(2) audits of institutions and contractors;

"(3) program reviews; and

"(4) other oversight of the program.

"(e) LIMITATION ON PART D EXPENDITURES.—For any fiscal year, expenditures for indirect administrative expenses and for loan servicing for loans made pursuant

to this part shall not exceed 30 percent of funds available pursuant to paragraph (2) for such fiscal year.''.

(c) ELIMINATION OF TRANSITION TO DIRECT LOANS.—Such Act is further amended—

(1) in section 422(c)(7) (20 U.S.C. 1072(c)(7))—

(A) by striking ''during the transition'' and all that follows through ''part D of this title'' in subparagraph (A); and

(B) by striking ''section 428(c)(10)(F)(v)'' in subparagraph (B) and inserting ''section 428(c)(9)(F)(v)'';

(2) in section 428(c)(8) (20 U.S.C. 1078(c)(8)), by striking subparagraph (B) and inserting the following:

''(B) Prior to making such determination for any guaranty agency, the Secretary shall, in consultation with the guaranty agency, develop criteria to determine whether such guaranty agency has made adequate collection efforts. In determining whether a guaranty agency's collection efforts have met such criteria, the Secretary shall consider the agency's record of success in collecting on defaulted loans, the age of the loans, and the amount of recent payments received on the loans.'';

(3) in section 428(c)(9)(E)—

(A) by inserting ''or'' after the semicolon at the end of clause (iv);

(B) by striking ''; or'' at the end of clause (v) and inserting a period; and

(C) by striking clause (vi);

(4) in clause (vii) of section 428(c)(9)(F)—

(A) by inserting ''and'' before ''to avoid disruption''; and

(B) by striking '', and to ensure an orderly transition'' and all that follows through the end of such clause and inserting a period;

(5) in section 428(c)(9)(K), by striking ''the progress of the transition from the loan programs under this part to'' and inserting ''the integrity and administration of'';

(6) in section 428(e)(1)(B)(ii), by striking ''during the transition'' and all that follows through ''part D of this title'';

(7) in section 428(e)(3), by striking ''of transition'';

(8) in section 428(j)(3)—

(A) by striking ''DURING TRANSITION TO DIRECT LENDING''; and

(B) by striking ''during the transition'' and all that follows through ''part D of this title,'' in subparagraph (A) and inserting a comma;

(9) in section 453(c)(2) (20 U.S.C. 1087c(c)(2)), by striking ''TRANSITION'' and inserting ''INSTITUTIONAL'';

(10) in section 453(c), by striking paragraph (3); and

(11) in section 456(b) (20 U.S.C. 1087f(b))—

(A) by inserting ''and'' after the semicolon at the end of paragraph (3);

(B) by striking paragraph (4);

(C) by redesignating paragraph (5) as paragraph (4); and

(D) in such paragraph (4) (as redesignated), by striking ''successful operation'' and inserting ''integrity and efficiency''.

(d) ADDITIONAL CONFORMING AMENDMENTS.—

(1) ABILITY OF PART D BORROWERS TO OBTAIN FEDERAL STAFFORD CONSOLIDATION LOANS.—Section 428C(a)(4) of such Act (20 U.S.C. 1078–3(a)(4)) is amended—

(A) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E); and

(B) by inserting after subparagraph (B) the following new subparagraph:

''(C) made under part D of this title;''.

(2) CONFORMING AMENDMENTS.—Section 428C(b) of such Act (20 U.S.C. 1078–3(b)) is amended by striking paragraph (5).

**SEC. 4003. ELIMINATION OF GRACE PERIOD INTEREST SUBSIDIES.**

Section 428(a)(3) of the Higher Education Act of 1965 (20 U.S.C. 1078(a)(3)) is amended by adding at the end the following new subparagraph:

''(C) Notwithstanding subparagraph (A), no portion of the interest which accrues after the student ceases to carry at an eligible institution at least one-half the normal full-time academic workload (as determined by the institution) and prior to the beginning of the repayment period of the loan shall be paid by the Secretary under this subsection on any loan made on or after January 1, 1996. Interest on the unpaid principal amount of any such loan during the interval described in the preceding sentence shall, at the option of the borrower—

''(i) be paid monthly or quarterly, or

"(ii) be added by the lender to the principal amount of the loan at the commencement of the repayment period.".

**SEC. 4004. PLUS PROGRAM REDUCTIONS.**

(a) LOAN LIMITS.—Section 428B(b) of the Higher Education Act of 1965 (20 U.S.C. 1078-2(b)) is amended—

(1) by striking "(b) LIMITATION BASED ON NEED.—" and inserting the following:

"(b) ANNUAL LIMITS.—

"(1) LIMITATION BASED ON NEED.—";

(2) by inserting before the last sentence thereof the following:

"(3) LIMITATION COMPUTED ON BASIS OF ACTUAL PAYMENTS.—"; and

(3) by inserting before paragraph (3) (as designated by the amendment made by paragraph (2) of this subsection) the following new paragraph:

"(2) DOLLAR LIMITATION.—Subject to paragraph (1), the maximum amount parents may borrow for one student in any academic year or its equivalent (as defined by regulations of the Secretary) is $15,000.".

(b) INTEREST REBATE.—Section 428B of such Act is further amended by adding at the end the following new subsection:

''(f) INTEREST REBATE.—

''(1) REBATE REQUIRED.—Each holder of a loan under this section made on or after the date of enactment of this subsection, shall pay, on June 30 and December 31 of each year, to the Secretary a rebate of subsidies in an amount equal to 0.8 percent of the outstanding principal balance of loans held on such date. Payment of such rebate shall be made not later than 60 days after each such date.

''(2) DEPOSIT OF REBATES.—The Secretary shall deposit all fees collected pursuant to paragraph (1) into the insurance fund established in section 431.''.

(c) PLUS LOANS INTEREST RATES.—Section 427A(c)(4) of such Act (20 U.S.C. 1077a(c)(4)) is amended by adding at the end the following new subparagraph:

''(F) Notwithstanding subparagraphs (A), (D), and (E), for any loan made pursuant to section 428B for which the first disbursement is made on or after January 1, 1996—

''(i) subparagraph (B) shall be applied by substituting '4.0' for '3.25'; and

"(ii) the interest rate shall not exceed 11 percent.".

(d) CONFORMING AMENDMENT.—Section 427A(h) of such Act (20 U.S.C. 1077a(h)) is amended—

(1) by striking paragraph (2); and

(2) by redesignating paragraph (3) as paragraph (2).

**SEC. 4005. LOAN TRANSFER FEE.**

Section 428(b)(2) of the Higher Education Act of 1965 (20 U.S.C. 1078(b)(2)) is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting "; and"; and

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

"(G) provide that, if a lender or holder, on or after January 1, 1996, sells, transfers, or assigns a loan under this part, then the transferee shall pay to the Secretary a transfer fee in an amount equal to 0.20 percent of the principal of the loan, which transfer fee shall be deposited into the insurance fund established in section 431, except that the provisions of this subparagraph shall not apply to any such sale,

transfer, or assignment by a lender or holder to such lender's or holder's affiliate or pursuant to a merger or other consolidation transaction.''.

**SEC. 4006. LENDER FEES TO GUARANTY AGENCIES.**

Subsection (f) of section 428 of the Higher Education Act of 1965 (20 U.S.C. 1078(f)) is amended to read as follows:

''(f) PAYMENTS OF CERTAIN COSTS.—

''(1) PAYMENTS FROM LENDERS.—With respect to any loan under this part for which the first disbursement is made on or after January 1, 1996, the originating lender shall remit to the guaranty agency which guarantees the loan, a fee equal to 0.70 percent of the principal amount of the loan.

''(2) USE OF PAYMENTS.—Payments made pursuant to paragraph (1) shall be used for the purposes of—

''(A) the administrative costs of collections of loans;

''(B) the administrative costs of preclaim assistance and other predefault activities;

''(C) the administrative costs of monitoring the enrollment and repayment status of students; and

''(D) other such costs related to the student loan insurance program.

''(3) TIMING OF PAYMENTS.—Payments made pursuant to paragraph (1) shall be made at the time insurance premiums on such loans are paid to the guaranty agency.

''(4) PROHIBITION ON PASS-THROUGH.—No part of any payments required by this section shall be assessed or collected, directly or indirectly, from any borrower under this part.''.

**SEC. 4007. ADDITIONAL LOAN PROGRAM CHANGES.**

(a) RESERVE FUNDS.—

(1) AMENDMENTS TO SECTION 422.—Section 422 of the Higher Education Act of 1965 (20 U.S.C. 1072) is amended—

(A) in the last sentence of subsection (a)(2), by striking ''Except as provided in section 428(c)(10)(E) or (F), such unencumbered'' and inserting ''Such'';

(B) in subsection (g)(1), by striking ''or the program authorized by part D of this title'' each place it appears;

(C) in subsection (g)(1)(D), by striking ''(A) or (B)'' and inserting ''(A), (B), or (C)''; and

(D) in subsection (g), by striking paragraph (4) and inserting the following:

''(4) DISPOSITION OF FUNDS RETURNED TO OR RECOVERED BY THE SECRETARY.—Any funds that are returned to or otherwise recovered by the Secretary pursuant to this subsection shall be returned to the Treasury of the United States for purposes of reducing the Federal debt and shall be deposited into the special account under section 3113(d) of title 31, United States Code.''.

(2) AMENDMENTS TO SECTION 428.—Section 428(c)(9)(A) of such Act (20 U.S.C. 1078(c)(9)(A)) is amended—

(A) by inserting ''and'' after the semicolon at the end of clause (i);

(B) by striking ''; and'' at the end of clause (ii) and inserting a period; and

(C) by striking clause (iii).

(b) APPLICATION FOR PART B LOANS USING FREE FEDERAL APPLICATION.—

(1) SINGLE FORM REQUIRED.—Section 483(a) of such Act (20 U.S.C. 1090(a)) is amended—

(A) in paragraph (1)—

(i) by inserting ''B,'' after ''assistance under parts A,'';

(ii) by striking ''and to determine the need of a student for the purpose of part B of this title''; and

(iii) by striking the last sentence and inserting the following: ''Such form may be in an electronic or any other format (subject to section 485B) in order to facilitate use by borrowers and institutions.''; and

(B) in paragraph (3), by striking ''and States shall receive,'' and inserting '', any guaranty agency authorized by any such institution, and States shall receive, at their request and''.

(2) USE OF ELECTRONIC FORMS.—Section 483(a) of such Act is further amended by adding the following new paragraph after paragraph (4):

''(5) ELECTRONIC FORMS.—(A) The Secretary, in cooperation with representatives of institutions of higher education, eligible lenders, and guaranty agencies, shall prescribe an electronic version of the form described in subsection (a)(1). Such electronic form shall not require signatures to be collected at the time such form is submitted if the data contained in the electronic form is certified in one or more separate writings. The Secretary shall pre-

scribe the initial electronic form not later than 90 days after the date of enactment of this paragraph.

''(B) Nothing in this Act shall preclude the use of the electronic form prescribed under subparagraph (A) through software developed, produced, distributed (including by diskette, modem or network communication, or otherwise) or collected by eligible lenders, guaranty agencies, eligible institutions, or consortia thereof. Such organization or consortium shall submit such electronic form to the Secretary for review prior to its use. If such electronic form is inconsistent with the provisions of this part, the Secretary shall notify the submitting organization or consortium of his objection within 30 days of such submission, and shall specifically identify the necessary changes. In the absence of such an objection the organization or consortium may use the electronic form as submitted. No fee may be charged in connection with use of the electronic form, or of any other electronic forms used in conjunction with such form in applying for Federal or State student financial assistance.''.

(c) AMENDMENTS TO ELIGIBLE LENDER DEFINITION.—Section 435(d)(1) of such Act (20 U.S.C. 1085) is amended—

(1) by inserting before the semicolon at the end of subparagraph (A) the following: ''; and in determining whether the making or holding of loans to students and parents under this part is the primary consumer credit function of the eligible lender, loans made or held as trustee or in a trust capacity for the benefit of a third party shall not be considered'';

(2) by striking ''and'' at the end of subparagraph (I);

(3) in subparagraph (J), by striking the period and inserting ''; and''; and

(4) by adding at the end the following new subparagraph:

''(K) a wholly owned subsidiary of a publicly-held holding company which, as of the date of enactment of this subparagraph, through one or more subsidiaries (i) acts as a finance company, and (ii) participates in the program authorized by this part pursuant to subparagraph (C).''.

(d) ADDITIONAL AMENDMENTS TO SECTION 428.—

(1) AMENDMENTS.—Section 428 of such Act is further amended—

(A) in subsection (b)(1)(G), by striking ''98 percent'' and inserting ''95 percent'';

(B) in subsection (b)(1)(X), by striking ''section 428(c)(10)'' and inserting ''section 428(c)(9)'';

(C) in subsection (c)(1)(A), by striking ''98 percent'' and inserting ''96 percent'';

(D) in subsection (c)(1)(B)(i), by striking ''88 percent'' and inserting ''86 percent'';

(E) in subsection (c)(1)(B)(ii), by striking ''78 percent'' and inserting ''76 percent'';

(F) in subsection (c)(9)(C)(ii), by striking ''80 percent'' and inserting ''76 percent'';

(G) in subsection (c)(9)(I) by inserting ''on the record'' after ''for a hearing'';

(H) in subsection (j)(2)(A), by striking ''60'' and inserting ''15'';

(I) in subsection (j)(2)(B), by striking ''two rejections'' and inserting ''one rejection''; and

(J) in subsection (l)—

(i) by striking paragraph (2); and

(ii) by striking ''(1) ASSISTANCE REQUIRED.—''.

(2) EFFECTIVE DATE.—The amendments made by subparagraphs (A) and (C) through (F) of paragraph (1) of this subsection shall apply to loans on

which the first disbursement of principal is made on or after January 1, 1996.

(e) REINSURANCE PERCENTAGE UNDER SECTION 428I.—Section 428I of such Act (20 U.S.C. 1078–9) is amended in subsection (b)(1)—

(1) by striking ''100 PERCENT'' in the heading and inserting ''95 PERCENT''; and

(2) by striking ''100 percent'' and inserting ''95 percent''.

(f) LOAN FEES FROM LENDERS.—Section 438(d)(2) of such Act (20 U.S.C. 1087–1(d)(2)) is amended to read as follows:

''(2) AMOUNT OF LOAN FEES.—The amount of the loan fee which shall be deducted under paragraph (1) shall be—

''(A) 0.50 percent of the principal amount of the loan, for any loan under this part for which the first disbursement was made on or after October 1, 1993, and before January 1, 1996; or

''(B) 0.30 percent of the principal amount of the loan, for any loan under this part for which the first disbursement was made on or after January 1, 1996.''.

(g) SMALL LENDER AUDIT EXEMPTION.—Section 428(b)(1)(U)(iii) of such Act (20 U.S.C. 1078(b)(1)(U)(iii)) is amended—

(1) by inserting ''in the case of any lender that originates or holds more than $5,000,000 in principal on loans made under this title in any fiscal year,'' before ''for (I)'';

(2) by inserting ''such'' before ''lender at least once'';

(3) by inserting ''such'' before ''a lender that is audited''; and

(4) by striking ''if the lender'' and inserting ''if such lender''.

**SEC. 4008. USE OF RESERVE FUNDS TO PURCHASE DEFAULTED LOANS.**

Section 422 of the Higher Education Act of 1965 (20 U.S.C. 1072) is amended by adding at the end the following new subsection:

''(h) USE OF RESERVE FUNDS TO PURCHASE DEFAULTED LOANS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a guaranty agency shall use not less than 50 percent of such agency's reserve funds to purchase and hold defaulted loans that are guaranteed by such agency and for which a claim for insurance

is filed with such agency by an eligible lender after the date of enactment of this subsection. The amount of such purchases shall be considered as reserve funds under this section and used in the calculation of the minimum reserve level under section 428(c)(9).

''(2) SPECIAL RULE.—A guaranty agency shall not be required to use its reserve funds to purchase and hold defaulted loans in accordance with paragraph (1) to the extent that—

''(A) the dollar volume of insurance claims filed with such agency does not amount to 50 percent of such agency's available reserve funds; or

''(B) such use is prohibited by State law; or

''(C) such use will compromise the ability of the guaranty agency to pay program expenses.''.

**SEC. 4009. EXTENSION OF PERIOD A GUARANTY AGENCY MUST HOLD A DEFAULTED LOAN.**

(a) EXEMPTION FOR EXTENDED HOLDING PERIOD.—The last sentence of section 428(c)(1)(A) of the Higher Education Act of 1965 (20 U.S.C. 1078(c)(1)(A)) is amended by striking out ''A guaranty agency'' and in-

serting ''Except as provided in section 428K, a guaranty agency''.

(b) NEW EXTENDED HOLDING PERIOD PROGRAM.—Part B of title IV of such Act (20 U.S.C. 1071 et seq.) is amended by inserting after section 428J the following new section:

**"SEC. 428K. GUARANTOR PURCHASE OF CLAIMS WITH RESERVE FUNDS.**

''(a) LOANS SUBJECT TO EXTENDED HOLDING PERIOD.—Except as provided in subsection (b), a guaranty agency shall file a claim for reimbursement with respect to losses (resulting from the default of a student borrower) subject to reimbursement by the Secretary pursuant to section 428(c)(1) not less than 180 days nor more than 225 days after the guaranty agency discharges such agency's insurance obligation on a loan insured under this part. Such claim shall include losses on the unpaid principal and accrued interest of any such loan, including interest accrued from the date of such discharge to the date such agency files the claim for reimbursement from the Secretary.

''(b) LOANS EXCLUDED FROM EXTENDED HOLDING.—A guaranty agency may file a claim with respect to losses subject to reimbursement by the Secretary pursuant to section 428(c)(1) prior to 180 days after the date

the guaranty agency discharges such agency's insurance obligation on a loan insured under this part, if—

''(1) such agency used 50 percent or more of such agency's reserve funds to purchase or hold loans in accordance with section 422(h);

''(2) such claim is based on an inability to locate the borrower and the guaranty agency certifies to the Secretary that—

''(A) diligent attempts were made to locate the borrower through the use of reasonable skip-tracing techniques in accordance with section 428(c)(2)(G); and

''(B) such skip-tracing attempts to locate the borrower were unsuccessful; or

''(3) the guaranty agency determines that the borrower is unlikely to possess the financial resources to begin repaying the loan prior to 180 days after default by the borrower.

''(c) GUARANTY AGENCY EFFORTS DURING EXTENDED HOLDING PERIOD.—A guaranty agency shall attempt to bring a loan described in subsection (a) into repayment status prior to 180 days after the date the guaranty agency discharges its insurance obligation on the loan, so that no claim for reimbursement by the Secretary is necessary. Upon securing payment satisfactory to the

guaranty agency during the 180-day period, such agency shall, if practicable, sell such loan to an eligible lender. Such loan shall not be sold to an eligible lender that the guaranty agency determines has substantially failed to exercise the due diligence required of lenders under this part.

''(d) REGULATION PROHIBITED.—The Secretary shall not regulate the collection activities of a guaranty agency with respect to a loan described in subsection (a) for which reinsurance has not been paid under section 428(c)(1).''.

**SEC. 4010. PRIVATIZATION OF COLLEGE CONSTRUCTION LOAN INSURANCE ASSOCIATION.**

(a) REPEAL OF STATUTORY RESTRICTIONS.—Part D of title VII of the Higher Education Act of 1965 (20 U.S.C. 1132f et seq.) is repealed.

(b) STATUS OF THE CORPORATION.—

(1) STATUS OF THE CORPORATION.—The Corporation shall not be an agency, instrumentality, or establishment of the United States Government and shall not be a ''Government corporation'' nor a ''Government controlled corporation'' as defined in section 103 of title 5, United States Code. No action under section 1491 of title 28, United States Code (commonly known as the Tucker Act), shall be al-

lowable against the United States based on the actions of the Corporation.

(2) CORPORATE POWERS.—The Corporation shall have the power to engage in any business or other activities for which corporations may be organized under the laws of any State of the United States or the District of Columbia. The Corporation shall have the power to enter into contracts, to execute instruments, to incur liabilities, to provide products and services, and to do all things as are necessary or incidental to the proper management of its affairs and the efficient operation of a private, for-profit business.

(3) LIMITATION ON OWNERSHIP OF STOCK.—Except as provided in subsection (d)(2) of this section, no stock of the Corporation may be sold or issued to an agency, instrumentality, or establishment of the United States Government, to a Government corporation or a Government controlled corporation (as such terms are defined in section 103 of title 5, United States Code), or to a Government sponsored enterprise (as such term is defined in section 622 of title 2, United States Code). The Student Loan Marketing Association shall not own any stock of the Corporation, except that it may retain the stock

it owns on the date of enactment. The Student Loan Marketing Association shall not control the operation of the Corporation, except that the Student Loan Marketing Association may participate in the election of directors as a shareholder, and may continue to exercise its right to appoint directors under section 754 of the Higher Education Act of 1965 as long as that section is in effect. The Student Loan Marketing Association shall not provide financial support or guarantees to the Corporation. Notwithstanding the prohibitions in this subsection, the United States may pursue any remedy against a holder of the Corporation's stock to which it would otherwise be entitled.

(c) RELATED PRIVATIZATION REQUIREMENTS.—

(1) NOTICE REQUIREMENTS.—During the 5-year period following the date of the enactment of this Act, the Corporation shall include in any document offering the Corporation's securities, in any contracts for insurance, guarantee, or reinsurance of obligations, and in any advertisement or promotional material, a statement that—

(A) the Corporation is not a Government-sponsored enterprise or instrumentality of the United States; and

(B) the Corporation's obligations are not guaranteed by the full faith and credit of the United States.

(2) CORPORATE CHARTER.—The Corporation's charter shall be amended as necessary and without delay to conform the requirements of this Act.

(3) CORPORATE NAME.—The name of the Corporation, or of any direct or indirect subsidiary thereof, may not contain the term ''College Construction Loan Insurance Association''.

(4) ARTICLES OF INCORPORATION.—The Corporation shall amend its articles of incorporation without delay to reflect that one of the purposes of the Corporation shall be to guarantee, insure and reinsure bonds, leases, and other evidences of debt of educational institutions, including Historically Black Colleges and Universities and other academic institutions which are ranked in the lower investment grade category using a nationally recognized credit rating system.

(5) TRANSITION REQUIREMENTS.—

(A) REQUIREMENTS UNTIL STOCK SALE.—Notwithstanding subsection (a), the requirements of section 754 of the Higher Education Act of 1965 (20 U.S.C. 1132f–3), as in exist-

ence as of the day before enactment of this Act, shall continue to be effective until the day immediately following the date of closing of the purchase of the Secretary's stock (or the date of closing of the final purchase, in the case of multiple transactions) pursuant to subsection (d) of this section.

(B) REPORTS AFTER STOCK SALE.—The Corporation shall, not later than March 30 of the first full calendar year immediately following the sale pursuant to subsection (d), and each of the 2 succeeding years, submit to the Secretary of Education a report describing the Corporation's efforts to assist in the financing of education facilities projects, including projects for elementary, secondary, and post-secondary educational institution infrastructure, and detailing, on a project-by-project basis, the Corporation's business dealings with educational institutions that are rated by a nationally recognized statistical rating organization at or below the organization's third highest ratings.

(d) SALE OF FEDERALLY OWNED STOCK.—

(1) SALE OF STOCK REQUIRED.—The Secretary of the Treasury shall make every effort to sell, pursuant to section 324 of title 31, United States Code, the stock of the Corporation owned by the Secretary of Education not later than 6 months after the date of the enactment of this Act.

(2) PURCHASE BY THE CORPORATION.—In the event that the Secretary of the Treasury is unable to sell the stock, or any portion thereof, at a price acceptable to the Secretary of Education and the Secretary of the Treasury, the Corporation shall purchase, within the period specified in paragraph (1), such stock at a price determined by the Secretary of the Treasury and acceptable to the Corporation based on independent appraisal by one or more nationally recognized financial firms, except that such price shall not exceed the value of the Secretary's stock as determined by the Congressional Budget Office in House Report 104–153, dated June 22, 1995. Such firms shall be selected by the Secretary of the Treasury in consultation with the Secretary of Education and the Corporation.

(e) ASSISTANCE BY THE CORPORATION.—The Corporation shall provide such assistance as the Secretary of

the Treasury and the Secretary of Education may require to facilitate the sale of the stock under this section.

(f) DEFINITION.—As used in this section, the term ''Corporation'' means the Corporation established pursuant to the provision of law repealed by subsection (a).

**SEC. 4011. ELIGIBLE INSTITUTION.**

(a) AMENDMENTS.—Section 481(b) of the Higher Education Act of 1965 (20 U.S.C. 1088(b)) is amended—

(1) by inserting before the period at the end of the first sentence the following: ''on the basis of a review by the institution's independent auditor using generally accepted accounting principles''; and

(2) by inserting after the end of such first sentence the following new sentences: ''For the purposes of clause (6), revenues from sources that are not derived from funds provided under this title include revenues from programs of education or training that do not meet the definition of an eligible program in subsection (e), but are provided on a contractual basis under Federal, State, or local training programs, or to business and industry. For the purposes of determining whether an institution meets the requirements of clause (6), the Secretary shall not consider the financial information of any institu-

tion for a fiscal year began on or before April 30, 1994.''.

(b) EFFECTIVE DATE.—Notwithstanding section 713 of this Act, the amendments made by subsection (a) shall apply to any determination made on or after July 1, 1994, by the Secretary of Education pursuant to section 481(b)(6) of the Higher Education Act of 1965.

**SEC. 4012. EXTENSION OF PROGRAM DURATION.**

Part B of title IV of the Higher Education Act of 1965 is amended—

(1) in section 424(a) (20 U.S.C. 1074(a)), by striking ''1998'' and inserting ''2002'';

(2) in section 428(a)(5) (20 U.S.C. 1078(a)(5))—

(A) by striking ''2002'' and inserting ''2006''; and

(B) by striking ''1998'' and inserting ''2002''; and

(3) in section 428C(e) (20 U.S.C. 1078-3(e)), by striking the first sentence and inserting ''The authority to make loans under this section expires at the close of September 30, 2002.''.

## Subtitle B—Service Contract Repeal

**SEC. 4101. SERVICE CONTRACT ACT OF 1965.**

(a) REPEAL.—The Service Contract Act of 1965 (41 U.S.C. 351 et seq.) is repealed.

(b) APPLICATION.—The amendment made by subsection (a) shall not apply to a contract which was entered into before the 45th day after the date of the enactment of this Act and to which the Service Contract Act of 1965 applied.

## Subtitle C—Provisions Relating to the Employee Retirement Income Security Act of 1974

**SEC. 4201. WAIVER OF MINIMUM PERIOD FOR JOINT AND SURVIVOR ANNUITY EXPLANATION BEFORE ANNUITY STARTING DATE.**

(a) GENERAL RULE.—For purposes of section 205(c)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(3)(A)), the minimum period prescribed by the Secretary of the Treasury between the date that the explanation referred to in such section is provided and the annuity starting date shall not apply if waived by the participant and, if applicable, the participant's spouse.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to plan years beginning after December 31, 1995.

# TITLE V—COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

## SEC. 5001. EXTENSION OF DELAY IN COST-OF-LIVING ADJUSTMENTS IN FEDERAL EMPLOYEE RETIREMENT BENEFITS THROUGH FISCAL YEAR 2002.

Section 11001(a) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66; 107 Stat. 408) is amended in the matter preceding paragraph (1) by striking out ''or 1996,'' and inserting in lieu thereof ''1996, 1997, 1998, 1999, 2000, 2001, or 2002,''.

## SEC. 5002. INCREASED CONTRIBUTIONS TO FEDERAL CIVILIAN RETIREMENT SYSTEMS.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—

(1) DEDUCTIONS.—The first sentence of section 8334(a)(1) of title 5, United States Code, is amended to read as follows: ''The employing agency shall deduct and withhold from the basic pay of an employee, Member, Congressional employee, law enforcement officer, firefighter, bankruptcy judge, judge of the United States Court of Appeals for the Armed Forces, United States magistrate, Claims

Court judge, or member of the Capitol Police, as the case may be, the percentage of basic pay applicable under subsection (c).''.

(2) AGENCY CONTRIBUTIONS.—

(A) INCREASE IN AGENCY CONTRIBUTIONS DURING CALENDAR YEARS 1996 THROUGH 2002.—Section 8334(a)(1) of title 5, United States Code (as amended by this section) is further amended—

(i) by inserting ''(A)'' after ''(1)''; and

(ii) by adding at the end thereof the following new subparagraph:

''(B)(i) Notwithstanding subparagraph (A), the agency contribution under the second sentence of such subparagraph, during the period beginning on January 1, 1996, through December 31, 2002—

''(I) for each employing agency (other than the United States Postal Service) shall be 8.5 percent of the basic pay of an employee, Congressional employee, and a Member of Congress, 9 percent of the basic pay of a law enforcement officer, a member of the Capitol Police, and a firefighter, and 9.5 percent of the basic pay of

a Claims Court judge, a United States magistrate, a judge of the United States Court of Appeals for the Armed Services, and a bankruptcy judge, as the case may be; and

''(II) for the United States Postal Service shall be 7 percent of the basic pay of an employee and 9 percent of the basic pay of a law enforcement officer.''.

(B) NO REDUCTION IN AGENCY CONTRIBUTIONS BY THE POSTAL SERVICE.—Agency contributions by the United States Postal Service under section 8348(h) of title 5, United States Code—

(i) shall not be reduced as a result of the amendments made under paragraph (3) of this subsection; and

(ii) shall be computed as though such amendments had not been enacted.

(3) INDIVIDUAL DEDUCTIONS, WITHHOLDINGS, AND DEPOSITS.—The table under section 8334(c) of title 5, United States Code, is amended—

(A) in the matter relating to an employee by striking out

| | |
|---|---|
| ''7 ..... | After December 31, 1969.'' |

and inserting in lieu thereof the following:

| | |
|---|---|
| ''7 ..... | January 1, 1970, to December 31, 1995. |
| 7.25 ... | January 1, 1996, to December 31, 1996. |
| 7.4 ..... | January 1, 1997, to December 31, 1997. |
| 7.5 ..... | January 1, 1998, to December 31, 2002. |
| 7 ..... | After December 31, 2002.''; |

(B) in the matter relating to a Member or employee for Congressional employee service by striking out

| | |
|---|---|
| ''7½ .... | After December 31, 1969.'' |

and inserting in lieu thereof the following:

| | |
|---|---|
| ''7.5 ..... | January 1, 1970, to December 31, 1995. |
| 7.25 ... | January 1, 1996, to December 31, 1996. |
| 7.4 ..... | January 1, 1997, to December 31, 1997. |
| 7.5 ..... | January 1, 1998, to December 31, 2002. |
| 7 ..... | After December 31, 2002.''; |

(C) in the matter relating to a Member for Member service by striking out

| | |
|---|---|
| ''8 ..... | After December 31, 1969.'' |

and inserting in lieu thereof the following:

| | |
|---|---|
| ''8 ..... | January 1, 1970, to December 31, 1995. |
| 7.25 ... | January 1, 1996, to December 31, 1996. |

| | |
|---|---|
| 7.4 ..... | January 1, 1997, to December 31, 1997. |
| 7.5 ..... | January 1, 1998, to December 31, 2002. |
| 7 ..... | After December 31, 2002.''; |

1 (D) in the matter relating to a law enforce-
2 ment officer for law enforcement service and
3 firefighter for firefighter service by striking out

| | |
|---|---|
| ''7½ .... | After December 31, 1974.'' |

4 and inserting in lieu thereof the following:

| | |
|---|---|
| ''7.5 ..... | January 1, 1975, to December 31, 1995. |
| 7.75 ... | January 1, 1996, to December 31, 1996. |
| 7.9 ..... | January 1, 1997, to December 31, 1997. |
| 8 ..... | January 1, 1998, to December 31, 2002. |
| 7.5 ..... | After December 31, 2002.''; |

5 (E) in the matter relating to a bankruptcy
6 judge by striking out

| | |
|---|---|
| ''8 ..... | After December 31, 1983.'' |

7 and inserting in lieu thereof the following:

| | |
|---|---|
| ''8 ..... | January 1, 1984, to December 31, 1995. |
| 8.25 ... | January 1, 1996, to December 31, 1996. |
| 8.4 ..... | January 1, 1997, to December 31, 1997. |
| 8.5 ..... | January 1, 1998, to December 31, 2002. |
| 8 ..... | After December 31, 2002.''; |

(F) in the matter relating to a judge of the United States Court of Appeals for the Armed Forces for service as a judge of that court by striking out

| | |
|---|---|
| ''8 ..... | On and after the date of the enactment of the Department of Defense Authorization Act, 1984.'' |

and inserting in lieu thereof the following:

| | |
|---|---|
| ''8 ..... | The date of the enactment of the Department of Defense Authorization Act, 1984, to December 31, 1995. |
| 8.25 ... | January 1, 1996, to December 31, 1996. |
| 8.4 ..... | January 1, 1997, to December 31, 1997. |
| 8.5 ..... | January 1, 1998, to December 31, 2002. |
| 8 ..... | After December 31, 2002.''; |

(G) in the matter relating to a United States magistrate by striking out

| | |
|---|---|
| ''8 ..... | After September 30, 1987.'' |

and inserting in lieu thereof the following:

| | |
|---|---|
| ''8 ..... | October 1, 1987, to December 31, 1995. |
| 8.25 ... | January 1, 1996, to December 31, 1996. |
| 8.4 ..... | January 1, 1997, to December 31, 1997. |
| 8.5 ..... | January 1, 1998, to December 31, 2002. |

| | |
|---|---|
| 8 ..... | After December 31, 2002.''; |

(H) in the matter relating to a Claims Court judge by striking out

| | |
|---|---|
| ''8 ..... | After September 30, 1988.'' |

and inserting in lieu thereof the following:

| | |
|---|---|
| ''8 ..... | October 1, 1988, to December 31, 1995. |
| 8.25 ... | January 1, 1996, to December 31, 1996. |
| 8.4 ..... | January 1, 1997, to December 31, 1997. |
| 8.5 ..... | January 1, 1998, to December 31, 2002. |
| 8 ..... | After December 31, 2002.''; |

and

(I) by inserting after the matter relating to a Claims Court judge the following:

| | | |
|---|---|---|
| ''Member of the Capitol Police ..... | 2.5 ..... | August 1, 1920, to June 30, 1926. |
| | ''3.5 ..... | July 1, 1926, to June 30, 1942. |
| | ''5 ..... | July 1, 1942, to June 30, 1948. |
| | ''6 ..... | July 1, 1948, to October 31, 1956. |
| | ''6.5 ..... | November 1, 1956, to December 31, 1969. |
| | ''7.5 ..... | January 1, 1970, to December 31, 1995. |
| | ''7.75 ... | January 1, 1996, to December 31, 1996. |
| | ''7.9 ..... | January 1, 1997, to December 31, 1997. |
| | ''8 ..... | January 1, 1998, to December 31, 2002. |
| | ''7.5 ..... | After December 31, 2002.''. |

(4) OTHER SERVICE.—

(A) MILITARY SERVICE.—Section 8334(j) of title 5, United States Code, is amended—

(i) in paragraph (1)(A) by inserting ''and subject to paragraph (5),'' after ''Except as provided in subparagraph (B),''; and

(ii) by adding at the end thereof the following new paragraph:

''(5) Effective with respect to any period of military service after December 31, 1995, the percentage of basic pay under section 204 of title 37 payable under paragraph (1) shall be equal to the same percentage as would be applicable under section 8334(c) for that same period for service as an employee, subject to paragraph (1)(B).''.

(B) VOLUNTEER SERVICE.—Section 8334(l) of title 5, United States Code, is amended—

(i) in paragraph (1) by adding at the end thereof the following: ''This paragraph shall be subject to paragraph (4).''; and

(ii) by adding at the end thereof the following new paragraph:

''(4) Effective with respect to any period of service after December 31, 1995, the percentage of the readjust-

ment allowance or stipend (as the case may be) payable under paragraph (1) shall be equal to the same percentage as would be applicable under section 8334(c) for that same period for service as an employee.''.

(b) FEDERAL EMPLOYEES RETIREMENT SYSTEM.—

(1) INDIVIDUAL DEDUCTIONS AND WITHHOLDINGS.—

(A) IN GENERAL.—Section 8422(a) of title 5, United States Code, is amended by striking out paragraph (2) and inserting in lieu thereof the following:

''(2) The percentage to be deducted and withheld from basic pay for any pay period shall be equal to—

''(A) the applicable percentage under paragraph (3), minus

''(B) the percentage then in effect under section 3101(a) of the Internal Revenue Code of 1986 (relating to rate of tax for old-age, survivors, and disability insurance).

''(3) The applicable percentage under this paragraph, for civilian service shall be as follows:

| | ''Percentage of basic pay | Service period |
|---|---|---|
| Employee | 7 | Before January 1, 1996. |
| | 7.25 | January 1, 1996, to December 31, 1996. |

| | ''Percentage of basic pay | Service period |
|---|---|---|
| | 7.4 ..... | January 1, 1997, to December 31, 1997. |
| | 7.5 ..... | January 1, 1998, to December 31, 2002. |
| | 7 ..... | After December 31, 2002. |
| Congressional employee ..... | 7.5 ..... | Before January 1, 1996. |
| | 7.25 ..... | January 1, 1996, to December 31, 1996. |
| | 7.4 ..... | January 1, 1997, to December 31, 1997. |
| | 7.5 ..... | January 1, 1998, to December 31, 2002. |
| | 7 ..... | After December 31, 2002. |
| Member ..... | 7.5 ..... | Before January 1, 1996. |
| | 7.25 ..... | January 1, 1996, to December 31, 1996. |
| | 7.4 ..... | January 1, 1997, to December 31, 1997. |
| | 7.5 ..... | January 1, 1998, to December 31, 2002. |
| | 7 ..... | After December 31, 2002. |
| Law enforcement officer, firefighter, member of the Capitol Police, or air traffic controller. | 7.5 ..... | Before January 1, 1996. |
| | 7.75 ..... | January 1, 1996, to December 31, 1996. |
| | 7.9 ..... | January 1, 1997, to December 31, 1997. |
| | 8 ..... | January 1, 1998, to December 31, 2002. |
| | 7.5 ..... | After December 31, 2002.'' |

(B) MILITARY SERVICE.—Section 8422(e) of title 5, United States Code, is amended—

(i) in paragraph (1)(A) by inserting ''and subject to paragraph (6),'' after ''Except as provided in subparagraph (B),''; and

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

''(6) The percentage of basic pay under section 204 of title 37 payable under paragraph (1), with respect to any period of military service performed during—

''(A) January 1, 1996, through December 31, 1996, shall be 3.25 percent;

''(B) January 1, 1997, through December 31, 1997, shall be 3.4 percent; and

''(C) January 1, 1998, through December 31, 2002, shall be 3.5 percent.''.

(C) VOLUNTEER SERVICE.—Section 8422(f) of title 5, United States Code, is amended—

(i) in paragraph (1) by adding at the end thereof the following: ''This paragraph shall be subject to paragraph (4).''; and

(ii) by adding at the end the following:

''(4) The percentage of the readjustment allowance or stipend (as the case may be) payable under paragraph (1), with respect to any period of volunteer service performed during—

''(A) January 1, 1996, through December 31, 1996, shall be 3.25 percent;

''(B) January 1, 1997, through December 31, 1997, shall be 3.4 percent; and

''(C) January 1, 1998, through December 31, 2002, shall be 3.5 percent.''.

(2) NO REDUCTION IN AGENCY CONTRIBUTIONS.—Agency contributions under section 8423 (a) and (b) of title 5, United States Code, shall not be reduced as a result of the amendments made under paragraph (1) of this subsection.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first applicable pay period beginning on or after January 1, 1996.

**SEC. 5003. FEDERAL RETIREMENT PROVISIONS RELATING TO MEMBERS OF CONGRESS AND CONGRESSIONAL EMPLOYEES.**

(a) RELATING TO THE YEARS OF SERVICE AS A MEMBER OF CONGRESS AND CONGRESSIONAL EMPLOYEES FOR PURPOSES OF COMPUTING AN ANNUITY.—

(1) CSRS.—Section 8339 of title 5, United States Code, is amended—

(A) in subsection (a) by inserting ''or Member'' after ''employee''; and

(B) by striking out subsections (b) and (c).

(2) FERS.—Section 8415 of title 5, United States Code, is amended—

(A) by striking out subsections (b) and (c);

(B) in subsections (a) and (g) by inserting ''or Member'' after ''employee'' each place it appears; and

(C) in subsection (g)(2) by striking out ''Congressional employee''.

(3) CAPITOL POLICE.—Section 8339(q) of title 5, United States Code, is amended—

(A) by striking ''subsection (b),'' and inserting ''subsection (b) (as last in effect),''; and

(B) by striking ''subsection (b)(2),'' and inserting ''subsection (b)(2) (as last in effect),''.

(b) ADMINISTRATIVE REGULATIONS.—The Secretary of the Senate and the Clerk of the House of Representatives, in consultation with the Office of Personnel Management, may prescribe regulations to carry out the provisions of this section and the amendments made by this section for applicable employees and Members of Congress.

(c) EFFECTIVE DATES.—

(1) YEARS OF SERVICE; ANNUITY COMPUTATION.—(A) The amendments made by subsection (a)

shall take effect on the date of the enactment of this Act and shall apply only with respect to the computation of an annuity relating to—

(i) the service of a Member of Congress as a Member or as a Congressional employee performed on or after January 1, 1996; and

(ii) the service of a Congressional employee as a Congressional employee performed on or after January 1, 1996.

(B) An annuity shall be computed as though the amendments made under subsection (a) had not been enacted with respect to—

(i) the service of a Member of Congress as a Member or a Congressional employee or military service performed before January 1, 1996; and

(ii) the service of a Congressional employee as a Congressional employee or military service performed before January 1, 1996.

(2) REGULATIONS.—The provisions of subsection (b) shall take effect on the date of the enactment of this Act.

**SEC. 5004. FEDERAL EMPLOYEES RETIREMENT SECURITY COMMISSION.**

(a) ESTABLISHMENT.—There shall be established in the legislative branch a commission to be known as the ''Federal Employees Retirement Security Commission'' (hereinafter in this section referred to as the ''Commission'').

(b) MEMBERS.—

(1) APPOINTMENT.—The Commission shall be composed of 7 members, to be appointed within 30 days after the date of the enactment of this Act, as follows:

(A) 2 members appointed by the Speaker of the House of Representatives.

(B) 2 members appointed by the majority leader of the Senate.

(C) 1 member appointed by the minority leader of the House of Representatives.

(D) 1 member appointed by the minority leader of the Senate.

(E) 1 member appointed by the President.

(2) CHAIRMAN; VICE CHAIRMAN.—The members of the Commission shall select 1 of the members to be the Chairman and another to be the Vice Chairman of the Commission.

(3) TERMS.—Each member shall be appointed for the life of the Commission.

(4) PAY AND TRAVEL EXPENSES.—

(A) PAY GENERALLY.—Each member, other than the Chairman, shall be paid at a rate not to exceed the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the actual performance of duties vested in the Commission.

(B) PAY FOR THE CHAIRMAN.—The Chairman shall be paid, for each day referred to in subparagraph (A), at a rate not to exceed the daily equivalent of the annual rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(C) TRAVEL EXPENSES.—Each member of the Commission shall, subject to the availability of appropriations and in such amounts as may be provided by such Act, be allowed travel expenses in the same manner as any individual employed intermittently by the Government is

allowed travel expenses under section 5703 of title 5, United States Code.

(D) GOVERNMENT EMPLOYEES AND MEMBERS OF CONGRESS.—Notwithstanding any other provision of this paragraph, members of the Commission who are full-time officers or employees of the United States or Members of Congress may not receive additional pay, allowances, or benefits by reason of their service on the Commission, except for travel expenses under subparagraph (C).

(5) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(c) MEETINGS.—

(1) OPEN MEETINGS.—Each meeting of the Commission, other than meetings in which classified information is to be discussed, shall be open to the public.

(2) ACCESS BY REQUEST.—

(A) IN GENERAL.—All the proceedings, information, and deliberations of the Commission shall be open, upon request, to the Chairman and the ranking minority party member of the respective committees under subparagraph (B)

or such chairmen or ranking minority party members of subcommittees of any such committee as may be designated by the Chairman or ranking minority party member, respectively, of such committee.

(B) IDENTIFICATION OF COMMITTEES.—The committees under this subparagraph are as follows:

(i) The Committee on Government Reform and Oversight of the House of Representatives.

(ii) The Committee on National Security of the House of Representatives.

(iii) The Committee on Governmental Affairs of the Senate.

(iv) The Committee on Armed Services of the Senate.

(3) FIRST MEETING.—The Commission shall hold its first meeting within 60 days after the date of the enactment of this Act.

(d) DIRECTOR; STAFF.—

(1) DIRECTOR.—The Commission shall have a Director, who—

(A) shall be appointed by the Commission; and

(B) shall be paid at a rate not to exceed the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(2) STAFF.—

(A) APPOINTMENTS; PAY.—The Director, with the approval of the Commission, may appoint and fix the pay of additional personnel, except that no individual so appointed may receive pay at a rate in excess of the maximum rate of basic pay payable under section 5376 of title 5, United States Code, for positions classified above GS-15 of the General Schedule.

(B) DETAILS FROM CONGRESSIONAL COMMITTEES AND OFFICES.—Upon the request of the Director, the chairman of any standing committee or other committee of either House or both Houses of the Congress, or the head of any other congressional office, may detail any of the personnel of that committee or office to the Commission to assist the Commission in carrying out its duties under this Act.

(C) ASSISTANCE FROM GAO.—The Comptroller General of the United States shall provide assistance, including the detailing of em-

ployees, to the Commission in accordance with an agreement entered into with the Commission.

(e) DUTIES.—

(1) IN GENERAL.—The Commission shall study and, within 7 months after the date of the enactment of this Act, submit to the Congress a written report on—

(A) the financial soundness of the retirement systems for Government employees (including employees of nonappropriated fund instrumentalities) and members of the uniformed services;

(B) the cost and level of benefits provided by the Civil Service Retirement System, the Federal Employees' Retirement System, and the other retirement systems under subparagraph (A), as compared with the cost and level of benefits of retirement systems prevalent in the private sector;

(C) the appropriate level and design of benefits of an alternative retirement system and modifications of existing systems to achieve the objectives described in paragraph (2); and

(D) the cost and suitability of benefits provided by the military retirement system, and their appropriateness in light of current and projected military readiness requirements.

(2) CONSIDERATIONS.—The considerations described in this paragraph are as follows:

(A) Portability of benefits, consistent with the greater mobility anticipated with respect to the workforce of the 21st century.

(B) Financial soundness, consistent with the requirements of the Employee Retirement Income Security Act of 1974 and the requirements that must be met in order to qualify to be insured by the Pension Benefit Guarantee Corporation.

(C) The Government's presence in a wide range of occupations and local labor markets, and the need for retirement benefits to be representative of the level of benefits received by most Americans in the private sector in order to allow the Government to recruit and retain a qualified workforce.

(D) Total compensation trends in the private sector, including the use of cafeteria plans.

(3) CONTENTS.—The Commission's report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for any legislation that the Commission considers appropriate.

(f) OTHER AUTHORITY.—

(1) EXPERTS AND CONSULTANTS.—The Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants subject to the same terms and conditions as would apply under section 3109 of title 5, United States Code, in the case of an Executive agency.

(2) LEASES.—The Commission may lease space and acquire personal property to the extent funds are available.

(g) FUNDING.—There are authorized to be appropriated to the Commission such funds as are necessary to carry out its duties under this Act. Such funds shall remain available until expended.

(h) TERMINATION.—The Commission shall cease to exist 30 days after submitting its report to the Congress under subsection (e).

**SEC. 5005. REPEAL OF AUTHORIZATION OF TRANSITIONAL APPROPRIATIONS FOR THE UNITED STATES POSTAL SERVICE.**

(a) REPEAL.—

(1) IN GENERAL.—Section 2004 of title 39, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) The table of sections for chapter 20 of such title is amended by repealing the item relating to section 2004.

(B) Section 2003(e)(2) of such title is amended by striking ''sections 2401 and 2004'' each place it appears and inserting ''section 2401''.

(b) CLARIFICATION THAT LIABILITIES FORMERLY PAID PURSUANT TO SECTION 2004 REMAIN LIABILITIES PAYABLE BY THE POSTAL SERVICE.—Section 2003 of title 39, United States Code, is amended by adding at the end the following:

''(h) Liabilities of the former Post Office Department to the Employees' Compensation Fund (appropriations for which were authorized by former section 2004, as in effect before the effective date of this subsection) shall be liabilities of the Postal Service payable out of the Fund.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—This section and the amendments made by this section shall be effective as of October 1, 1995.

(2) PROVISIONS RELATING TO PAYMENTS FOR FISCAL YEAR 1996.—

(A) AMOUNTS NOT YET PAID.—No payment may be made to the Postal Service Fund, on or after the date of the enactment of this Act, pursuant to any appropriation for fiscal year 1996 authorized by section 2004 of title 39, United States Code (as in effect before the effective date of this section).

(B) AMOUNTS PAID.—If any payment to the Postal Service Fund is or has been made pursuant to an appropriation for fiscal year 1996 authorized by such section 2004, then an amount equal to the amount of such payment shall be paid from such Fund into the Treasury as miscellaneous receipts.

**SEC. 5006. AVAILABILITY OF SURPLUS PROPERTY FOR HOMELESS ASSISTANCE.**

(a) REPEAL.—(1) Title V of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411 et seq.) is repealed.

(2) The table of contents in section 101(b) of that Act is amended by striking the items relating to title V.

(3) This subsection shall be effective October 1, 1995.

(b) AUTHORITY TO TRANSFER SURPLUS REAL PROPERTY FOR HOUSING USE.—Section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) is amended by adding at the end the following:

''(r) Under such regulations as the Administrator may prescribe, and in consultation with appropriate local governmental authorities, the Administrator may transfer to any nonprofit organization which exists for the primary purpose of providing housing or housing assistance for homeless individuals or families, such surplus real property, including buildings, fixtures, and equipment situated thereon, as is needed for housing use.

''(s)(1) Under such regulations as the Administrator may prescribe, and in consultation with appropriate local governmental authorities, the Administrator may transfer to any non-profit organization which exists for the primary purpose of providing housing or housing assistance for low-income individuals or families such surplus real property, including buildings, fixtures, and equipment situated thereon, as is needed for housing use.

''(2) In making transfers under this subsection, the Administrator shall take such actions, which may include grant agreements with an organization receiving a grant, as may be necessary to ensure that—

''(A) assistance provided under this subsection is used to facilitate and encourage homeownership opportunities through the construction of self-help housing, under terms which require that the person receiving the assistance contribute a significant amount of labor toward the construction; and

''(B) the dwellings constructed with property transferred under this subsection shall be quality dwellings that comply with local building and safety codes and standards and shall be available at prices below the prevailing market prices.''.

# TITLE VI—COMMITTEE ON INTERNATIONAL RELATIONS

## Subtitle A—Recovery Of Costs Of Certain Health Care Services

### SEC. 6001. RECOVERY OF COSTS OF HEALTH CARE SERVICES FOR PERSONNEL OF THE FOREIGN SERVICE OF THE UNITED STATES AND OTHER ELIGIBLE INDIVIDUALS.

(a) AUTHORITIES.—Section 904 of the Foreign Service Act of 1980 (22 U.S.C. 4084) is amended—

(1) in subsection (a) by—

(A) striking ''and'' before ''members of the families of such members and employees''; and

(B) by inserting immediately before the period '', and for care provided abroad) such other persons as are designated by the Secretary of State, except that such persons shall be considered persons other than covered beneficiaries for purposes of subsections (g) and (h)'';

(2) in subsection (d) by inserting '', subject to the provisions of subsections (g) and (h)'' after ''treatment''; and

(3) by adding the following new subsections:

''(g)(1) In the case of a person who is a covered beneficiary, the Secretary of State is authorized to collect from a third-party payer the reasonable costs incurred by the Department of State on behalf of such person for health care services to the same extent that the covered beneficiary would be eligible to receive reimbursement or indemnification from the third-party payer for such costs.

''(2) If the insurance policy, plan, contract, or similar agreement of that third-party payer includes a requirement for a deductible or copayment by the beneficiary of the plan, then the Secretary of State may collect from the

third-party payer only the reasonable costs of the care provided less the deductible or copayment amount.

''(3) A covered beneficiary shall not be required to pay any deductible or copayment for health care services under this subsection.

''(4) No provision of any insurance, medical service, or health plan contract or agreement having the effect of excluding from coverage or limiting payment of charges for care in the following circumstances shall operate to prevent collection by the Secretary of State under paragraph (1)—

''(A) care provided directly or indirectly by a governmental entity;

''(B) care provided to an individual who has not paid a required deductible or copayment; or

''(C) care provided by a provider with which the third-party payer has no participation agreement.

''(5) No law of any State, or of any political subdivision of a State, and no provision of any contract or agreement shall operate to prevent or hinder recovery or collection by the United States under this section.

''(6) As to the authority provided in paragraph (1) of this subsection—

''(A) the United States shall be subrogated to any right or claim that the covered beneficiary may have against a third-party payer;

''(B) the United States may institute and prosecute legal proceedings against a third-party payer to enforce a right of the United States under this subsection; and

''(C) the Secretary may compromise, settle, or waive a claim of the United States under this subsection.

''(7) The Secretary shall prescribe regulations for the administration of this subsection and subsection (h). Such regulations shall provide for computation of the reasonable cost of health care services.

''(8) Regulations prescribed under this subsection shall provide that medical records of a covered beneficiary receiving health care under this subsection shall be made available for inspection and review by representatives of the payer from which collection by the United States is sought for the sole purpose of permitting the third party to verify—

''(A) that the care or services for which recovery or collection is sought were furnished to the covered beneficiary; and

''(B) that the provisions of such care or services to the covered beneficiary meets criteria generally applicable under the health plan contract involved, except that this paragraph shall be subject to the provisions of paragraphs (2) and (4).

''(9) Amounts collected under this subsection or under subsection (h) from a third party payer or from any other payer shall be deposited in the Treasury as a miscellaneous offsetting receipt.

''(10) For purposes of this section—

''(A) the term 'covered beneficiary' means an individual eligible to receive health care under this section whose health care costs are to be paid by a third-party payer under a contractual agreement with such payer;

''(B) the term 'services', as used in 'health care services' includes products; and

''(C) the term 'third-party payer' means an entity that provides a fee-for-service insurance policy, contract, or similar agreement through the Federal Employees Health Benefit program, under which the expenses of health care services for individuals are paid.

''(h) In the case of a person, other than a covered beneficiary, who receives health care services pursuant to

this section, the Secretary of State is authorized to collect from such person the reasonable costs of health care services incurred by the Department of State on behalf of such person. The United States shall have the same rights against persons subject to the provisions of this subsection as against third-party payers covered by subsection (g).''.

(b) EFFECTIVE DATE.—The authorities of this section shall be effective beginning on the date of the enactment of this Act.

## Subtitle B—Enactment Into Law of Division A of H.R. 1561

### SEC. 6101. ENACTMENT INTO LAW OF DIVISION A OF H.R. 1561.

Division A of H.R. 1561, as passed the House of Representatives on June 8, 1995 (relating to consolidation of foreign affairs agencies), is hereby enacted into law.

## Subtitle C—Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995

### SEC. 6201. SHORT TITLE.

This subtitle may be cited as the ''Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995''.

### SEC. 6202. FINDINGS.

The Congress makes the following findings:

(1) The economy of Cuba has experienced a decline of at least 60 percent in the last 5 years as a result of—

(A) the end of its subsidization by the former Soviet Union of between 5 billion and 6 billion dollars annually;

(B) 36 years of Communist tyranny and economic mismanagement by the Castro government;

(C) the extreme decline in trade between Cuba and the countries of the former Soviet bloc; and

(D) the stated policy of the Russian Government and the countries of the former Soviet bloc to conduct economic relations with Cuba on strictly commercial terms.

(2) At the same time, the welfare and health of the Cuban people have substantially deteriorated as a result of this economic decline and the refusal of the Castro regime to permit free and fair democratic elections in Cuba.

(3) The Castro regime has made it abundantly clear that it will not engage in any substantive political reforms that would lead to democracy, a market economy, or an economic recovery.

(4) The repression of the Cuban people, including a ban on free and fair democratic elections, and continuing violations of fundamental human rights have isolated the Cuban regime as the only completely nondemocratic government in the Western Hemisphere.

(5) As long as free elections are not held in Cuba, the economic condition of the country and the welfare of the Cuban people will not improve in any significant way.

(6) The totalitarian nature of the Castro regime has deprived the Cuban people of any peaceful means to improve their condition and has led thousands of Cuban citizens to risk or lose their lives in dangerous attempts to escape from Cuba to freedom.

(7) Radio Marti and Television Marti have both been effective vehicles for providing the people of Cuba with news and information and have helped to bolster the morale of the people of Cuba living under tyranny.

(8) The consistent policy of the United States towards Cuba since the beginning of the Castro regime, carried out by both Democratic and Republican administrations, has sought to keep faith with

the people of Cuba, and has been effective in sanctioning the totalitarian Castro regime.

(9) The United States has shown a deep commitment, and considers it a moral obligation, to promote and protect human rights and fundamental freedoms as expressed in the Charter of the United Nations and in the Universal Declaration of Human Rights.

(10) The Congress has historically and consistently manifested its solidarity and the solidarity of the American people with the democratic aspirations of the Cuban people.

(11) The Cuban Democracy Act of 1992 calls upon the President to encourage the governments of countries that conduct trade with Cuba to restrict their trade and credit relations with Cuba in a manner consistent with the purposes of that Act.

(12) The 1992 FREEDOM Support Act requires that the President, in providing economic assistance to Russia and the emerging Eurasian democracies, take into account the extent to which they are acting to ''terminate support for the communist regime in Cuba, including removal of troops, closing military facilities, and ceasing trade subsidies and economic, nuclear, and other assistance''.

(13) The Cuban Government engages in the illegal international narcotics trade and harbors fugitives from justice in the United States.

(14) The Castro government threatens international peace and security by engaging in acts of armed subversion and terrorism such as the training and supplying of groups dedicated to international violence.

(15) The Castro government has utilized from its inception and continues to utilize torture in various forms (including by psychiatry), as well as execution, exile, confiscation, political imprisonment, and other forms of terror and repression, as means of retaining power.

(16) Fidel Castro has defined democratic pluralism as ''pluralistic garbage'' and continues to make clear that he has no intention of tolerating the democratization of Cuban society.

(17) The Castro government holds innocent Cubans hostage in Cuba by no fault of the hostages themselves solely because relatives have escaped the country.

(18) Although a signatory state to the 1928 Inter-American Convention on Asylum and the International Covenant on Civil and Political Rights

(which protects the right to leave one's own country), Cuba nevertheless surrounds embassies in its capital by armed forces to thwart the right of its citizens to seek asylum and systematically denies that right to the Cuban people, punishing them by imprisonment for seeking to leave the country and killing them for attempting to do so (as demonstrated in the case of the confirmed murder of over 40 men, women, and children who were seeking to leave Cuba on July 13, 1994).

(19) The Castro government continues to utilize blackmail, such as the immigration crisis with which it threatened the United States in the summer of 1994, and other unacceptable and illegal forms of conduct to influence the actions of sovereign states in the Western Hemisphere in violation of the Charter of the Organization of American States and other international agreements and international law.

(20) The United Nations Commission on Human Rights has repeatedly reported on the unacceptable human rights situation in Cuba and has taken the extraordinary step of appointing a Special Rapporteur.

(21) The Cuban Government has consistently refused access to the Special Rapporteur and formally expressed its decision not to ''implement so much as one comma'' of the United Nations Resolutions appointing the Rapporteur.

(22) The United Nations General Assembly passed Resolution 1992/70 on December 4, 1992, Resolution 1993/48/142 on December 20, 1993, and Resolution 1994/49/544 on October 19, 1994, referencing the Special Rapporteur's reports to the United Nations and condemning ''violations of human rights and fundamental freedoms'' in Cuba.

(23) Article 39 of Chapter VII of the United Nations Charter provides that the United Nations Security Council ''shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken . . ., to maintain or restore international peace and security.''.

(24) The United Nations has determined that massive and systematic violations of human rights may constitute a ''threat to peace'' under Article 39 and has imposed sanctions due to such violations of human rights in the cases of Rhodesia, South Africa, Iraq, and the former Yugoslavia.

(25) In the case of Haiti, a neighbor of Cuba not as close to the United States as Cuba, the United States led an effort to obtain and did obtain a United Nations Security Council embargo and blockade against that country due to the existence of a military dictatorship in power less than 3 years.

(26) United Nations Security Council Resolution 940 of July 31, 1994, subsequently authorized the use of ''all necessary means'' to restore the ''democratically elected government of Haiti'', and the democratically elected government of Haiti was restored to power on October 15, 1994.

(27) The Cuban people deserve to be assisted in a decisive manner to end the tyranny that has oppressed them for 36 years and the continued failure to do so constitutes ethically improper conduct by the international community.

(28) For the past 36 years, the Cuban Government has posed and continues to pose a national security threat to the United States.

**SEC. 6203. PURPOSES.**

The purposes of this subtitle are as follows:

(1) To assist the Cuban people in regaining their freedom and prosperity, as well as in joining

the community of democracies that are flourishing in the Western Hemisphere.

(2) To seek international sanctions against the Castro government in Cuba.

(3) To encourage the holding of free and fair democratic elections in Cuba, conducted under the supervision of internationally recognized observers.

(4) To develop a plan for furnishing assistance to a transition government and, subsequently, to a democratically elected government when such governments meet the eligibility requirements of this subtitle.

(5) To protect property rights abroad of United States nationals.

(6) To provide for the continued national security of the United States in the face of continuing threats from the Castro government of terrorism, theft of property from United States nationals, and domestic repression from which refugees flee to United States shores.

**SEC. 6204. DEFINITIONS.**

As used in this subtitle, the following terms have the following meanings:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional com-

mittees'' means the Committee on International Relations, the Committee on Ways and Means, and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations, the Committee on Finance, and the Committee on Appropriations of the Senate.

(2) COMMERCIAL ACTIVITY.—The term ''commercial activity'' has the meaning given that term in section 1603(d) of title 28, United States Code.

(3) CONFISCATED.—As used in parts 1 and 3, the term ''confiscated'' refers to—

(A) the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959—

(i) without the property having been returned or adequate and effective compensation provided; or

(ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(B) the repudiation by the Cuban Government of, the default by the Cuban Government

on, or the failure by the Cuban Government to pay, on or after January 1, 1959—

(i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;

(ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or

(iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

(4) CUBAN GOVERNMENT.—(A) The term ''Cuban Government'' includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

(B) For purposes of subparagraph (A), the term ''agency or instrumentality of the Government of Cuba'' means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with ''Cuba'' substituted for ''a foreign state'' each place it appears in such section.

(5) DEMOCRATICALLY ELECTED GOVERNMENT IN CUBA.—The term ''democratically elected government in Cuba'' means a government determined by

the President to have met the requirements of section 206.

(6) ECONOMIC EMBARGO OF CUBA.—The term ''economic embargo of Cuba'' refers to the economic embargo imposed against Cuba pursuant to section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)), the International Emergency Economic Powers Act (50 U.S.C. 1701 and following), and the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following), as modified by the Cuban Democracy Act of 1992 (22 U.S.C. 6001 and following).

(7) FOREIGN NATIONAL.—The term ''foreign national'' means—

(A) an alien; or

(B) any corporation, trust, partnership, or other juridical entity not organized under the laws of the United States, or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

(8) KNOWINGLY.—The term ''knowingly'' means with knowledge or having reason to know.

(9) PROPERTY.—(A) The term ''property'' means any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.

(B) For purposes of part 3 of this subtitle, the term ''property'' shall not include real property used for residential purposes unless, as of the date of the enactment of this Act—

(i) the claim to the property is owned by a United States national and the claim has been certified under title V of the International Claims Settlement Act of 1949; or

(ii) the property is occupied by a member or official of the Cuban Government or the ruling political party in Cuba.

(10) TRAFFICS.—(A) As used in part 3, a person or entity ''traffics'' in property if that person or entity knowingly and intentionally—

(i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or

otherwise acquires or holds an interest in confiscated property,

(ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or

(iii) causes, directs, participates in, or profits from, trafficking (as described in clauses (i) and (ii)) by another person, or otherwise engages in trafficking (as described in clauses (i) and (ii)) through another person,

without the authorization of the United States national who holds a claim to the property.

(B) The term ''traffics'' does not include—

(i) the delivery of international telecommunication signals to Cuba that are authorized by section 1705(e) of the Cuban Democracy Act of 1992 (22 U.S.C. 6004(e)); or

(ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national.

(11) TRANSITION GOVERNMENT IN CUBA.—The term ''transition government in Cuba'' means a gov-

ernment determined by the President to have met the requirements of section 6235.

(12) UNITED STATES NATIONAL.—The term ''United States national'' means—

(A) any United States citizen; or

(B) any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States, and which has its principal place of business in the United States.

## PART 1—SEEKING SANCTIONS AGAINST THE CASTRO GOVERNMENT

### SEC. 6211. STATEMENT OF POLICY.

It is the sense of the Congress that—

(1) the acts of the Castro government, including its massive, systematic, and extraordinary violations of human rights, are a threat to international peace;

(2) the President should advocate, and should instruct the United States Permanent Representative to the United Nations to propose and seek, within the Security Council, a mandatory international embargo against the totalitarian Cuban

Government pursuant to chapter VII of the Charter of the United Nations, which is similar to measures taken by United States representatives with respect to Haiti; and

(3) any resumption or commencement of efforts by any state to make operational the nuclear facility at Cienfuegos, Cuba, will have a detrimental impact on United States assistance to and relations with that state.

**SEC. 6212. ENFORCEMENT OF THE ECONOMIC EMBARGO OF CUBA.**

(a) POLICY.—(1) The Congress hereby reaffirms section 1704(a) of the Cuban Democracy Act of 1992 that states the President should encourage foreign countries to restrict trade and credit relations with Cuba.

(2) The Congress further urges the President to take immediate steps to apply the sanctions described in section 1704(b) of that Act against countries assisting Cuba.

(b) DIPLOMATIC EFFORTS.—The Secretary of State shall ensure that United States diplomatic personnel abroad understand and, in their contacts with foreign officials, are communicating the reasons for the United States economic embargo of Cuba, and are urging foreign governments to cooperate more effectively with the embargo.

(c) EXISTING REGULATIONS.—The President should instruct the Secretary of the Treasury and the Attorney General to enforce fully the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.

(d) TRADING WITH THE ENEMY ACT.—

(1) CIVIL PENALTIES.—Subsection (b) of section 16 of the Trading With the Enemy Act (50 U.S.C. App. 16(b)) is amended to read as follows:

''(b)(1) A civil penalty of not to exceed $50,000 may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of this Act.

''(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation under paragraph (1) shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

''(3) The penalties provided under this subsection may not be imposed for—

''(A) news gathering, research, or the export or import of, or transmission of, information or informational materials; or

''(B) clearly defined educational or religious activities, or activities of recognized human rights organizations, that are reasonably limited in frequency, duration, and number of participants.

''(4) The penalties provided under this subsection may be imposed only on the record after opportunity for an agency hearing in accordance with sections 554 through 557 of title 5, United States Code, with the right to prehearing discovery.

''(5) Judicial review of any penalty imposed under this subsection may be had to the extent provided in section 702 of title 5, United States Code.''.

(2) FORFEITURE OF PROPERTY USED IN VIOLATION.—Section 16 of the Trading With the Enemy Act is further amended by striking subsection (c).

(3) CLERICAL AMENDMENT.—Section 16 of the Trading With the Enemy Act is further amended by inserting ''SEC. 16.'' before ''(a)''.

(e) COVERAGE OF DEBT-FOR-EQUITY SWAPS BY ECONOMIC EMBARGO OF CUBA.—Section 1704(b)(2) of the Cuban Democracy Act of 1992 (22 U.S.C. 6003(b)(2)) is amended—

(1) by striking ''and'' at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph:

''(B) includes an exchange, reduction, or forgiveness of Cuban debt owed to a foreign country in return for a grant of an equity interest in a property, investment, or operation of the Government of Cuba (including the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba) or of a Cuban national; and''; and

(4) by adding at the end the following flush sentence:

''As used in this paragraph, the term 'agency or instrumentality of the Government of Cuba' means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with 'Cuba' substituted for 'a foreign state' each place it appears in such section.''.

**SEC. 6213. PROHIBITION AGAINST INDIRECT FINANCING OF THE CASTRO DICTATORSHIP.**

(a) PROHIBITION.—Notwithstanding any other provision of law, no loan, credit, or other financing may be ex-

tended knowingly by a United States national, permanent resident alien, or United States agency, to a foreign national, United States national, or permanent resident alien, in order to finance transactions involving any confiscated property the claim to which is owned by a United States national as of the date of the enactment of this Act.

(b) TERMINATION OF PROHIBITION.—The prohibition of subsection (a) shall cease to apply on the date on which the economic embargo of Cuba terminates under section 6235.

(c) PENALTIES.—Violations of subsection (a) shall be punishable by the same penalties as are applicable to violations of the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.

(d) DEFINITIONS.—As used in this section—

(1) the term ''permanent resident alien'' means an alien admitted for permanent residence into the United States; and

(2) the term ''United States agency'' has the meaning given the term ''agency'' in section 551(1) of title 5, United States Code.

**SEC. 6214. UNITED STATES OPPOSITION TO CUBAN MEMBERSHIP IN INTERNATIONAL FINANCIAL INSTITUTIONS.**

(a) OPPOSITION TO CUBAN MEMBERSHIP IN INTERNATIONAL FINANCIAL INSTITUTIONS.—(1) Until such time as the President determines that a transition government in Cuba is in power, the Secretary of the Treasury should instruct the United States executive director to each international financial institution to use the voice and vote of the United States to oppose the admission of Cuba as a member of such institution.

(2) Once a transition government in Cuba is in power, the President is encouraged to take steps to support the processing of Cuba's application for membership in any financial institution subject to the membership taking effect at such time as the President deems most likely to facilitate the transition to a democratically elected government in Cuba.

(b) REDUCTION IN UNITED STATES PAYMENTS TO INTERNATIONAL FINANCIAL INSTITUTIONS.—If any international financial institution approves a loan or other assistance to the Cuban Government over the opposition of the United States, then the Secretary of the Treasury shall withhold from payment to that institution an amount equal to the amount of the loan or other assistance to the

Cuban Government, with respect to each of the following types of payment:

(1) The paid-in portion of the increase in capital stock of the institution.

(2) The callable portion of the increase in capital stock of the institution.

(c) DEFINITION.—For purposes of this section, the term ''international financial institution'' means the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the Inter-American Development Bank.

**SEC. 6215. UNITED STATES OPPOSITION TO ENDING THE SUSPENSION OF THE GOVERNMENT OF CUBA FROM THE ORGANIZATION OF AMERICAN STATES.**

The President should instruct the United States Permanent Representative to the Organization of American States to use the voice and vote of the United States to oppose ending the suspension of the Government of Cuba from the Organization until the President determines under section 6233(c)(3) that a democratically elected government in Cuba is in power.

**SEC. 6216. ASSISTANCE BY THE INDEPENDENT STATES OF THE FORMER SOVIET UNION FOR THE CUBAN GOVERNMENT.**

(a) REPORTING REQUIREMENT.—Not later than 90 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report detailing progress towards the withdrawal of personnel of any independent state of the former Soviet Union (within the meaning of section 3 of the FREEDOM Support Act (22 U.S.C. 5801)), including advisers, technicians, and military personnel, from the Cienfuegos nuclear facility in Cuba.

(b) CRITERIA FOR ASSISTANCE.—Section 498A(a)(11) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a(a)(11)) is amended by striking ''of military facilities'' and inserting ''military and intelligence facilities, including the military and intelligence facilities at Lourdes and Cienfuegos''.

(c) INELIGIBILITY FOR ASSISTANCE.—(1) Section 498A(b) of that Act (22 U.S.C. 2295a(b)) is amended—

(A) by striking ''or'' at the end of paragraph (4);

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following:

''(5) for the government of any independent state effective 30 days after the President has determined and certified to the appropriate congressional committees (and Congress has not enacted legislation disapproving the determination within that 30-day period) that such government is providing assistance for, or engaging in nonmarket based trade (as defined in section 498B(k)(3)) with, the Cuban Government; or''.

(2) Subsection (k) of section 498B of that Act (22 U.S.C. 2295b(k)), is amended by adding at the end the following:

''(3) NONMARKET BASED TRADE.—As used in section 498A(b)(5), the term 'nonmarket based trade' includes exports, imports, exchanges, or other arrangements that are provided for goods and services (including oil and other petroleum products) on terms more favorable than those generally available in applicable markets or for comparable commodities, including—

''(A) exports to the Cuban Government on terms that involve a grant, concessional price, guaranty, insurance, or subsidy;

''(B) imports from the Cuban Government at preferential tariff rates;

''(C) exchange arrangements that include advance delivery of commodities, arrangements in which the Cuban Government is not held accountable for unfulfilled exchange contracts, and arrangements under which Cuba does not pay appropriate transportation, insurance, or finance costs; and

''(D) the exchange, reduction, or forgiveness of Cuban debt in return for a grant by the Cuban Government of an equity interest in a property, investment, or operation of the Cuban Government or of a Cuban national.

''(4) CUBAN GOVERNMENT.—(A) The term 'Cuban Government' includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

''(B) For purposes of subparagraph (A), the term 'agency or instrumentality of the Government of Cuba' means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with 'Cuba' substituted for 'a foreign state' each place it appears in such section.''.

(d) FACILITIES AT LOURDES, CUBA.—(1) The Congress expresses its strong disapproval of the extension by

Russia of credits equivalent to approximately $200,000,000 in support of the intelligence facility at Lourdes, Cuba, in November 1994.

(2) Section 498A of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a) is amended by adding at the end the following new subsection:

''(d) REDUCTION IN ASSISTANCE FOR SUPPORT OF INTELLIGENCE FACILITIES IN CUBA.—(1) Notwithstanding any other provision of law, the President shall withhold from assistance provided, on or after the date of the enactment of this subsection, for an independent state of the former Soviet Union under this chapter an amount equal to the sum of assistance and credits, if any, provided on or after such date by such state in support of intelligence facilities in Cuba, including the intelligence facility at Lourdes, Cuba.

''(2)(A) The President may waive the requirement of paragraph (1) to withhold assistance if the President certifies to the appropriate congressional committees that the provision of such assistance is important to the national security of the United States, and, in the case of such a certification made with respect to Russia, if the President certifies that the Russian Government has assured the United States Government that the Russian Government is not sharing intelligence data collected at the

Lourdes facility with officials or agents of the Cuban Government.

''(B) At the time of a certification made with respect to Russia pursuant to subparagraph (A), the President shall also submit to the appropriate congressional committees a report describing the intelligence activities of Russia in Cuba, including the purposes for which the Lourdes facility is used by the Russian Government and the extent to which the Russian Government provides payment or government credits to the Cuban Government for the continued use of the Lourdes facility.

''(C) The report required by subparagraph (B) may be submitted in classified form.

''(D) For purposes of this paragraph, the term 'appropriate congressional committees' includes the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

''(3) The requirement of paragraph (1) to withhold assistance shall not apply with respect to—

''(A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;

''(B) democratic political reform and rule of law activities;

''(C) technical assistance for safety upgrades of civilian nuclear power plants;

''(D) the creation of private sector and non-governmental organizations that are independent of government control;

''(E) the development of a free market economic system; and

''(F) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103–160).''.

**SEC. 6217. TELEVISION BROADCASTING TO CUBA.**

(a) CONVERSION TO UHF.—The Director of the United States Information Agency shall implement a conversion of television broadcasting to Cuba under the Television Marti Service to ultra high frequency (UHF) broadcasting.

(b) PERIODIC REPORTS.—Not later than 45 days after the date of the enactment of this Act, and every three months thereafter until the conversion described in subsection (a) is fully implemented, the Director of the United States Information Agency shall submit a report to the appropriate congressional committees on the progress made in carrying out subsection (a).

(c) TERMINATION OF BROADCASTING AUTHORITIES.—Upon transmittal of a determination under section

6233(c)(3), the Television Broadcasting to Cuba Act (22 U.S.C. 1465aa and following) and the Radio Broadcasting to Cuba Act (22 U.S.C. 1465 and following) are repealed.

**SEC. 6218. REPORTS ON ASSISTANCE AND COMMERCE RECEIVED BY CUBA FROM OTHER FOREIGN COUNTRIES.**

(a) REPORTS REQUIRED.—Not later than 90 days after the date of the enactment of this Act, and every year thereafter, the President shall submit a report to the appropriate congressional committees on assistance and commerce received by Cuba from other foreign countries during the preceding 12-month period.

(b) CONTENTS OF REPORTS.—Each report required by subsection (a) shall, for the period covered by the report, contain the following, to the extent such information is known:

(1) A description of all bilateral assistance provided to Cuba by other foreign countries, including humanitarian assistance.

(2) A description of Cuba's commerce with foreign countries, including an identification of Cuba's trading partners and the extent of such trade.

(3) A description of the joint ventures completed, or under consideration, by foreign nationals involving facilities in Cuba, including an identifica-

tion of the location of the facilities involved and a description of the terms of agreement of the joint ventures and the names of the parties that are involved.

(4) A determination whether or not any of the facilities described in paragraph (3) is the subject of a claim by a United States national.

(5) A determination of the amount of Cuban debt owed to each foreign country, including—

(A) the amount of debt exchanged, forgiven, or reduced under the terms of each investment or operation in Cuba involving foreign nationals; and

(B) the amount of debt owed to the foreign country that has been exchanged, reduced, or forgiven in return for a grant by the Cuban Government of an equity interest in a property, investment, or operation of the Cuban Government or of a Cuban national.

(6) A description of the steps taken to ensure that raw materials and semifinished or finished goods produced by facilities in Cuba involving foreign nationals do not enter the United States market, either directly or through third countries or parties.

(7) An identification of countries that purchase, or have purchased, arms or military supplies from the Cuban Government or that otherwise have entered into agreements with the Cuban Government that have a military application, including—

(A) a description of the military supplies, equipment, or other materiel sold, bartered, or exchanged between the Cuban Government and such countries;

(B) a listing of the goods, services, credits, or other consideration received by the Cuban Government in exchange for military supplies, equipment, or materiel; and

(C) the terms or conditions of any such agreement.

**SEC. 6219. AUTHORIZATION OF SUPPORT FOR DEMOCRATIC AND HUMAN RIGHTS GROUPS AND INTERNATIONAL OBSERVERS.**

(a) AUTHORIZATION.—Notwithstanding any other provision of law, except for section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394–1) and comparable notification requirements contained in any Act making appropriations for foreign operations, export financing, and related programs, the President is authorized to furnish assistance and provide other support for

individuals and independent nongovernmental organizations to support democracy-building efforts for Cuba, including the following:

(1) Published and informational matter, such as books, videos, and cassettes, on transitions to democracy, human rights, and market economies, to be made available to independent democratic groups in Cuba.

(2) Humanitarian assistance to victims of political repression, and their families.

(3) Support for democratic and human rights groups in Cuba.

(4) Support for visits and permanent deployment of independent international human rights monitors in Cuba.

(b) OAS EMERGENCY FUND.—(1) The President shall take the necessary steps to encourage the Organization of American States to create a special emergency fund for the explicit purpose of deploying human rights observers, election support, and election observation in Cuba.

(2) The President should instruct the United States Permanent Representative to the Organization of American States to encourage other member states of the Organization to join in calling for the Cuban Government to allow the immediate deployment of independent human

rights monitors of the Organization throughout Cuba and on-site visits to Cuba by the Inter-American Commission on Human Rights.

(3) Notwithstanding section 307 of the Foreign Assistance Act of 1961 (22 U.S.C. 2227) or any other provision of law limiting the United States proportionate share of assistance to Cuba by any international organization, the President should provide not less than $5,000,000 of the voluntary contributions of the United States to the Organization of American States as of the date of the enactment of this Act solely for the purposes of the special fund referred to in paragraph (1).

**SEC. 6220. WITHHOLDING OF FOREIGN ASSISTANCE FROM COUNTRIES SUPPORTING NUCLEAR PLANT IN CUBA.**

(a) FINDINGS.—The Congress makes the following findings:

(1) President Clinton stated in April 1993 that ''the United States opposes the construction of the Juragua nuclear power plant because of our concerns about Cuba's ability to ensure the safe operation of the facility and because of Cuba's refusal to sign the Nuclear Non-Proliferation Treaty or ratify the Treaty of Tlatelolco.''.

(2) Cuba has not signed the Treaty on the Non-Proliferation of Nuclear Weapons or ratified the Treaty of Tlatelolco, the latter of which establishes Latin America and the Caribbean as a nuclear weapons-free zone.

(3) The State Department, the Nuclear Regulatory Commission, and the Department of Energy have expressed concerns about the construction and operation of Cuba's nuclear reactors.

(4) In a September 1992 report to Congress, the General Accounting Office outlined concerns among nuclear energy experts about deficiencies in the nuclear plant project in Juragua, near Cienfuegos, Cuba, including—

(A) a lack in Cuba of a nuclear regulatory structure;

(B) the absence in Cuba of an adequate infrastructure to ensure the plant's safe operation and requisite maintenance;

(C) the inadequacy of training of plant operators;

(D) reports by a former technician from Cuba who, by examining with x-rays weld sites believed to be part of the auxiliary plumbing

system for the plant, found that 10 to 15 percent of those sites were defective;

(E) since September 5, 1992, when construction on the plant was halted, the prolonged exposure to the elements, including corrosive salt water vapor, of the primary reactor components; and

(F) the possible inadequacy of the upper portion of the reactors' dome retention capability to withstand only 7 pounds of pressure per square inch, given that normal atmospheric pressure is 32 pounds per square inch and United States reactors are designed to accommodate pressures of 50 pounds per square inch.

(5) The United States Geological Survey claims that it had difficulty determining answers to specific questions regarding earthquake activity in the area near Cienfuegos because the Cuban Government was not forthcoming with information.

(6) The Geological Survey has indicated that the Caribbean plate, a geological formation near the south coast of Cuba, may pose seismic risks to Cuba and the site of the power plant, and may produce large to moderate earthquakes.

(7) On May 25, 1992, the Caribbean plate produced an earthquake numbering 7.0 on the Richter scale.

(8) According to a study by the National Oceanic and Atmospheric Administration, summer winds could carry radioactive pollutants from a nuclear accident at the power plant throughout all of Florida and parts of the States on the gulf coast as far as Texas, and northern winds could carry the pollutants as far northeast as Virginia and Washington, D.C.

(9) The Cuban Government, under dictator Fidel Castro, in 1962 advocated the Soviets' launching of nuclear missiles to the United States, which represented a direct and dangerous provocation of the United States and brought the world to the brink of a nuclear conflict.

(10) Fidel Castro over the years has consistently issued threats against the United States Government, most recently that he would unleash another perilous mass migration from Cuba upon the enactment of this Act.

(11) Despite the various concerns about the plant's safety and operational problems, a feasibility study is being conducted that would establish a sup-

port group to include Russia, Cuba, and third countries with the objective of completing and operating the plant.

(b) WITHHOLDING OF FOREIGN ASSISTANCE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the President shall withhold from assistance allocated, on or after the date of the enactment of this Act, for any country an amount equal to the sum of assistance and credits, if any, provided on or after such date of enactment by that country or any entity in that country in support of the completion of the Cuban nuclear facility at Juragua, near Cienfuegos, Cuba.

(2) EXCEPTIONS.—The requirement of paragraph (1) to withhold assistance shall not apply with respect to—

(A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;

(B) democratic political reform and rule of law activities;

(C) the creation of private sector and nongovernmental organizations that are independent of government control;

(D) the development of a free market economic system; and

(E) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103–160).

(3) DEFINITION.—As used in paragraph (1), the term ''assistance'' means assistance under the Foreign Assistance Act of 1961, credits, sales, and guarantees of extensions of credit under the Arms Export Control Act, assistance under titles I and III of the Agricultural Trade Development and Assistance Act of 1954, assistance under the FREEDOM Support Act of 1992, and any other program of assistance or credits provided by the United States to other countries under other provisions of law, except that the term ''assistance'' does not include humanitarian assistance, including disaster relief assistance.

**SEC. 6221. EXPULSION OF CRIMINALS FROM CUBA.**

The President shall instruct all United States Government officials who engage in official conduct with the Cuban Government to raise on a regular basis the extradition of or rendering to the United States all persons residing in Cuba who are sought by the United States Department of Justice for crimes committed in the United States.

## PART 2—ASSISTANCE TO A FREE AND INDEPENDENT CUBA

### SEC. 6231. POLICY TOWARD A TRANSITION GOVERNMENT AND A DEMOCRATICALLY ELECTED GOVERNMENT IN CUBA.

The policy of the United States is as follows:

(1) To support the self-determination of the Cuban people.

(2) To recognize that the self-determination of the Cuban people is a sovereign and national right of the citizens of Cuba which must be exercised free of interference by the government of any other country.

(3) To encourage the Cuban people to empower themselves with a government which reflects the self-determination of the Cuban people.

(4) To recognize the potential for a difficult transition from the current regime in Cuba that may result from the initiatives taken by the Cuban people for self-determination in response to the intransigence of the Castro regime in not allowing any substantive political or economic reforms, and to be prepared to provide the Cuban people with humanitarian, developmental, and other economic assistance.

(5) In solidarity with the Cuban people, to provide appropriate forms of assistance—

(A) to a transition government in Cuba;

(B) to facilitate the rapid movement from such a transition government to a democratically elected government in Cuba that results from an expression of the self-determination of the Cuban people; and

(C) to support such a democratically elected government.

(6) Through such assistance, to facilitate a peaceful transition to representative democracy and a market economy in Cuba and to consolidate democracy in Cuba.

(7) To deliver such assistance to the Cuban people only through a transition government in Cuba, through a democratically elected government in Cuba, through United States Government organizations, or through United States, international, or indigenous nongovernmental organizations.

(8) To encourage other countries and multilateral organizations to provide similar assistance, and to work cooperatively with such countries and organizations to coordinate such assistance.

(9) To ensure that appropriate assistance is rapidly provided and distributed to the people of Cuba upon the institution of a transition government in Cuba.

(10) Not to provide favorable treatment or influence on behalf of any individual or entity in the selection by the Cuban people of their future government.

(11) To assist a transition government in Cuba and a democratically elected government in Cuba to prepare the Cuban military forces for an appropriate role in a democracy.

(12) To be prepared to enter into negotiations with a democratically elected government in Cuba either to return the United States Naval Base at Guantanamo to Cuba or to renegotiate the present agreement under mutually agreeable terms.

(13) To consider the restoration of diplomatic recognition and support the reintegration of the Cuban Government into Inter-American organizations when the President determines that there exists a democratically elected government in Cuba.

(14) To take steps to remove the economic embargo of Cuba when the President determines that

a transition to a democratically elected government in Cuba has begun.

(15) To assist a democratically elected government in Cuba to strengthen and stabilize its national currency.

(16) To pursue trade relations with a free, democratic, and independent Cuba.

**SEC. 6232. ASSISTANCE FOR THE CUBAN PEOPLE.**

(a) AUTHORIZATION.—

(1) IN GENERAL.—The President shall develop a plan for providing economic assistance to Cuba at such time as the President determines that a transition government or a democratically elected government in Cuba (as determined under section 6233(c)) is in power.

(2) EFFECT ON OTHER LAWS.—Assistance may be provided under this section subject to an authorization of appropriations and subject to the availability of appropriations.

(b) PLAN FOR ASSISTANCE.—

(1) DEVELOPMENT OF PLAN.—The President shall develop a plan for providing assistance under this section—

(A) to Cuba when a transition government in Cuba is in power; and

(B) to Cuba when a democratically elected government in Cuba is in power.

(2) TYPES OF ASSISTANCE.—Assistance under the plan developed under paragraph (1) may, subject to an authorization of appropriations and subject to the availability of appropriations, include the following:

(A) TRANSITION GOVERNMENT.—(i) Except as provided in clause (ii), assistance to Cuba under a transition government shall, subject to an authorization of appropriations and subject to the availability of appropriations, be limited to—

(I) such food, medicine, medical supplies and equipment, and assistance to meet emergency energy needs, as is necessary to meet the basic human needs of the Cuban people; and

(II) assistance described in subparagraph (C).

(ii) Assistance provided only after the President certifies to the appropriate congressional committees, in accordance with procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance

Act of 1961, that such assistance is essential to the successful completion of the transition to democracy.

(iii) Only after a transition government in Cuba is in power, remittances by individuals to their relatives of cash or goods, as well as freedom to travel to visit them without any restrictions, shall be permitted.

(B) DEMOCRATICALLY ELECTED GOVERNMENT.—Assistance to a democratically elected government in Cuba may, subject to an authorization of appropriations and subject to the availability of appropriations, consist of additional economic assistance, together with assistance described in subparagraph (C). Such economic assistance may include—

(i) assistance under chapter 1 of part I (relating to development assistance), and chapter 4 of part II (relating to the economic support fund), of the Foreign Assistance Act of 1961;

(ii) assistance under the Agricultural Trade Development and Assistance Act of 1954;

(iii) financing, guarantees, and other forms of assistance provided by the Export-Import Bank of the United States;

(iv) financial support provided by the Overseas Private Investment Corporation for investment projects in Cuba;

(v) assistance provided by the Trade and Development Agency;

(vi) Peace Corps programs; and

(vii) other appropriate assistance to carry out the policy of section 6231.

(C) MILITARY ADJUSTMENT ASSISTANCE.—Assistance to a transition government in Cuba and to a democratically elected government in Cuba shall also include assistance in preparing the Cuban military forces to adjust to an appropriate role in a democracy.

(c) STRATEGY FOR DISTRIBUTION.—The plan developed under subsection (b) shall include a strategy for distributing assistance under the plan.

(d) DISTRIBUTION.—Assistance under the plan developed under subsection (b) shall be provided through United States Government organizations and nongovernmental organizations and private and voluntary organizations, whether within or outside the United States, includ-

ing humanitarian, educational, labor, and private sector organizations.

(e) INTERNATIONAL EFFORTS.—The President shall take the necessary steps—

(1) to seek to obtain the agreement of other countries and of international financial institutions and multilateral organizations to provide to a transition government in Cuba, and to a democratically elected government in Cuba, assistance comparable to that provided by the United States under this subtitle; and

(2) to work with such countries, institutions, and organizations to coordinate all such assistance programs.

(f) COMMUNICATION WITH THE CUBAN PEOPLE.—The President shall take the necessary steps to communicate to the Cuban people the plan for assistance developed under this section.

(g) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a report describing in detail the plan developed under this section.

(h) TRADE AND INVESTMENT RELATIONS.—

(1) REPORT TO CONGRESS.—The President, following the transmittal to the Congress of a determination under section 6233(c)(3) that a democratically elected government in Cuba is in power, shall submit to the appropriate congressional committees a report that describes—

(A) acts, policies, and practices that constitute significant barriers to, or distortions of, United States trade in goods or services or foreign direct investment with respect to Cuba;

(B) policy objectives of the United States regarding trade relations with a democratically elected government in Cuba, and the reasons therefor, including possible—

(i) reciprocal extension of nondiscriminatory trade treatment (most-favored-nation treatment);

(ii) designation of Cuba as a beneficiary developing country under title V of the Trade Act of 1974 (relating to the Generalized System of Preferences) or as a beneficiary country under the Caribbean Basin Economic Recovery Act, and the implications of such designation with respect to trade with any other country that is

such a beneficiary developing country or beneficiary country or is a party to the North American Free Trade Agreement; and

(iii) negotiations regarding free trade, including the accession of Cuba to the North American Free Trade Agreement;

(C) specific trade negotiating objectives of the United States with respect to Cuba, including the objectives described in section 108(b)(5) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3317(b)(5)); and

(D) actions proposed or anticipated to be undertaken, and any proposed legislation necessary or appropriate, to achieve any of such policy and negotiating objectives.

(2) CONSULTATIONS.—The President shall consult with the appropriate congressional committees and shall seek advice from the appropriate advisory committees established under section 135 of the Trade Act of 1974 regarding the policy and negotiating objectives and the legislative proposals described in paragraph (1).

**SEC. 6233. COORDINATION OF ASSISTANCE PROGRAM; IMPLEMENTATION AND REPORTS TO CONGRESS; REPROGRAMMING.**

(a) COORDINATING OFFICIAL.—The President shall designate a coordinating official who shall be responsible for—

(1) implementing the strategy for distributing assistance described in section 6232(b);

(2) ensuring the speedy and efficient distribution of such assistance; and

(3) ensuring coordination among, and appropriate oversight by, the agencies of the United States that provide assistance described in section 6232(b), including resolving any disputes among such agencies.

(b) UNITED STATES-CUBA COUNCIL.—Upon making a determination under subsection (c)(3) that a democratically elected government in Cuba is in power, the President, after consultation with the coordinating official, is authorized to designate a United States-Cuba council—

(1) to ensure coordination between the United States Government and the private sector in responding to change in Cuba, and in promoting market-based development in Cuba; and

(2) to establish periodic meetings between representatives of the United States and Cuban private sectors for the purpose of facilitating bilateral trade.

(c) IMPLEMENTATION OF PLAN; REPORTS TO CONGRESS.—

(1) IMPLEMENTATION WITH RESPECT TO TRANSITION GOVERNMENT.—Upon making a determination that a transition government in Cuba is in power, the President shall transmit that determination to the appropriate congressional committees and shall, subject to an authorization of appropriations and subject to the availability of appropriations, commence the delivery and distribution of assistance to such transition government under the plan developed under section 6232(b).

(2) REPORTS TO CONGRESS.—(A) The President shall transmit to the appropriate congressional committees a report setting forth the strategy for providing assistance described in section 6232(b)(2)(A) and (C) to the transition government in Cuba under the plan of assistance developed under section 6232(b), the types of such assistance, and the extent to which such assistance has been distributed in accordance with the plan.

(B) The President shall transmit the report not later than 90 days after making the determination referred to in paragraph (1), except that the President shall transmit the report in preliminary form not later than 15 days after making that determination.

(3) IMPLEMENTATION WITH RESPECT TO DEMOCRATICALLY ELECTED GOVERNMENT.—The President shall, upon determining that a democratically elected government in Cuba is in power, submit that determination to the appropriate congressional committees and shall, subject to an authorization of appropriations and subject to the availability of appropriations, commence the delivery and distribution of assistance to such democratically elected government under the plan developed under section 6232(b).

(4) ANNUAL REPORTS TO CONGRESS.—Not later than 60 days after the end of each fiscal year, the President shall transmit to the appropriate congressional committees a report on the assistance provided under the plan developed under section 6232(b), including a description of each type of assistance, the amounts expended for such assistance,

and a description of the assistance to be provided under the plan in the current fiscal year.

(d) REPROGRAMMING.—Any changes in the assistance to be provided under the plan developed under section 6232(b) may not be made unless the President notifies the appropriate congressional committees at least 15 days in advance in accordance with the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394–1).

**SEC. 6234. TERMINATION OF THE ECONOMIC EMBARGO OF CUBA.**

(a) PRESIDENTIAL ACTIONS.—Upon submitting a determination to the appropriate congressional committees under section 6233(c)(1) that a transition government in Cuba is in power, the President, after consulting with the Congress, is authorized to take steps to suspend the economic embargo of Cuba to the extent that such action contributes to a stable foundation for a democratically elected government in Cuba.

(b) SUSPENSION OF CERTAIN PROVISIONS OF LAW.—In carrying out subsection (a), the President may suspend the enforcement of—

(1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a));

(2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) with regard to the ''Republic of Cuba'';

(3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act (22 U.S.C. 6003, 6004(d), 6005);

(4) section 902(c) of the Food Security Act of 1985; and

(5) the prohibitions on transactions described in part 515 of title 31, Code of Federal Regulations.

(c) ADDITIONAL PRESIDENTIAL ACTIONS.—Upon submitting a determination to the appropriate congressional committees under section 6233(c)(3) that a democratically elected government in Cuba is in power, the President shall take steps to terminate the economic embargo of Cuba.

(d) CONFORMING AMENDMENTS.—On the date on which the President submits a determination under section 6233(c)(3)—

(1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)) is repealed;

(2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) is amended by striking ''Republic of Cuba'';

(3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6003, 6004(d), and 6005) are repealed; and

(4) section 902(c) of the Food Security Act of 1985 is repealed.

(e) REVIEW OF SUSPENSION OF ECONOMIC EMBARGO.—

(1) REVIEW.—If the President takes action under subsection (a) to suspend the economic embargo of Cuba, the President shall immediately so notify the Congress. The President shall report to the Congress no less frequently than every 6 months thereafter, until he submits a determination under section 6233(c)(3) that a democratically elected government in Cuba is in power, on the progress being made by Cuba toward the establishment of such a democratically elected government. The action of the President under subsection (a) shall cease to be effective upon the enactment of a joint resolution described in paragraph (2).

(2) JOINT RESOLUTIONS.—For purposes of this subsection, the term ''joint resolution'' means only a joint resolution of the 2 Houses of Congress, the matter after the resolving clause of which is as follows: ''That the Congress disapproves the action of

the President under section 6234(a) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995 to suspend the economic embargo of Cuba, notice of which was submitted to the Congress on ____.'', with the blank space being filled with the appropriate date.

(3) REFERRAL TO COMMITTEES.—Joint resolutions introduced in the House of Representatives shall be referred to the Committee on International Relations and joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations.

(4) PROCEDURES.—(A) Any joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions, a motion to proceed to the consideration of any joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(C) Not more than 1 joint resolution may be considered in the House of Representatives and the

Senate in the 6-month period beginning on the date on which the President notifies the Congress under paragraph (1) of the action taken under subsection (a), and in each 6-month period thereafter.

**SEC. 6235. REQUIREMENTS FOR A TRANSITION GOVERNMENT.**

For purposes of this subtitle, a transition government in Cuba is a government in Cuba which—

(1) is demonstrably in transition from communist totalitarian dictatorship to representative democracy;

(2) has recognized the right to independent political activity and association;

(3) has released all political prisoners and allowed for investigations of Cuban prisons by appropriate international human rights organizations;

(4) has ceased any interference with Radio or Television Marti broadcasts;

(5) makes public commitments to and is making demonstrable progress in—

(A) establishing an independent judiciary;

(B) dissolving the present Department of State Security in the Cuban Ministry of the Interior, including the Committees for the De-

fense of the Revolution and the Rapid Response Brigades;

(C) respecting internationally recognized human rights and basic freedoms as set forth in the Universal Declaration of Human Rights, to which Cuba is a signatory nation;

(D) effectively guaranteeing the rights of free speech and freedom of the press;

(E) organizing free and fair elections for a new government—

(i) to be held in a timely manner within a period not to exceed 1 year after the transition government assumes power;

(ii) with the participation of multiple independent political parties that have full access to the media on an equal basis, including (in the case of radio, television, or other telecommunications media) in terms of allotments of time for such access and the times of day such allotments are given; and

(iii) to be conducted under the supervision of internationally recognized observers, such as the Organization of American

States, the United Nations, and other elections monitors;

(F) assuring the right to private property;

(G) taking appropriate steps to return to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or to provide equitable compensation to such citizens and entities for such property;

(H) granting permits to privately owned telecommunications and media companies to operate in Cuba; and

(I) allowing the establishment of independent trade unions as set forth in conventions 87 and 98 of the International Labor Organization, and allowing the establishment of independent social, economic, and political associations;

(6) does not include Fidel Castro or Raul Castro;

(7) has given adequate assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people;

(8) permits the deployment throughout Cuba of independent and unfettered international human rights monitors; and

(9) has extradited or otherwise rendered to the United States all persons sought by the United States Department of Justice for crimes committed in the United States.

**SEC. 6236. REQUIREMENTS FOR A DEMOCRATICALLY ELECTED GOVERNMENT.**

For purposes of this subtitle, a democratically elected government in Cuba, in addition to continuing to comply with the requirements of section 6235, is a government in Cuba which—

(1) results from free and fair elections conducted under the supervision of internationally recognized observers;

(2) has permitted opposition parties ample time to organize and campaign for such elections, and has permitted full access to the media to all candidates in the elections;

(3) is showing respect for the basic civil liberties and human rights of the citizens of Cuba;

(4) has made demonstrable progress in establishing an independent judiciary;

(5) is substantially moving toward a market-oriented economic system;

(6) is committed to making constitutional changes that would ensure regular free and fair elections that meet the requirements of paragraph (2); and

(7) has made demonstrable progress in returning to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or providing full compensation for such property in accordance with international law standards and practice.

## PART 3—PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS AGAINST CONFISCATORY TAKINGS BY THE CASTRO REGIME

### SEC. 6251. STATEMENT OF POLICY.

The Congress makes the following findings:

(1) The right of individuals to hold and enjoy property is a fundamental right recognized by the United States Constitution and international human rights law, including the Universal Declaration of Human Rights.

(2) The illegal confiscation or taking of property by governments, and the acquiescence of governments in the confiscation of property by their citizens, undermines the comity among nations, the free flow of commerce, and economic development.

(3) It is in the interest of all nations to respect equally the property rights of their citizens and nationals of other countries.

(4) Nations that provide an effective mechanism for prompt, adequate, and fair compensation for the confiscation of private property will continue to have the support of the United States.

(5) The United States Government has an obligation to its citizens to provide protection against illegal confiscation by foreign nations and their citizens, including the provision of private remedies.

(6) Nations that illegally confiscate private property should not be immune to another nation's laws whose purpose is to protect against the confiscation of lawfully acquired property by its citizens.

(7) Trafficking in illegally acquired property is a crime under the laws of the United States and other nations, yet this same activity is allowed under international law.

(8) International law, by not providing effective remedies, condones the illegal confiscation of property and allows for the unjust enrichment from the use of confiscated property by governments and private entities at the expense of those who hold legal claim to the property.

(9) The development of an international mechanism sanctioning those governments and private entities that confiscate and unjustly use private property so confiscated should be a priority objective of United States foreign policy.

**SEC. 6252. LIABILITY FOR TRAFFICKING IN PROPERTY CONFISCATED FROM UNITED STATES NATIONALS.**

(a) CIVIL REMEDY.—

(1) LIABILITY FOR TRAFFICKING.—(A) Except as provided in paragraphs (3) and (4), any person, including any agency or instrumentality of a foreign state in the conduct of a commercial activity, that, after the end of the 6-month period beginning on the date of the enactment of this Act, traffics in confiscated property shall be liable to any United States national who owns the claim to such property for money damages in an amount equal to the sum of—

(i) the amount which is the greater of—

(I) the amount, if any, certified to the claimant by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949, plus interest;

(II) the amount determined under section 6253(a)(2), plus interest; or

(III) the fair market value of that property, calculated as being the then current value of the property, or the value of the property when confiscated plus interest, whichever is greater; and

(ii) reasonable costs and attorneys' fees.

(B) Interest under subparagraph (A)(i) shall be at the rate set forth in section 1961 of title 28, United States Code, computed by the court from the date of the confiscation of the property involved to the date on which the action is brought under this subsection.

(2) PRESUMPTION IN FAVOR OF CERTIFIED CLAIMS.—There shall be a presumption that the amount for which a person, including any agency or instrumentality of a foreign state in the conduct of a commercial activity, is liable under clause (i) of paragraph (1)(A) is the amount that is certified

under subclause (I) of that clause. The presumption shall be rebuttable by clear and convincing evidence that the amount described in subclause (II) or (III) of that clause is the appropriate amount of liability under that clause.

(3) INCREASED LIABILITY FOR PRIOR NOTICE.—Except as provided in paragraph (4), any person, including any agency or instrumentality of a foreign state in the conduct of a commercial activity, that traffics in confiscated property after having received—

(A) notice of a claim to ownership of the property by a United States national who owns a claim to the confiscated property, and

(B) notice of the provisions of this section, shall be liable to that United States national for money damages in an amount which is the sum of the amount equal to the amount determined under paragraph (1)(A)(ii) plus triple the amount determined applicable under subclause (I), (II), or (III) of paragraph (1)(A)(i).

(4) APPLICABILITY.—(A) Except as otherwise provided in this paragraph, actions may be brought under paragraph (1) with respect to property con-

fiscated before, on, or after the date of the enactment of this Act.

(B) In the case of property confiscated before the date of the enactment of this Act, no United States national may bring an action under this section unless such national acquired ownership of the claim to the confiscated property before such date.

(C) In the case of property confiscated on or after the date of the enactment of this Act, no United States national who acquired ownership of a claim to confiscated property by assignment for value after such date of enactment may bring an action on the claim under this section.

(5) TREATMENT OF CERTAIN ACTIONS.—(A) In the case of any action brought under this section by a United States national who was eligible to file the underlying claim in the action with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but did not so file the claim, the court may hear the case only if the court determines that the United States national had good cause for not filing the claim.

(B) In the case of any action brought under this section by a United States national whose claim in the action was timely filed with the Foreign

Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but was denied by the Commission, the court may assess the basis for the denial and may accept the findings of the Commission on the claim as conclusive in the action under this section unless good cause justifies another result.

(6) INAPPLICABILITY OF ACT OF STATE DOCTRINE.—No court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under paragraph (1).

(b) DEFINITION.—As used in this subsection, the term ''agency or instrumentality of a foreign state'' has the meaning given that term in section 1603(b) of title 28, United States Code.

(c) JURISDICTION.—

(1) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by inserting after section 1331 the following new section:

**"§ 1331a. Civil actions involving confiscated property**

''The district courts shall have exclusive jurisdiction of any action brought under section 6252 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995, regardless of the amount in controversy.''.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 85 of title 28, United States Code, is amended by inserting after the item relating to section 1331 the following:

''1331a. Civil actions involving confiscated property.''.

(d) CERTAIN PROPERTY IMMUNE FROM EXECUTION.—Section 1611 of title 28, United States Code, is amended by adding at the end the following:

''(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 6252 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995 to the extent the property is a facility or installation used by an accredited diplomatic mission for official purposes.''.

(e) ELECTION OF REMEDIES.—

(1) ELECTION.—Subject to paragraph (2)—

(A) any United States national that brings an action under this section may not bring any other civil action or proceeding under the common law, Federal law, or the law of any of the several States, the District of Columbia, or any territory or possession of the United States, that seeks monetary or nonmonetary compensation by reason of the same subject matter; and

(B) any person who brings, under the common law or any provision of law other than this section, a civil action or proceeding for monetary or nonmonetary compensation arising out of a claim for which an action would otherwise be cognizable under this section may not bring an action under this section on that claim.

(2) TREATMENT OF CERTIFIED CLAIMANTS.—In the case of any United States national that brings an action under this section based on a claim certified under title V of the International Claims Settlement Act of 1949—

(A) if the recovery in the action is equal to or greater than the amount of the certified claim, the United States national may not receive payment on the claim under any agreement entered into between the United States and Cuba settling claims covered by such title, and such national shall be deemed to have discharged the United States from any further responsibility to represent the United States national with respect to that claim;

(B) if the recovery in the action is less than the amount of the certified claim, the United States national may receive payment

under a claims agreement described in subparagraph (A) but only to the extent of the difference between the amount of the recovery and the amount of the certified claim; and

(C) if there is no recovery in the action, the United States national may receive payment on the certified claim under a claims agreement described in subparagraph (A) to the same extent as any certified claimant who does not bring an action under this section.

(f) DEPOSIT OF EXCESS PAYMENTS BY CUBA UNDER CLAIMS AGREEMENT.—Any amounts paid by Cuba under any agreement entered into between the United States and Cuba settling certified claims under title V of the International Claims Settlement Act of 1949 that are in excess of the payments made on such certified claims after the application of subsection (e) shall be deposited into the United States Treasury.

(g) TERMINATION OF RIGHTS.—

(1) IN GENERAL.—All rights created under this section to bring an action for money damages with respect to property confiscated before the date of the enactment of this Act shall cease upon the transmittal to the Congress of a determination of the President under section 6233(c)(3).

(2) PENDING SUITS.—The termination of rights under paragraph (1) shall not affect suits commenced before the date of such termination, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this subsection had not been enacted.

**SEC. 6253. DETERMINATION OF CLAIMS TO CONFISCATED PROPERTY.**

(a) EVIDENCE OF OWNERSHIP.—

(1) CONCLUSIVENESS OF CERTIFIED CLAIMS.—In any action brought under this part, the courts shall accept as conclusive proof of ownership a certification of a claim to ownership that has been made by the Foreign Claims Settlement Commission pursuant to title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following).

(2) CLAIMS NOT CERTIFIED.—In the case of a claim that has not been certified by the Foreign Claims Settlement Commission before the enactment of this Act, a court may appoint a special master, including the Foreign Claims Settlement Commission, to make determinations regarding the amount and validity of claims to ownership of confiscated property. Such determinations are only for evi-

dentiary purposes in civil actions brought under this part and do not constitute certifications pursuant to title V of the International Claims Settlement Act of 1949.

(3) EFFECT OF DETERMINATIONS OF FOREIGN ENTITIES.—In determining ownership, courts shall not accept as conclusive evidence of ownership any findings, orders, judgments, or decrees from administrative agencies or courts of foreign countries or international organizations that invalidate the claim held by a United States national, unless the invalidation was found pursuant to binding international arbitration to which United States national submitted the claim.

(b) AMENDMENT OF THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949.—Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following) is amended by adding at the end the following new section:

''EVALUATION OF OWNERSHIP CLAIMS REFERRED BY DISTRICT COURTS OF THE UNITED STATES

''SEC. 514. Notwithstanding any other provision of this title and only for purposes of section 6252 the Cuban Liberty and Solidarity (LIBERTAD) Act, a United States district court, for fact-finding purposes, may refer to the Commission, and the Commission may determine, ques-

tions of the amount and ownership of a claim by a United States national (as defined in section 6204 of the Cuban Liberty and Solidarity (LIBERTAD) Act) resulting from the confiscation of property by the Government of Cuba described in section 503(a), whether or not the United States national qualified as a national of the United States (as defined in section 502(1)) at the time of the action by the Government of Cuba.''.

(c) RULE OF CONSTRUCTION.—Nothing in this subtitle or section 514 of the International Claims Settlement Act of 1949, as added by subsection (b), shall be construed—

(1) to require or otherwise authorize the claims of Cuban nationals who became United States citizens after their property was confiscated to be included in the claims certified to the Secretary of State by the Foreign Claims Settlement Commission for purposes of future negotiation and espousal of claims with a friendly government in Cuba when diplomatic relations are restored; or

(2) as superseding, amending, or otherwise altering certifications that have been made pursuant to title V of the International Claims Settlement Act of 1949 before the enactment of this Act.

**SEC. 6254. EXCLUSIVITY OF FOREIGN CLAIMS SETTLEMENT COMMISSION CERTIFICATION PROCEDURE.**

Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following), as amended by section 6253, is further amended by adding at the end the following new section:

''EXCLUSIVITY OF FOREIGN CLAIMS SETTLEMENT COMMISSION CERTIFICATION PROCEDURE

''SEC. 515. (a) Subject to subsection (b), neither any national of the United States who was eligible to file a claim under section 503 but did not timely file such claim under that section, nor any national of the United States (on the date of the enactment of this section) who was not eligible to file a claim under that section, nor any national of Cuba, including any agency, instrumentality, subdivision, or enterprise of the Government of Cuba or any local government of Cuba in place on the date of the enactment of this section, nor any successor thereto, whether or not recognized by the United States, shall have a claim to, participate in, or otherwise have an interest in, the compensation proceeds or other nonmonetary compensation paid or allocated to a national of the United States by virtue of a claim certified by the Commission under section 507, nor shall any court of the United States or any State court have jurisdiction to adjudicate any such claim.

''(b) Nothing in subsection (a) shall be construed to detract from or otherwise affect any rights in the shares of the capital stock of nationals of the United States owning claims certified by the Commission under section 507.''.

## PART 4—EXCLUSION OF CERTAIN ALIENS

### SEC. 6271. EXCLUSION FROM THE UNITED STATES OF ALIENS WHO HAVE CONFISCATED PROPERTY OF UNITED STATES NATIONALS OR WHO TRAFFIC IN SUCH PROPERTY.

(a) GROUNDS FOR EXCLUSION.—The Secretary of State, in consultation with the Attorney General, shall exclude from the United States any alien who the Secretary of State determines is a person who—

(1) has confiscated, or has directed or overseen the confiscation of, property a claim to which is owned by a United States national, or converts or has converted for personal gain confiscated property, a claim to which is owned by a United States national;

(2) traffics in confiscated property, a claim to which is owned by a United States national;

(3) is a corporate officer, principal, or shareholder with a controlling interest of an entity which has been involved in the confiscation of property or

trafficking in confiscated property, a claim to which is owned by a United States national; or

(4) is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

(b) DEFINITIONS.—As used in this section, the following terms have the following meanings:

(1) CONFISCATED; CONFISCATION.—The terms ''confiscated'' and ''confiscation'' refer to—

(A) the nationalization, expropriation, or other seizure by foreign governmental authority of ownership or control of property on or after January 1, 1959—

(i) without the property having been returned or adequate and effective compensation provided; or

(ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(B) the repudiation by foreign governmental authority of, the default by foreign governmental authority on, or the failure by foreign governmental authority to pay, on or after January 1, 1959—

(i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by foreign governmental authority;

(ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by foreign governmental authority; or

(iii) a debt which was incurred by foreign governmental authority in satisfaction or settlement of a confiscated property claim.

(2) PROPERTY.—The term ''property'' does not include claims arising from a territory in dispute as a result of war between United Nations member states in which the ultimate resolution of the disputed territory has not been resolved.

(3) TRAFFICS.—(A) A person or entity ''traffics'' in property if that person or entity knowingly and intentionally—

(i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or

otherwise acquires or holds an interest in confiscated property,

(ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or

(iii) causes, directs, participates in, or profits from, trafficking (as described in clauses (i) and (ii)) by another person, or otherwise engages in trafficking (as described in clauses (i) and (ii)) through another person,

without the authorization of the United States national who holds a claim to the property.

(B) The term ''traffics'' does not include—

(i) the delivery of international telecommunication signals to Cuba that are authorized by section 1705(e) of the Cuban Democracy Act of 1992 (22 U.S.C. 6004(e)); or

(ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national.

(c) NATIONAL INTEREST EXEMPTION.—This section shall not apply where the Secretary of State finds, on a case-by-case basis, that making a determination under

subsection (a) would be contrary to the national interest of the United States.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—This section applies to aliens seeking to enter the United States on or after the date of the enactment of this Act.

(2) TRAFFICKING.—This section applies only with respect to acts within the meaning of ''traffics'' that occur on or after the date of the enactment of this Act.

# TITLE VII—COMMITTEE ON THE JUDICIARY

**SEC. 7001. PATENT AND TRADEMARK FEES.**

Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note) is amended—

(1) in subsection (a) by striking ''1998'' and inserting ''2002'';

(2) in subsection (b)(2) by striking ''1998'' and inserting ''2002''; and

(3) in subsection (c)—

(A) by striking ''through 1998'' and inserting ''through 2002''; and

(B) by adding at the end the following:

''(9) $119,000,000 in fiscal year 1999.

''(10) $119,000,000 in fiscal year 2000.

''(11) $119,000,000 in fiscal year 2001.

''(12) $119,000,000 in fiscal year 2002.''.

**SEC. 7002. CIVIL MONETARY PENALTY SURCHARGE AND TELECOMMUNICATIONS CARRIER COMPLIANCE PAYMENTS.**

Public Law 103-414 is amended by adding at the end the following:

## "TITLE IV—CIVIL MONETARY PENALTY SURCHARGE AND TELECOMMUNICATIONS CARRIER COMPLIANCE PAYMENTS

**"SEC. 401. CIVIL MONETARY PENALTY SURCHARGE.**

''(a) IMPOSITION.—Notwithstanding any other provision of law, and subject to section 402(c) of this title, a surcharge of 40 percent of the principal amount of a civil monetary penalty shall be added to each civil monetary penalty at the time it is assessed by the United States or an agency thereof.

''(b) APPLICATION OF PAYMENTS.—Payments relating to a civil monetary penalty shall be applied in the following order: (1) to costs; (2) to principal; (3) to surcharges required by subsection (a) of this section; and (4) to interest.

''(c) EFFECTIVE DATES.—(1) A surcharge under subsection (a) of this section shall be added to all civil

monetary penalties assessed on or after October 1, 1995, or the date of enactment of this title, whichever is later.

''(2) The authority to add a surcharge under this section shall terminate on October 1, 1998.

''(d) LIMITATION.—The provisions of this section shall not apply to any civil monetary penalty assessed under title 26, United States Code.

**"SEC. 402. DEPARTMENT OF JUSTICE TELECOMMUNICATIONS CARRIER COMPLIANCE FUND.**

''(a) ESTABLISHMENT OF FUND.—There is hereby established in the United States Treasury a fund to be known as the Department of Justice Telecommunications Carrier Compliance Fund (hereinafter referred to as 'the Fund'), which shall be available to the Attorney General to the extent and in the amounts authorized by subsection (c) of this section to make payments to telecommunications carriers, as authorized by section 109 of the Communications Assistance for Law Enforcement Act.

''(b) OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, United States Code, the Attorney General may credit surcharges added pursuant to section 401 of this title to the Fund as offsetting collections.

''(c) REQUIREMENTS FOR APPROPRIATIONS OFFSET.—(1) Surcharges added pursuant to section 401 of

this title are authorized only to the extent and in the amounts provided for in advance in appropriations acts.

''(2)(A)(i) Subject to the requirements of this subparagraph, collections credited to the Fund are authorized to be appropriated in amounts of $56,000,000 for fiscal year 1996, and $112,000,000 for each of fiscal years 1997 and 1998.

''(ii) Notwithstanding clause (i), the maximum amount authorized to be appropriated for any such fiscal year shall equal the amount that the Office of Management and Budget estimates will be credited to the Fund during that year.

''(B) Amounts described in subparagraph (A) of this paragraph are authorized to be appropriated without fiscal year limitation.

''(d) TERMINATION.—(1) The Attorney General may terminate the Fund at such time as the Attorney General determines that the Fund is no longer necessary.

''(2) Any balance in the Fund at the time of its termination shall be deposited in the general fund of the Treasury.

''(3) A decision of the Attorney General to terminate the Fund shall not be subject to judicial review.

**"SEC. 403. DEFINITIONS.**

''For purposes of this title, the terms 'agency' and 'civil monetary penalty' have the meanings given to them by section 3 of the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, October 5, 1990, 104 Stat. 890 (28 U.S.C. 2461 note).''.

# TITLE VIII—COMMITTEE ON NATIONAL SECURITY

## Subtitle A—Military Retired Pay

**SEC. 8001. ELIMINATION OF DISPARITY BETWEEN EFFECTIVE DATES FOR MILITARY AND CIVILIAN RETIREE COST-OF-LIVING ADJUSTMENTS FOR FISCAL YEARS 1996, 1997, AND 1998.**

(a) CONFORMANCE WITH SCHEDULE FOR CIVIL SERVICE COLAS.—Subparagraph (B) of section 1401a(b)(2) of title 10, United States Code, is amended—

(1) by striking out ''THROUGH 1998'' the first place it appears and all that follows through ''In the case of'' the second place it appears and inserting in lieu thereof ''THROUGH 1996.—In the case of'';

(2) by striking ''of 1994, 1995, 1996, or 1997'' and inserting in lieu thereof ''of 1993, 1994, or 1995''; and

(3) by striking out ''September'' and inserting in lieu thereof ''March''.

(b) REPEAL OF PRIOR CONDITIONAL ENACTMENT.—Section 8114A(b) of Public Law 103–335 (108 Stat. 2648) is repealed.

# Subtitle B—Naval Petroleum Reserves

**SEC. 8011. SALE OF NAVAL PETROLEUM RESERVES.**

(a) SALE OF RESERVES REQUIRED.—Chapter 641 of title 10, United States Code, is amended by inserting after section 7421 the following new section:

**"§ 7421a. Sale of naval petroleum reserves**

''(a) SALE REQUIRED.—(1) Notwithstanding any other provision of this chapter, the Secretary shall sell all right, title, and interest of the United States in and to the lands owned or controlled by the United States inside the naval petroleum and oil shale reserves established by this chapter. In the case of Naval Petroleum Reserve Numbered 1, the lands to be sold shall include sections 16 and 36 of township 30 south, range 23 east, Mount Diablo Principal Meridian, California.

''(2) Not later than September 30, 1996, the Secretary shall enter into one or more contracts for the sale of all of the interest of the United States in the naval petroleum reserves.

''(b) TIMING AND ADMINISTRATION OF SALE.—(1) Not later than January 1, 1996, the Secretary shall retain

the services of five independent experts in the valuation of oil and gas fields to conduct separate assessments, in a manner consistent with commercial practices, of the fair market value of the interest of the United States in each naval petroleum reserve. In making their assessments for each naval petroleum reserve, the independent experts shall consider (among other factors) all equipment and facilities to be included in the sale, the net present value of the reserve, and the net present value of the anticipated revenue stream that the Secretary determines the Treasury would receive from the reserve if it were not sold, adjusted for any anticipated increases in tax revenues that would result if it were sold. The independent experts shall complete their assessments not later than June 1, 1996. In setting the minimum acceptable price for each naval petroleum reserve, the Secretary shall consider the average of the five assessments regarding the reserve or, if more advantageous to the Government, the average of three assessments after excluding the high and low assessments.

''(2) Not later than March 1, 1996, the Secretary shall retain the services of an investment banker to independently administer, in a manner consistent with commercial practices and in a manner that maximizes sale proceeds to the Government, the sale of the naval petroleum reserves under this section. The Secretary may enter

into the contracts required under this paragraph and paragraph (1) on a noncompetitive basis.

''(3) Not later than June 1, 1996, the sales administrator selected under paragraph (2) shall complete a draft contract for the sale of each naval petroleum reserve, which shall accompany the invitation for bids and describe the terms and provisions of the sale of the interest of the United States in the reserve. Each draft contract shall identify all equipment and facilities to be included in the sales. Each draft contract, including the terms and provisions of the sale of the interest of the United States in the naval petroleum reserves, shall be subject to review and approval by the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget.

''(4) Not later than July 1, 1996, the Secretary shall publish an invitation for bids for the purchase of the naval petroleum reserves.

''(5) Not later than September 1, 1996, the Secretary shall accept the highest responsible offer for purchase of the interest of the United States in the naval petroleum reserves, or a particular reserve, that meets or exceeds the minimum acceptable price determined under paragraph (1). The Secretary may accept an offer for only a portion of a reserve so long as the entire reserve is still sold under

this section at a price that meets or exceeds the minimum acceptable price.

''(c) FUTURE LIABILITIES.—To effectuate the sale of the interest of the United States in a naval petroleum reserve, the Secretary may extend such indemnities and warranties as the Secretary considers reasonable and necessary to protect the purchaser from claims arising from the ownership in the reserve by the United States.

''(d) SPECIAL RULES PREPARATORY TO SALE OF NAVAL PETROLEUM RESERVE NUMBERED 1.—(1) Not later than June 1, 1996, the Secretary shall finalize equity interests of the known oil and gas zones in Naval Petroleum Reserve Numbered 1 in the manner provided by this subsection.

''(2) The Secretary shall retain the services of an independent petroleum engineer, mutually acceptable to the equity owners, who shall prepare a recommendation on final equity figures. The Secretary may accept the recommendation of the independent petroleum engineer for final equity in each known oil and gas zone and establish final equity interest in the Naval Petroleum Reserve Numbered 1 in accordance with such recommendation, or the Secretary may use such other method to establish final equity interest in that reserve as the Secretary considers

appropriate. The Secretary may enter into the contract required under this paragraph on a noncompetitive basis.

''(3) If, on the effective date of this section, there is an ongoing equity redetermination dispute between the equity owners under section 9(b) of the unit plan contract, such dispute shall be resolved in the manner provided in the unit plan contract not later than June 1, 1996. Such resolution shall be considered final for all purposes under this section.

''(4) In this section, the term 'unit plan contract' means the unit plan contract between equity owners of the lands within the boundaries of Naval Petroleum Reserve Numbered 1 (Elk Hills) entered into on June 19, 1944.

''(e) PRODUCTION ALLOCATION REGARDING NAVAL PETROLEUM RESERVE NUMBERED 1.—(1) As part of the contract for purchase of Naval Petroleum Reserve Numbered 1, the purchaser of the interest of the United States in that reserve shall agree to make up to 25 percent of the purchaser's share of annual petroleum production from the purchased lands available for sale to small refiners, which do not have their own adequate sources of supply of petroleum, for processing or use only in their own refineries. None of the reserved production sold to small refiners may be resold in kind. The purchaser of that reserve may reduce the quantity of petroleum reserved under

this subsection in the event of an insufficient number of qualified bids. The seller of this petroleum production has the right to refuse bids that are less than the prevailing market price of comparable oil.

''(2) The purchaser of Naval Petroleum Reserve Numbered 1 shall also agree to ensure that the terms of every sale of the purchaser's share of annual petroleum production from the purchased lands shall be so structured as to give full and equal opportunity for the acquisition of petroleum by all interested persons, including major and independent oil producers and refiners alike.

''(f) MAINTAINING PRODUCTION PENDING SALE OF NAVAL PETROLEUM RESERVE NUMBERED 1.—Until the sale of Naval Petroleum Reserve Numbered 1 is completed under this section, the Secretary shall continue to produce that reserve at the maximum daily oil or gas rate from a reservoir, which will permit maximum economic development of the reservoir consistent with sound oil field engineering practices in accordance with section 3 of the unit plan contract. The definition of maximum efficient rate in section 7420(6) of this title shall not apply to Naval Petroleum Reserve Numbered 1.

''(g) EFFECT ON EXISTING CONTRACTS.—(1) In the case of any contract, in effect on the effective date of this section, for the purchase of production from any part of

the United States' share of the naval petroleum reserves, the sale of the interest of the United States in the reserves shall be subject to the contract for a period of three months after the closing date of the sale or until termination of the contract, whichever occurs first. The term of any contract entered into after the effective date of this section for the purchase of such production shall not exceed the anticipated closing date for the sale of the reserve.

''(2) In the case of Naval Petroleum Reserve Numbered 1, the Secretary shall exercise the termination procedures provided in the contract between the United States and Bechtel Petroleum Operation, Inc., Contract Number DE–ACO1–85FE60520 so that the contract terminates not later than the date of closing of the sale of that reserve.

''(3) In the case of Naval Petroleum Reserve Numbered 1, the Secretary shall exercise the termination procedures provided in the unit plan contract so that the unit plan contract terminates not later than the date of closing of the sale of that reserve.

''(h) OFFER OF SETTLEMENT OF STATE OF CALIFORNIA CLAIMS REGARDING NAVAL PETROLEUM RESERVE NUMBERED 1.—(1) In connection with the sale of Naval Petroleum Reserve Numbered 1, the Secretary shall

offer to settle all claims against the United States by the State of California and the Teachers' Retirement Fund of the State of California with respect to lands within that reserve, including sections 16 and 36 of township 30 south, range 23 east, Mount Diablo Principal Meridian, California, or production or proceeds of sale from that reserve. Subject to paragraph (2), the Secretary shall offer in settlement of such claims—

''(A) a payment from funds provided for this purpose in advance in appropriation Acts;

''(B) a grant of land pursuant to sections 2275 and 2276 of the Revised Statutes of the United States (43 U.S.C. 851 and 852) so long as such land is not generating revenue for the United States;

''(C) any other option that would not be inconsistent with the Congressional Budget Act of 1974 (2 U.S.C. 621 et seq.); or

''(D) any combination of subparagraphs (A), (B), and (C).

''(2) The value of any payment, grant, or option (or combination thereof) offered as settlement under paragraph (1) may not exceed an amount equal to seven percent of the proceeds from the sale of Naval Petroleum Reserve Numbered 1, after deducting the costs incurred to conduct the sale of that reserve.

"(3) Acceptance of the settlement offered under paragraph (1) shall be subject to the condition that all claims against the United States by the State of California or the Teachers' Retirement Fund of the State of California are released with respect to lands within the Naval Petroleum Reserve Numbered 1, including sections 16 and 36 of township 30 south, range 23 east, Mount Diablo Principal Meridian, California, or production or proceeds of sale from that reserve. The Secretary may specify the manner in which the release of such claims shall be evidenced.

"(i) EFFECT ON ANTITRUST LAWS.—Nothing in this section shall be construed to alter the application of the antitrust laws of the United States to the purchaser of a naval petroleum reserve or to the lands in the naval petroleum reserves subject to sale under this section upon the completion of the sale.

"(j) PRESERVATION OF PRIVATE RIGHT, TITLE, AND INTEREST.—Nothing in this section shall be construed to adversely affect the ownership interest of any other entity having any right, title, and interest in and to lands within the boundaries of the naval petroleum reserves.

"(k) CONGRESSIONAL NOTIFICATION.—Section 7431 of this title shall not apply to the sale of the naval petroleum reserves under this section. However, the Secretary

may not enter into a contract for the sale of a naval petroleum reserve until the end of the 15-day period beginning on the date on which the Secretary notifies the Committee on Armed Services of the Senate and the Committee on National Security and the Committee on Commerce of the House of Representatives that the Secretary has accepted an offer under subsection (b)(5) for the sale of that reserve.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7421 the following new item:

''7421a. Sale of naval petroleum reserves.''.

# Subtitle C—National Defense Stockpile

## SEC. 8021. DISPOSAL OF CERTAIN MATERIALS IN NATIONAL DEFENSE STOCKPILE FOR DEFICIT REDUCTION.

(a) DISPOSALS REQUIRED.—(1) During fiscal year 1996, the President shall dispose of all cobalt contained in the National Defense Stockpile that, as of the date of the enactment of this Act, is authorized for disposal under any law (other than this Act).

(2) In addition to the disposal of cobalt under paragraph (1), the President shall dispose of additional quantities of cobalt and quantities of aluminum, ferro colum-

bium, germanium, palladium, platinum, and rubber contained in the National Defense Stockpile so as to result in receipts to the United States in amounts equal to—

(A) $21,000,000 during the fiscal year ending September 30, 1996;

(B) $338,000,000 during the five-fiscal year period ending on September 30, 2000; and

(C) $649,000,000 during the seven-fiscal year period ending on September 30, 2002.

(3) The President is not required to include the disposal of the materials identified in paragraph (2) in an annual materials plan for the National Defense Stockpile. Disposals made under this section may be made without consideration of the requirements of an annual materials plan.

(b) LIMITATION ON DISPOSAL QUANTITY.—The total quantities of materials authorized for disposal by the President under subsection (a)(2) may not exceed the amounts set forth in the following table:

**Authorized Stockpile Disposals**

| Material for disposal | Quantity |
|---|---|
| Aluminum | 62,881 short tons |
| Cobalt | 42,482,323 pounds contained |
| Ferro Columbium | 930,911 pounds contained |
| Germanium | 68,207 kilograms |
| Palladium | 1,264,601 troy ounces |
| Platinum | 452,641 troy ounces |
| Rubber | 125,138 long tons |

(c) DEPOSIT OF RECEIPTS.—Notwithstanding section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h), funds received as a result of the disposal of materials under subsection (a)(2) shall be deposited into the general fund of the Treasury for the purpose of deficit reduction.

(d) RELATIONSHIP TO OTHER DISPOSAL AUTHORITY.—The disposal authority provided in subsection (a)(2) is new disposal authority and is in addition to, and shall not affect, any other disposal authority provided by law regarding the materials specified in such subsection.

(e) TERMINATION OF DISPOSAL AUTHORITY.—The President may not use the disposal authority provided in subsection (a)(2) after the date on which the total amount of receipts specified in subparagraph (C) of such subsection is achieved.

(f) DEFINITION.—The term ''National Defense Stockpile'' means the National Defense Stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

# TITLE IX—COMMITTEE ON RESOURCES

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# Subtitle A—Alaska and Helium Privatization

## PART 1—ALASKA

### SEC. 9001. EXPORTS OF ALASKAN NORTH SLOPE OIL.

(a) AMENDMENT OF MINERAL LEASING ACT.—Section 28(s) of the Mineral Leasing Act (30 U.S.C. 185(s)) is amended to read as follows:

''EXPORTS OF ALASKAN NORTH SLOPE OIL

''(s)(1) Subject to paragraphs (2) through (6) of this subsection and notwithstanding any other provision of this Act or any other provision of law (including any regulation) applicable to the export of oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C.

1652), such oil may be exported unless the President finds that exportation of this oil is not in the national interest. The President shall make his national interest determination within 5 months after the date of enactment of this subsection. In evaluating whether exports of this oil are in the national interest, the President shall at a minimum consider—

''(A) whether exports of this oil would diminish the total quantity or quality of petroleum available to the United States;

''(B) the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential adverse effects of exports of this oil on the environment, which shall be completed within four months of the date of the enactment of this subsection; and

''(C) whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including in noncontiguous States and Pacific territories.

If the President determines that exports of this oil are in the national interest, he may impose such terms and

conditions (other than a volume limitation) as are necessary or appropriate to ensure that such exports are consistent with the national interest.

''(2) Except in the case of oil exported to a country with which the United States entered into a bilateral international oil supply agreement before November 26, 1979, or to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency, any oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) shall, when exported, be transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (as determined in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)).

''(3) Nothing in this subsection shall restrict the authority of the President under the Constitution, the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), or the National Emergencies Act (50 U.S.C. 1601 et seq.) to prohibit exports of this oil or under Part B of title II of the Energy Policy and Conservation Act (42 U.S.C. 6271–76).

''(4) The Secretary of Commerce shall issue any rules necessary for implementation of the President's national interest determination, including any licensing require-

ments and conditions, within 30 days of the date of such determination by the President. The Secretary of Commerce shall consult with the Secretary of Energy in administering the provisions of this subsection.

''(5) If the Secretary of Commerce finds that exporting oil under authority of this subsection has caused sustained material oil supply shortages or sustained oil prices significantly above world market levels and further finds that these supply shortages or price increases have caused or are likely to cause sustained material adverse employment effects in the United States, the Secretary of Commerce, in consultation with the Secretary of Energy, shall recommend, and the President may take, appropriate action concerning exports of this oil, which may include modifying or revoking authority to export such oil.

''(6) Administrative action under this subsection is not subject to sections 551 and 553 through 559 of title 5, United States Code.''.

(b) GAO REPORT.—

(1) REVIEW.—The Comptroller General of the United States shall conduct a review of energy production in California and Alaska and the effects of Alaskan North Slope oil exports, if any, on consumers, independent refiners, and shipbuilding and ship repair yards on the West Coast and in Hawaii. The

Comptroller General shall commence this review 2 years after the date of enactment of this Act and, within 6 months after commencing the review, shall provide a report to the Committee on Resources and the Committee on Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(2) CONTENTS OF REPORT.—The report shall contain a statement of the principal findings of the review and recommendations for Congress and the President to address job loss in the shipbuilding and ship repair industry on the West Coast, as well as adverse impacts on consumers and refiners on the West Coast and in Hawaii, that the Comptroller General attributes to Alaska North Slope oil exports.

**SEC. 9002. ARCTIC COASTAL PLAIN LEASING AND REVENUE.**

(a) PURPOSE.—It is the purpose of this section to reduce the Federal deficit by an estimated $1,300,000,000 over the next 5 years. This revenue will be derived from competitive bonus bids for oil and gas leases in the Coastal Plain area of Alaska's North Slope.

(b) DEFINITIONS.—For the purposes of this section:

(1) The term ''Secretary'' means the Secretary of the Interior.

(2) The term ''Coastal Plain'' means that portion of the Arctic National Wildlife Refuge identified in section 1002(b)(1) of the Alaska National Interest Lands Conservation Act of 1980 (Public Law 96–487; 16 U.S.C. 3142(b)(1)) consisting of approximately 1,549,000 acres.

(c) COMPATIBILITY.—Congress hereby determines that the oil and gas leasing program and activities authorized by this section in the Coastal Plain are compatible with the purposes for which the Arctic National Wildlife Refuge was established, and that no further findings or decisions are required to implement this determination.

(d) AUTHORIZATION.—(1) Congress hereby authorizes and directs the Secretary to establish and promptly implement a program to assure the expeditious competitive leasing exploration, development, production, and transportation of the oil and gas resources of the Coastal Plain. Regulations to implement this program and to govern oil and gas leasing, exploration, development and production shall be promulgated by the Secretary within 6 months of the date of enactment of this section.

(2) The Coastal Plain leasing program required by paragraph (1) shall include the following:

(A) The first lease sale of not less than 200,000 acres shall be conducted within 12 months of the date of enactment of this section.

(B) The lease sales shall be based upon an industry nomination process.

(C) The Secretary is directed to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, any oil and gas lease on unleased Federal lands within the Coastal Plain. These regulations may provide for the deposit of cash bids in an interest-bearing account until the Secretary accepts the bids, with interest earned paid to the General Treasury for bids that are accepted, and to the unsuccessful bidders for bids that are rejected.

(D) Royalty payments shall not be less than 12½ percent, and rental payments shall be prescribed by the Secretary.

(E) The Attorney General of the United States and the Federal Trade Commission may conduct such review of lease terms and lease sale activities as are necessary to ensure compliance with the antitrust laws.

(F) The size of lease tracts may be up to 11,520 acres but not less than 2,560 acres, as deter-

mined by the Secretary, except that the Secretary may lease smaller tracts if he determines smaller tracts are necessary to promote a more competitive leasing program or are necessary in certain locations to mitigate reasonably foreseeable impacts on the environment.

(G) Each lease shall be issued for an initial period of up to 10 years and shall be extended as long as oil or gas is produced in paying quantities from the lease or unit area to which the lease is committed or as drilling or reworking operations as approved by the Secretary are conducted thereon.

(H) The Secretary is authorized and directed to promulgate regulations and to include terms in leases to ensure that—

(i) activities are conducted pursuant to an approved exploration or development plan;

(ii) lessees secure an appropriate performance bond to cover activities;

(iii) provision is made for the suspension, cancellation, assignment, relinquishment and unitization of leases; and

(iv) the Secretary has access to lease information and that confidential, privileged or pro-

prietary information furnished by lessees is adequately protected.

(e) JUDICIAL REVIEW.—Any complaint filed seeking judicial review of an action of the Secretary in promulgating any regulation under this section may be filed only in the United States Court of Appeals for the District of Columbia, and such complaint shall be filed within 90 days from the date of such promulgation, or after such date if such complaint is based solely on grounds arising after such 90th day, in which case the complaint must be filed within 90 days after the complainant knew or reasonably should have known of the grounds for the complaint. Any complaint seeking judicial review of any other actions of the Secretary under this section may be filed in any appropriate district court of the United States, and such complaint must be filed within 90 days from the date of the action being challenged, or after such date if such complaint is based solely on grounds arising after such 90th day, in which case the complaint must be filed within 90 days after the complainant knew or reasonably should have known of the grounds for the complaint.

(f) ADMINISTRATION.—(1) Section 1003 of the Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2452; 16 U.S.C. 3143) is repealed.

(2) This section shall be considered the primary land management authorization for all activities associated with exploration, development, and production from the Coastal Plain. No land management review, determination, or other action shall be required except as specifically authorized by this section.

(g) PROTECTION OF FISH AND WILDLIFE RESOURCES AND OTHER ENVIRONMENTAL VALUES.—(1) Before conducting a competitive oil and gas lease sale under this section, the Secretary shall promulgate, within 6 months, as provided in subsection (d)(1), such rules and regulations as are necessary to ensure that oil and gas exploration, development, production, and transportation activities undertaken in the Coastal Plain achieve the reasonable protection of the fish and wildlife resources, environment and subsistence uses of the Coastal Plain.

(2) The Secretary shall administer the provisions of this section through regulations and lease terms that the Secretary determines to be necessary to mitigate reasonably foreseeable and significantly adverse effects on the fish and wildlife, surface resources and subsistence resources of the Coastal Plain.

(3)(A) The Secretary, after consultation with the State of Alaska, the city of Kaktovik, Alaska, and the North Slope Borough, is authorized to close to leasing and

designate up to 30,000 acres of the Coastal Plain as Special Areas if the Secretary determines that these lands are of such unique character and interest so as to require special management and regulatory protection. The Secretary shall notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives 90 days in advance of making such designations. The Secretary may permit leasing of all or portions of any lands within the Coastal Plain designated as Special Areas by setting lease terms that limit or condition surface use and occupancy by lessees of such lands but permit the use of horizontal drilling technology from sites on leases located outside the designated Special Areas.

(B) Notwithstanding any other provision of law or any international agreement to which the United States is a party, the Secretary's sole authority to close lands within the Coastal Plain to oil and gas leasing and to exploration, development, and production as provided for in this part is set forth in subparagraph (A).

(4) The Secretary shall, in consultation with the State of Alaska, the city of Kaktovik, Alaska, and the North Slope Borough, develop guidelines to encourage the siting of facilities having common use characteristics (service bases, ports and docks, airports, major pipelines

and roads) in a manner which leads to facility consolidation, avoids unnecessary duplication, utilizes existing facilities, minimizes impacts on fish, wildlife, habitat and the subsistence activities of residents of Native communities, and avoids disruption of the lives of the residents of the Village of Kaktovik and other communities.

(5) Notwithstanding title XI of the Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2457; 16 U.S.C. 3161 et seq.), the Secretary is authorized and directed to grant, under sections 28(a) through (t) and (v) through (y) of the Mineral Leasing Act (30 U.S.C. 185), rights-of-way and easements across the Coastal Plain for the purposes of this section, for pipeline construction, and the transportation of oil and gas and related purposes.

(6) The Secretary is authorized to close, on a seasonal basis, portions of the Coastal Plain to exploratory drilling activities as necessary to protect caribou calving areas and other species of fish and wildlife.

(h) APPLICATION OF ENVIRONMENTAL LAWS.—The ''Final Legislative Environmental Impact Statement'' (April 1987) prepared pursuant to section 1002 of the Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2449; 16 U.S.C. 3142) and section 102(2)(C) of the National Environmental Policy Act of 1969 (89

Stat. 424; 42 U.S.C. 4332(2)(C)) is hereby determined to be adequate and legally sufficient for all actions authorized pursuant to this section, including all phases of oil and gas leasing, exploration, development, production, transportation and related activities, including the granting of rights-of-way, use permits and other authorizations.

(i) NEW REVENUES.—(1) Notwithstanding any other provision of law, all revenues received from competitive bids, sales, bonuses, royalties, rents, fees, interest or other income derived from the leasing of oil and gas resources within the Coastal Plain shall be deposited into the Treasury of the United States: *Provided,* That 50 percent of all such Coastal Plain revenues shall be paid by the Secretary of the Treasury semiannually, on March 30th and on September 30th of each year, to the State of Alaska.

(2) On March 1st of each year following the date of enactment of this section, the Secretary shall prepare and submit to the Congress an annual report on the revenues derived and on the leasing program authorized by this section.

(j) CONVEYANCE.—Notwithstanding the provisions of section 1302(h)(2) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192(h)(2)), the Secretary is authorized and directed to convey (1) to the Kaktovik Inupiat Corporation the surface estate of the lands de-

scribed in paragraph 2 of Public Land Order 6959, to the extent necessary to fulfill the corporation's entitlement under section 12 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611), and (2) to the Arctic Slope Regional Corporation the subsurface estate beneath such surface estate pursuant to the August 9, 1983, agreement between the Arctic Slope Regional Corporation and the United States of America.

(k) PENALTY.—Any person, including any Federal official, who fails to comply with any provision or mandate of this section, a lease term, or a regulation promulgated under this section, after notice of such failure and expiration of a reasonable period for corrective action, shall be liable, after hearing, for a civil penalty of not more than $10,000 for each day of the continuance of such failure.

(l) COMMUNITY ASSISTANCE.—There is hereby established a Community Assistance Fund in the Treasury which shall be maintained at a level of $5,000,000 annually from the Federal share of Coastal Plain revenues and shall be available to the Secretary for the purposes of this section. Organized boroughs, other municipal subdivisions of the State of Alaska, and recognized Indian Reorganization Act entities which are impacted by activities authorized under this section shall be eligible, on application to the Secretary, for local assistance from the Community

Assistance Fund for needed social services and to provide public services and facilities required in connection with supporting exploration and development of the Coastal Plain.

(m) EMPLOYMENT AND CONTRACTING.—As a condition of any leases, permits, or other Federal authorizations granted or issued pursuant to this section, a recipient of those leases, permits, or authorizations shall be required to use its best efforts to assure that the lessee and its agents and contractors provide a fair share of employment and contracting for Alaska Natives and Alaska Native Corporations from throughout the State.

(n) USE OF ANWR REVENUES.—

(1) ESTABLISHMENT OF ENDOWMENT.—There is hereby established in the general fund of the Treasury a separate account which shall be known as the National Endowment for Fish and Wildlife.

(2) CONTENTS.—(A) Except as provided in subparagraph (B), the Endowment shall consist of revenues received from the following sources:

(i) Gifts, devises, and bequests to the Endowment.

(ii) Amounts appropriated by the Congress to the Endowment.

(iii) Any revenues deposited into the Treasury of the United States under subsection (i), from the Federal share of revenues derived from oil and gas leasing within the Coastal Plain, that exceed $1,300,000,000.

(B) After the Endowment has reached a level of $250,000,000 in principal, further payments to the Endowment shall consist only of the following:

(i) Gifts, devises, and bequests to the Endowment.

(ii) Amounts appropriated by the Congress to the Endowment.

(iii) 5 percent of the Federal royalties derived from commercial production of oil and gas on Federal leases on the Coastal Plain.

(3) ESTABLISHMENT OF FISH AND WILDLIFE CONSERVATION COMMISSION.—(A) To carry out the purposes of this subsection, there is hereby established a commission to be known as the Fish and Wildlife Conservation Commission.

(B) The Commission shall consist of—

(i) the Secretary of the Interior, who shall be the chairman,

(ii) 3 Members of the Senate selected by the President of the Senate, and

(iii) 3 Members of the House of Representatives selected by the Speaker.

(C) At least 1 member of the Commission selected from each House of Congress shall be a member of the minority party in that House.

(D) Any Member of the House of Representatives who is a member of the Commission, if reelected to the succeeding Congress, may serve on the Commission notwithstanding the expiration of a Congress.

(E) Any vacancy on the Commission shall be filled in the same manner as the original appointment.

(4) EXPENDITURES BY COMMISSION.—(A) The Fish and Wildlife Commission may make expenditures from the Endowment for the following fish and wildlife conservation purposes:

(i) Acquisition of important habitat lands for endangered species or threatened species from owners of private property. Such lands may be acquired solely on a willing seller basis and shall be managed by the Secretary of the Interior for the conservation of such species pursuant to the terms of section 5 of the En-

dangered Species Act of 1973 (16 U.S.C. 1534).

(ii) Provision of funding for purposes authorized under the Endangered Species Act of 1973.

(iii) Provision of funds to the North American Wetlands Conservation Fund pursuant to the North American Wetlands Conservation Act (16 U.S.C. 4401 et seq.).

(B) The amount expended under subparagraph (A)(iii) each fiscal year shall equal or exceed 25 percent of the total expenditures from the Endowment in that fiscal year.

(C) The Secretary of the Interior may not recommend any lands or interest in lands for purchase or other forms of acquisition using funds made available under the terms of this section unless the Secretary of the Interior—

(i) has determined that such lands are necessary for the conservation of endangered species or other fish and wildlife; and

(ii) has consulted with the county or other unit of local government in which such lands are located and with the Governor of the State concerned.

(D) Land or an interest in land may not be acquired with moneys from the Endowment unless—

(i) the acquisition thereof has been approved by the Governor of the State in which the land is located; and

(ii) the owner of the land or interest has offered the land or interest for acquisition under this subsection and consented to the acquisition.

(5) ANNUAL REPORT.—The Commission shall, through its chairman, annually report in detail to the Congress, by not later than the first Monday in December, regarding the operations of the Commission during the preceding fiscal year.

(6) STATE LAW.—The jurisdiction of any State, both civil and criminal, over persons upon areas acquired under this subsection shall not be changed or otherwise affected by reason of the acquisition and administration of the areas by the United States as endangered species habitat. Nothing in this subsection is intended to interfere with the operation of the game laws of the States.

(7) ADMINISTRATION OF AREAS ACQUIRED.—Areas of lands, waters, or interest therein acquired or reserved pursuant to this subsection shall, unless

otherwise provided by law, be administered by the Secretary of the Interior under rules and regulations prescribed by the Secretary to conserve and protect endangered species in accordance with the Endangered Species Act of 1973, or to restore or develop adequate wildlife habitat.

(8) DEFINITIONS.—In this subsection:

(A) The term ''Commission'' means the Fish and Wildlife Conservation Commission established by this subsection.

(B) The term ''Endowment'' means the National Endowment for Fish and Wildlife established by this subsection.

(9) CONFORMING AMENDMENT.—Section 7 of the North American Wetlands Conservation Act of 1989 (16 U.S.C. 4406) is amended by adding at the end the following:

''(e) FISH AND WILDLIFE COMMISSION FUNDING.—In addition to the amounts made available under subsections (a), (b), and (c) of this section, the Council may receive funds from the Fish and Wildlife Commission to carry out the purposes of this Act. Use of such funds shall not be subject to the cost allocation requirements of section 8 of this Act.''.

**SEC. 9003. ALASKA POWER ADMINISTRATION SALE.**

(a) DEFINITIONS.—For purposes of this section:

(1) The term ''Eklutna assets'' means the Eklutna Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Eklutna Purchase Agreement.

(2) The term ''Eklutna Purchase Agreement'' means the August 2, 1989, Eklutna Purchase Agreement between the Alaska Power Administration of the Department of Energy and the Eklutna Purchasers, together with any amendments thereto which were adopted before the enactment of this section.

(3) The term ''Eklutna Purchasers'' means the Municipality of Anchorage doing business as Municipal Light and Power, the Chugach Electric Association, Inc. and the Matanuska Electric Association, Inc.

(4) The term ''Secretary'' means the Secretary of Energy except where otherwise specified.

(5) The term ''Snettishan assets'' means the Snettisham Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Snettisham Purchase Agreement.

(6) The term ''Snettisham Purchase Agreement'' means the February 10, 1989, Snettisham

Purchase Agreement between the Alaska Power Administration of the Department of Energy and the Alaska Power Authority and its successors in interest, together with any amendments thereto which were adopted before the enactment of this section.

(b) SALE OF SNETTISHAM AND EKLUNTA ASSETS.—

(1) SNETTISHAM.—The Secretary is authorized and directed to sell and transfer the Snettisham assets to the State of Alaska in accordance with the terms of this section and the Snettisham Purchase Agreement.

(2) EKLUTNA.—The Secretary is authorized and directed to sell and transfer the Eklutna assets to the Eklutna Purchasers in accordance with the terms of this section and the Eklutna Purchase Agreement.

(3) COOPERATION OF OTHER AGENCIES.—Other departments, agencies, and instrumentalities of the United States shall cooperate with the Secretary in implementing the sales and transfers under this section.

(4) AUTHORIZATION OF APPROPRIATIONS; CONTRIBUTED FUNDS.—(A) There are authorized to be appropriated such sums as may be necessary to prepare, survey, or acquire Snettisham and Eklutna as-

sets for sale and transfer under this section. Such preparations and acquisitions shall provide sufficient title in the assets to ensure beneficial use, enjoyment, and occupancy thereof to the purchasers.

(B) Notwithstanding any other provision of law, the Alaska Power Administration is authorized to receive, administer, and expend such contributed funds as may be provided by the Eklutna Purchasers or customers or the Snettisham Purchasers or customers for the purposes of upgrading, improving, maintaining, or administering Eklutna or Snettisham. Upon the termination of the Alaska Power Administration required under subsection (d), the Secretary of Energy shall administer and expend any remaining balances of such contributed funds for the purposes intended by the contributors.

(C) The Secretary is directed to use up to $5,000,000 from unobligated balances available to the Department of Energy to fund any sale preparation costs for the sales under this section, and shall provide an accounting of all sale preparation costs to the Committee on Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate within 60 days after completion of the sale.

(c) GENERAL PROVISIONS.—

(1) RIGHTS-OF-WAY AND OTHER LANDS FOR THE EKLUTNA PROJECT.—With respect to Eklutna lands described in Exhibit A of the Eklutna Purchase Agreement:

(A) The Secretary of the Interior shall issue rights-of-way to the Alaska Power Administration for subsequent reassignment to the Eklutna Purchasers at no cost to the Eklutna Purchasers.

(B) Such rights-of-way shall remain effective for a period equal to the life of the Eklutna hydroelectric project as extended by improvements, repairs, renewals, or replacements.

(C) Such rights-of-way shall be sufficient for the operation, maintenance, repair, and replacement of, and access to, the facilities of the Eklutna hydroelectric project located on military lands and lands managed by the Bureau of Land Management, including land selected by, but not yet conveyed to, the State of Alaska.

(D) If the Eklutna Purchasers subsequently sell or transfer the Eklutna hydroelectric project to private ownership, the Bureau of Land Management may assess reason-

able and customary fees for continued use of the rights-of-way on lands managed by the Bureau of Land Management and military lands in accordance with applicable law.

(E) The Secretary shall transfer fee title to lands at Anchorage Substation to the Eklutna Purchasers at no additional cost if the Secretary of the Interior determines that pending claims to and selections of those lands are invalid or relinquished.

(F) With respect only to the Eklutna lands identified in Exhibit A of the Eklutna Purchase Agreement, the State of Alaska may select, and the Secretary of the Interior shall convey, to the State, improved lands under the selection entitlements in section 6 of the Alaska Statehood Act (Public Law 85–508; 72 Stat. 339) and the North Anchorage Land Agreement of January 31, 1983. The conveyance of such lands is subject to the rights-of-way provided to the Eklutna Purchasers under subparagraph (A).

(2) LANDS FOR THE SNETTISHAM PROJECT.—With respect to the Snettisham lands identified in Exhibit A of the Snettisham Purchase Agreement, the State of Alaska may select, and the Secretary of

the Interior shall convey to the State, improved lands under the selection entitlement in section 6 of the Alaska Statehood Act (Public Law 85–508; 72 Stat. 339).

(3) EFFECT ON STATE SELECTIONS.—Notwithstanding the expiration of the right of the State of Alaska to make selections under section 6 of the Alaska Statehood Act (Public Law 85–508; 72 Stat. 339), the State of Alaska may select lands authorized for selection under this section or any Purchase Agreement incorporated into or ratified by this section. The State shall complete such selections within one year after the date of the enactment of this section. The Secretary of the Interior shall convey lands selected by the State under this section notwithstanding the limitation contained in section 6(b) of the Alaska Statehood Act (Public Law 85–508; 72 Stat. 339) regarding the occupancy, appropriation, or reservation of selected lands. Nothing in this subsection shall be construed to authorize the Secretary of the Interior to convey to the State of Alaska a total acreage of selected lands in excess of the total acreage which could be transferred to the State of Alaska pursuant to the Alaska Statehood Act (Pub-

lic Law 85–508; 72 Stat. 339), and other applicable law.

(4) REPEAL OF ACT OF AUGUST 9, 1955.—The Act of August 9, 1955 (69 Stat. 618), concerning water resources investigations in Alaska, is repealed.

(5) TREATMENT OF ASSET SALE.—The sales of assets under this section shall not be considered a disposal of Federal surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) or the Surplus Property Act of 1944 (50 U.S.C. App. 1622).

(6) APPLICATION OF CERTAIN LAWS.—(A) The Act of July 31, 1950 (64 Stat. 382), shall cease to apply on the date, as determined by the Secretary, when all Eklutna assets have been conveyed to the Eklutna Purchasers.

(B) Section 204 of the Flood Control Act of 1962 (Public Law 87–874; 76 Stat. 1193) shall cease to apply effective on the date, as determined by the Secretary, when all Snettisham assets have been conveyed to the State of Alaska.

(d) TERMINATION OF ALASKA POWER ADMINISTRATION.—

(1) TERMINATION OF ALASKA POWER ADMINISTATION.—Not later than one year after both

of the sales authorized in this section have occurred, as measured by the Transaction Dates stipulated in the Purchase Agreements, the Secretary shall—

(A) complete the business of, and close out, the Alaska Power Administration;

(B) prepare and submit to Congress a report documenting the sales; and

(C) return unobligated balances of funds appropriated for the Alaska Power Administration to the Treasury of the United States.

(2) DOE ORGANIZATION ACT.—Section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7152(a)) is amended as follows:

(A) In paragraph (1)—

(i) by striking out subparagraph (C); and

(ii) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E) respectively.

(B) In paragraph (2), by striking out ''the Bonneville Power Administration, and the Alaska Power Administration'' and inserting in lieu thereof ''and the Bonneville Power Administration''.

The amendments made by this paragraph shall take effect on the date on which the Secretary submits the report referred to in subparagraph (B) of paragraph (1).

(e) PROCEEDS.—The proceeds from the sale of Snettisham and Eklutna assets under this section shall be credited to miscellaneous receipts in the Treasury.

(f) SECTION 147(d) OF INTERNAL REVENUE CODE.—For purposes of section 147(d) of the Internal Revenue Code of 1986, the ''first use'' of Snettisham shall be considered to occur pursuant to acquistion of the property by or on behalf of the State of Alaska.

## PART 2—HELIUM PRIVATIZATION

### SEC. 9011. SHORT TITLE.

This part may be cited as the ''Helium Privatization Act of 1995''.

### SEC. 9012. AMENDMENT OF HELIUM ACT.

Except as otherwise expressly provided, whenever in this part an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Helium Act (50 U.S.C. 167 to 167n).

### SEC. 9013. AUTHORITY OF SECRETARY.

Sections 3, 4, and 5 are amended to read as follows:

**"SEC. 3. AUTHORITY OF SECRETARY.**

''(a) EXTRACTION AND DISPOSAL OF HELIUM ON FEDERAL LANDS.—(1) The Secretary may enter into agreements with private parties for the recovery and disposal of helium on Federal lands upon such terms and conditions as he deems fair, reasonable and necessary. The Secretary may grant leasehold rights to any such helium. The Secretary may not enter into any agreement by which the Secretary sells such helium other than to a private party with whom the Secretary has an agreement for recovery and disposal of helium. Such agreements may be subject to such rules and regulations as may be prescribed by the Secretary.

''(2) Any agreement under this subsection shall be subject to the existing rights of any affected Federal oil and gas lessee. Each such agreement (and any extension or renewal thereof) shall contain such terms and conditions as deemed appropriate by the Secretary.

''(3) This subsection shall not in any manner affect or diminish the rights and obligations of the Secretary and private parties under agreements to dispose of helium produced from Federal lands in existence at the enactment of the Helium Privatization Act of 1995 except to the extent that such agreements are renewed or extended after such date.

"(b) STORAGE, TRANSPORTATION, AND SALE.—The Secretary is authorized to store, transport, and sell helium only in accordance with this Act.

"(c) MONITORING AND REPORTING.—The Secretary is authorized to monitor helium production and helium reserves in the United States and to periodically prepare reports regarding the amounts of helium produced and the quantity of crude helium in storage in the United States.

**"SEC. 4. STORAGE, TRANSPORTATION, AND WITHDRAWAL OF CRUDE HELIUM.**

"(a) STORAGE, TRANSPORTATION, AND WITHDRAWAL.—The Secretary is authorized to store and transport crude helium and to maintain and operate existing crude helium storage at the Bureau of Mines Cliffside Field, together with related helium transportation and withdrawal facilities.

"(b) CESSATION OF PRODUCTION, REFINING, AND MARKETING.—Effective 18 months after the date of enactment of the Helium Privatization Act of 1995, the Secretary shall cease producing, refining and marketing refined helium and shall cease carrying out all other activities relating to helium which the Secretary was authorized to carry out under this Act before the date of enactment of the Helium Privatization Act of 1995, except those activities described in subsection (a). The amount of helium

reserves owned by the United States and stored in the Bureau of Mines Cliffside Field at such date of cessation, less 600,000,000 cubic feet, shall be the helium reserves owned by the United States required to be sold pursuant to section 8(b) hereof.

''(c) DISPOSAL OF FACILITIES.—(1) Within two years after the date on which the Secretary ceases producing, refining and marketing refined helium and ceases all other activities relating to helium in accordance with subsection (b), the Secretary shall dispose of all facilities, equipment, and other real and personal property, together with all interests therein, held by the United States for the purpose of producing, refining and marketing refined helium. The disposal of such property shall be in accordance with the provisions of law governing the disposal of excess or surplus properties of the United States.

''(2) All proceeds accruing to the United States by reason of the sale or other disposal of such property shall be treated as moneys received under this chapter for purposes of section 6(f). All costs associated with such sale and disposal (including costs associated with termination of personnel) and with the cessation of activities under subsection (b) shall be paid from amounts available in the helium production fund established under section 6(f).

''(3) Paragraph (1) shall not apply to any facilities, equipment, or other real or personal property, or any interest therein, necessary for the storage and transportation of crude helium or any equipment needed to maintain the purity, quality control, and quality assurance of helium in the reserve.

''(d) EXISTING CONTRACTS.—All contracts which were entered into by any person with the Secretary for the purchase by such person from the Secretary of refined helium and which are in effect on the date of the enactment of the Helium Privatization Act of 1995 shall remain in force and effect until the date on which the facilities referred to in subsection (c) are disposed of. Any costs associated with the termination of such contracts shall be paid from the helium production fund established under section 6(f).

**"SEC. 5. FEES FOR STORAGE, TRANSPORTATION AND WITHDRAWAL.**

''Whenever the Secretary provides helium storage, withdrawal, or transportation services to any person, the Secretary is authorized and directed to impose fees on such person to reimburse the Secretary for the full costs of providing such storage, transportation, and withdrawal. All such fees received by the Secretary shall be treated

as moneys received under this Act for purposes of section 6(f).''.

**SEC. 9014. SALE OF CRUDE HELIUM.**

Section 6 is amended as follows:

(1) Subsection (a) is amended by striking out ''from the Secretary'' and inserting ''from persons who have entered into enforceable contracts to purchase an equivalent amount of crude helium from the Secretary''.

(2) Subsection (b) is amended by inserting ''crude'' before ''helium'' and by adding the following at the end thereof: ''Except as may be required by reason of subsection (a), the Secretary shall not make sales of crude helium under this section in such amounts as will disrupt the market price of crude helium.''.

(3) Subsection (c) is amended by inserting ''crude'' before ''helium'' the first place it appears and by striking ''together with interest as provided in subsection (d) of this section'' and all that follows down through the period at the end of such subsection and inserting the following:

''all funds required to be repaid to the United States as of October 1, 1995, under this section (hereinafter referred to as 'repayable amounts'). The price at which

crude helium is sold by the Secretary shall not be less than the amount determined by the Secretary as follows:

''(1) Divide the outstanding amount of such repayable amounts by the volume (in mcf) of crude helium owned by the United States and stored in the Bureau of Mines Cliffside Field at the time of the sale concerned.

''(2) Adjust the amount determined under paragraph (1) by the Consumer Price Index for years beginning after December 31, 1995.''.

(4) Subsection (d) is amended to read as follows:

''(d) EXTRACTION OF HELIUM FROM DEPOSITS ON FEDERAL LANDS.—All moneys received by the Secretary from the sale or disposition of helium on Federal lands shall be paid to the Treasury and credited against the amounts required to be repaid to the Treasury under subsection (c) of this section.''.

(5) Subsection (e) is repealed.

(6) Subsection (f) is amended by inserting ''(1)'' after ''(f)'' and by adding the following at the end thereof:

''(2) Within 7 days after the commencement of each fiscal year after the disposal of the facilities referred to in section 4(c), all amounts in such fund in excess of

$2,000,000 (or such lesser sum as the Secretary deems necessary to carry out this Act during such fiscal year) shall be paid to the Treasury and credited as provided in paragraph (1). Upon repayment of all amounts referred to in subsection (c), the fund established under this section shall be terminated and all moneys received under this Act shall be deposited in the Treasury as General Revenues.''.

**SEC. 9015. ELIMINATION OF STOCKPILE.**

Section 8 is amended to read as follows:

**''SEC. 8. ELIMINATION OF STOCKPILE.**

''(a) REVIEW OF RESERVES.—The Secretary shall review annually the known helium reserves in the United States and make a determination as to the expected life of the domestic helium reserves (other than Federally owned helium stored at the Cliffside Reservoir) at that time.

''(b) STOCKPILE SALES.—Not later than January 1, 2005, the Secretary shall commence offering for sale crude helium from helium reserves owned by the United States in such minimum annual amounts as would be necessary to dispose of all such helium reserves in excess of 600,000,000 cubic feet (mcf) on a straight-line basis between such date and January 1, 2015: *Provided*, That the minimum price for all such sales, as determined by the

Secretary in consultation with the helium industry, shall be such as will ensure repayment of the amounts required to be repaid to the Treasury under section 6(c), and provided further that the minimum annual sales requirement may be deferred only if, and to the extent that, the Secretary is unable to arrange sales at the minimum price. The sales shall be at such times during each year and in such lots as the Secretary determines, in consultation with the helium industry, are necessary to carry out this subsection with minimum market disruption.

''(c) DISCOVERY OF ADDITIONAL RESERVES.—The discovery of additional helium reserves shall not affect the duty of the Secretary to make sales of helium as provided in subsection (b), as the case may be.''.

**SEC. 9016. REPEAL OF AUTHORITY TO BORROW.**

Sections 12 and 15 are repealed.

**SEC. 9017. REPORTS.**

Section 16 is amended by redesignating existing section 16 as section 16(a) and inserting the following at the end thereof:

''(b)(1) The Inspector General of the Department of the Interior shall cause to be prepared, not later than March 31 following each fiscal year commencing with the date of enactment of the Helium Privatization Act of 1995, annual financial statements for the Helium Oper-

ations of the Bureau of Mines. The Director of the Bureau of Mines shall cooperate with the Inspector General in fulfilling this requirement, and shall provide him with such personnel and accounting assistance as may be necessary for that purpose. The financial statements shall be audited by the General Accounting Office, and a report on such audit shall be delivered by the General Accounting Office to the Secretary of the Interior and Congress, not later than June 30 following the end of the fiscal year for which they are prepared. The audit shall be prepared in accordance with generally accepted government auditing standards.

''(2) The financial statements shall be comprised of the following:

''(A) A balance sheet reflecting the overall financial position of the Helium Operations, including assets and liabilities thereof;

''(B) the Statement of Operations, reflecting the fiscal period results of the Helium Operations;

''(C) a statement cash flows or changes in financial position of the Helium Operations; and

''(D) a reconciliation of budget reports of the Helium Operations.

''(3) The Statement of Operations shall include but not be limited to the revenues from, and costs of, sales

of crude helium, the storage and transportation of crude helium, the production, refining and marketing of refined helium, and the maintenance and operation of helium storage facilities at the Bureau of Mines Cliffside Field. The term 'revenues' for this purpose shall exclude (A) royalties paid to the United States for production of helium or other extraction of resources, except to the extent that the Helium Operations incur direct costs in connection therewith, and (B) proceeds from sales of assets other than inventory. The term 'expenses' shall include, but not be limited to (i) all labor costs of the Bureau of Mines Helium Operations, and of the Department of the Interior in connection therewith, and (ii) for financial reporting purposes but not in connection with the determination of sales prices in section 6(c), all current-period interest on outstanding repayable amounts (as described in section 6(c)) calculated at the same rates as such interest was calculated prior to the enactment of the Helium Privatization Act of 1995.

''(4) The balance sheet shall include, but not be limited to, on the asset side, the present discounted market value of crude helium reserves; and on the liability side, the accrued liability for principal and interest on debt to the United States. For financial reporting purposes but not in connection with the determination of sales prices

in section 6(c), the balance sheet shall also include accrued but unpaid interest on outstanding repayable amounts (as described in section 6(c)) through the date of the report, calculated at the same rates as such interest was calculated prior to the enactment of the Helium Privatization Act of 1995.''.

**SEC. 9018. LAND CONVEYANCE IN POTTER COUNTY, TEXAS.**

(a) IN GENERAL.—The Secretary of the Interior shall transfer all right, title, and interest of the United States in and to the parcel of land described in subsection (b) to the Texas Plains Girl Scout Council for consideration of $1, reserving to the United States such easements as may be necessary for pipeline rights-of-way.

(b) LAND DESCRIPTION.—The parcel of land referred to in subsection (a) is all those certain lots, tracts or parcels of land lying and being situated in the County of Potter and State of Texas, and being the East Three Hundred Thirty-One (E331) acres out of Section Seventy-eight (78) in Block Nine (9), B.S. & F. Survey, (sometimes known as the G. D. Landis pasture) Potter County, Texas, located by certificate No. 1/39 and evidenced by letters patents Nos. 411 and 412 issued by the State of Texas under date of November 23, 1937, and of record in Vol. 66A of the Patent Records of the State of Texas.

The metes and bounds description of such lands is as follows:

(1) FIRST TRACT.—One Hundred Seventy-one (171) acres of land known as the North part of the East part of said survey Seventy-eight (78) aforesaid, described by metes and bounds as follows:

Beginning at a stone 20 x 12 x 3 inches marked X, set by W. D. Twichell in 1905, for the Northeast corner of this survey and the Northwest corner of Section 59;

Thence, South 0 degrees 12 minutes East with the West line of said Section 59, 999.4 varas to the Northeast corner of the South 160 acres of East half of Section 78;

Thence, North 89 degrees 47 minutes West with the North line of the South 150 acres of the East half, 956.8 varas to a point in the East line of the West half Section 78;

Thence North 0 degrees 10 minutes West with the East line of the West half 999.4 varas to a stone 18 x 14 x 3 inches in the middle of the South line of Section 79;

Thence South 89 degrees 47 minutes East 965 varas to the place of beginning.

(2) SECOND TRACT.—One Hundred Sixty (160) acres of land known as the South part of the East part of said survey No. Seventy-eight (78) described by metes and bounds as follows:

Beginning at the Southwest corner of Section 59, a stone marked X and a pile of stones;

Thence North 89 degrees 47 minutes West with the North line of Section 77, 966.5 varas to the Southeast corner of the West half of Section 78; Thence North 0 degrees 10 minutes West with the East line of the West half of Section 78;

Thence South 89 degrees 47 minutes East 965.8 varas to a point in the East line of Section 78;

Thence South 0 degrees 12 minutes East 934.6 varas to the place of beginning.

Containing an area of 331 acres, more or less.

# Subtitle B—Water and Power

## PART 1—POWER MARKETING ADMINISTRATIONS

### SEC. 9201. SHORT TITLE.

This part may be cited as the ''Power Administration Act''.

**SEC. 9202. EVALUATION OF SALES OF SOUTHEASTERN, SOUTHWESTERN, AND WESTERN AREA POWER ADMINISTRATION FACILITIES.**

(a) REPEALS.—The following provisions are repealed:

(1) Section 505 of Public Law 102–377, the Fiscal Year 1993 Energy and Water Development Appropriations Act.

(2) Section 208 of Public Law 99–349, the Urgent Supplemental Appropriations Act, 1986.

(3) Section 510 of Public Law 101–514, the Fiscal Year 1991 Energy and Water Development appropriations Act.

(b) EVALUATION OF ISSUES.—(1) The Secretary of Energy, the Secretary of the Interior, and the Secretary of the Army shall enter into arrangements with an experienced private sector firm to serve as advisor to the Secretaries with respect to the sale of the facilities used to generate and transmit the electric power marketed by the Southeastern Power Administration, the Southwestern Power Administration and the Western Area Power Administration, including all transmission and related structures, equipment, facilities and all real, tangible and intangible property (including rights-of-way) which are used in connection with, and necessary for, the operation of such power generation and transmission facilities.

(2) Prior to December 31, 1996, the advisor shall provide to the Secretaries and the Congress a report identifying all recipients of water and power from such facilities, all relevant contracts, debt obligations, equity interests, and other binding agreements which apply to the facilities concerned and to the sale of electric power from such facilities, all assets tangible or intangible, all applicable requirements relating to environmental mitigation, Indian trust responsibilities, land ownership or use rights relevant to the proposed transfers which could terminate based on a transfer out of Federal ownership, and navigational requirements which affect the operation of such facilities.

(3) In conducting the evaluation, the Secretaries and the advisor should also recognize that many of the dams and reservoirs associated with the generation of electric power marketed by the Power Marketing Administrations are first and foremost water supply, flood control, or navigation projects. In general, power generation is incidental to these primary purposes. In addition, there are also secondary purposes such as recreation and environmental values which are served by these facilities as well as the power production. The evaluation should assume that such facilities will continue to be operated in a manner consistent with their current, primary purposes and the evalua-

tion directed by this section shall not assume any changes in the other current operational objectives of the facilities.

(4) Such evaluation shall also include an evaluation of the tax consequences, and the revenue impacts of such consequences for the United States, of possible arrangements for the sale of generation and transmission facilities to potential transferees identified by the advisor. The report shall also investigate alternative groupings of such generation and transmission facilities for purposes of sale in order to determine which groupings would be most desirable for purposes of effectuating such sales. Proposed transfers should be structured by watershed or by project unless the advisor can provide satisfactory information to the Secretaries that another alternative should be used. Asset groupings shall specifically be designed to avoid the sale of the most valuable assets while the Federal government would be forced to retain the less valuable assets.

**SEC. 9203. BONNEVILLE POWER ADMINISTRATION APPROPRIATIONS REFINANCING.**

(a) DEFINITIONS.—For the purposes of this section:

(1) The term ''Administrator'' means the Administrator of the Bonneville Power Administration.

(2) The term ''capital investment'' means a capitalized cost funded by Federal appropriations that—

(A) is for a project, facility, or separable unit or feature of a project or facility;

(B) is a cost for which the Administrator is required by law to establish rates to repay to the United States Treasury through the sale of electric power, transmission, or other services;

(C) excludes a Federal irrigation investment; and

(D) excludes an investment financed by the current revenues of the Administrator or by bonds issued and sold, or authorized to be issued and sold, by the Administrator under section 13 of the Federal Columbia River Transmission System Act (16 U.S.C. 838(k)).

(3) The term ''new capital investment'' means a capital investment for a project, facility, or separable unit or feature of a project or facility, placed in service after September 30, 1995.

(4) The term ''old capital investment'' means a capital investment whose capitalized cost—

(A) was incurred, but not repaid, before October 1, 1995; and

(B) was for a project, facility, or separable unit or feature of a project or facility, placed in service before October 1, 1995.

(5) The term ''repayment date'' means the end of the period within which the Administrator's rates are to assure the repayment of the principal amount of a capital investment.

(6) The term ''Treasury rate'' means—

(A) for an old capital investment, a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding October 1, 1995, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between October 1, 1995, and the repayment date for the old capital investment; and

(B) for a new capital investment, a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding the beginning of the fiscal year in which the related project, facility, or separable unit or feature is placed in service, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between the beginning of the fiscal year and the repayment date for the new capital investment.

(b) NEW PRINCIPAL AMOUNTS.—(1) Effective October 1, 1995, an old capital investment shall have a new principal amount that is the sum of—

(A) the present value of the old payment amounts for the old capital investment, calculated using a discount rate equal to the Treasury rate for the old capital investment; and

(B) an amount equal to $100,000,000 multiplied by a fraction whose numerator is the principal amount of the old payment amounts for the old capital investment and whose denominator is the sum of the principal amounts of the old payment amounts for all old capital investments.

(2) With the approval of the Secretary of the Treasury based solely on consistency with this Act, the Administrator shall determine the new principal amounts under paragraph (1) and the assignment of interest rates to the new principal amounts under subsection (c).

(3) For the purposes of this section, ''old payment amounts'' means, for an old capital investment, the annual interest and principal that the Administrator would have paid to the United States Treasury from October 1, 1995, if this section were not enacted, assuming that—

(A) the principal were repaid—

(i) on the repayment date the Administrator assigned before October 1, 1993, to the old capital investment, or

(ii) with respect to an old capital investment for which the Administrator has not assigned a repayment date before October 1, 1993, on a repayment date the Administrator shall assign to the old capital investment in accordance with paragraph 10(d)(1) of the version of Department of Energy Order RA 6120.2 in effect on October 1, 1993; and

(B) interest were paid—

(i) at the interest rate the Administrator assigned before October 1, 1993, to the old capital investment, or

(ii) with respect to an old capital investment for which the Administrator has not assigned an interest rate before October 1, 1993, at a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding the beginning of the fiscal year in which the related project, facility, or separable unit or feature is placed in service, on outstanding interest-bearing obligations of the United States with peri-

ods to maturity comparable to the period between the beginning of the fiscal year and the repayment date for the old capital investment.

(c) INTEREST RATE FOR NEW PRINCIPAL AMOUNTS.—As of October 1, 1995, the unpaid balance on the new principal amount established for an old capital investment under subsection (b) shall bear interest annually at the Treasury rate for the old capital investment until the earlier of the date that the new principal amount is repaid or the repayment date for the new principal amount.

(d) REPAYMENT DATES.—As of October 1, 1995, the repayment date for the new principal amount established for an old capital investment under subsection (b) shall be no earlier than the repayment date for the old capital investment assumed in subsection (b)(3)(A).

(e) PREPAYMENT LIMITATIONS.—During the period October 1, 1995, through September 30, 2000, the total new principal amounts of old capital investments, as established under subsection (b), that the Administrator may pay before their respective repayment dates shall not exceed $100,000,000.

(f) INTEREST RATES FOR NEW CAPITAL INVESTMENTS DURING CONSTRUCTION.—(1) The principal amount of a new capital investment includes interest in

each fiscal year of construction of the related project, facility, or separable unit or feature at a rate equal to the one-year rate for the fiscal year on the sum of—

(A) construction expenditures that were made from the date construction commenced through the end of the fiscal year, and

(B) accrued interest during construction.

(2) The Administrator shall not be required to pay, during construction of the project, facility, or separable unit or feature, the interest calculated, accrued, and capitalized under paragraph (1).

(3) For the purposes of this subsection, ''one-year rate'' for a fiscal year means a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding the beginning of the fiscal year, on outstanding interest-bearing obligations of the United States with periods to maturity of approximately one year.

(g) INTEREST RATES FOR NEW CAPITAL INVESTMENTS.—The unpaid balance on the principal amount of a new capital investment bears interest at the Treasury rate for the new capital investment from the date the related project, facility, or separable unit or feature is placed in service until the earlier of the date the new capital in-

vestment is repaid or the repayment date for the new capital investment.

(h) CREDITS TO ADMINISTRATOR'S PAYMENTS TO THE UNITED STATES TREASURY.—The Confederated Tribe of the Colville Reservation Grand Coulee Dam Settlement Act (Public Law 103–436) is amended by striking section 6 and inserting the following:

**"SEC. 6. CREDITS TO ADMINISTRATOR'S PAYMENTS TO THE UNITED STATES TREASURY.**

''(a) IN GENERAL.—So long as the Adminisatrator makes annual payments to the tribes under the settlement agreement, the Administrator shall apply against amounts otherwise payable by the Administrator to the United States Treasury a credit that reduces the Administrator's payment in the amount and for each fiscal year as follows: $15,250,000 in fiscal year 1996; $15,860,000 in fiscal year 1997; $16,490,000 in fiscal year 1998; $17,150,000 in fiscal year 1999; $17,840,000 in fiscal year 2000; and $4,100,000 in each succeeding fiscal year.

''(b) DEFINITIONS.—For the purposes of this section—

''(1) the term 'settlement agreement' means that settlement agreement between the United States of America and the Confederated Tribes of the Colville Reservation signed by the Tribes on

April 16, 1994, and by the United States of America on April 21, 1994, which settlement agreement resolves claims of the Tribes in Docket 181–D of the Indian Claims Commission, which docket has been transferred to the United States Court of Federal Claims; and

''(2) the term 'Tribes' means the Confederated Tribes of the Colville Reservation, a Federally recognized Indian Tribe.''.

(i) CONTRACT PROVISIONS.—In each contract of the Administrator that provides for the Administrator to sell electric power, transmission, or related services, and that is in effect after September 30, 1995, the Administrator shall offer to include, or as the case may be, shall offer to amend to include, provisions specifying that after September 30, 1995—

(1) the Administrator shall establish rates and charges on the basis that—

(A) the principal amount of an old capital investment shall be no greater than the new principal amount established under subsection (b);

(B) the interest rate applicable to the unpaid balance of the new principal amount of an old capital investment shall be no greater than

the interest rate established under subsection (c);

(C) any payment of principal of an old capital investment shall reduce the outstanding principal balance of the old capital investment in the amount of the payment at the time the payment is tendered; and

(D) any payment of interest on the unpaid balance of the new principal amount of an old capital investment shall be a credit against the appropriate interest account in the amount of the payment at the time the payment is tendered;

(2) apart from charges necessary to repay the new principal amount of an old capital investment as established under subsection (b), and to pay the interest on the principal amount under subsection (c), no amount may be charged for return to the United States Treasury as repayment for or return on an old capital investment, whether by way of rate, rent, lease payment, assessment, user charge, or any other fee;

(3) amounts provided under section 1304 of title 31, United States Code, shall be available to pay, and shall be the sole source for payment of, a

judgment against or settlement by the Administrator or the United States on a claim for a breach of the contract provisions required by this Act; and

(4) the contract provisions specified in this Act shall not—

(A) preclude the Administrator from recovering, through rates or other means, any tax that is generally imposed on electric utilities in the United States, or

(B) affect the Administrator's authority under applicable law, including section 7(g) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(g)), to—

(i) allocate costs and benefits, including but not limited to fish and wildlife costs, to rates or resources, or

(ii) design rates.

(j) SAVINGS PROVISIONS.—(1) This section does not affect the obligation of the Administrator to repay the principal associated with each capital investment, and to pay interest on the principal, only from the ''Administrator's net proceeds,'' as defined in section 13 of the Federal Columbia River Transmission System Act (16 U.S.C. 838k(b)).

(2) Except as provided in subsection (e) of this section, this section does not affect the authority of the Administrator to pay all or a portion of the principal amount associated with a capital investment before the repayment date for the principal amount.

(k) DOE STUDY.—(1) The Administrator shall undertake a study to determine the effect that increases in the rates for electric power sales made by the Administrator may have on the customer base of the Bonneville Power Administration. Such study shall identify other sources of electric power that may be available to customers of the Bonneville Power Administration and shall estimate the level at which higher rates for power sales by the Administration may result in the loss of customers by the Administration.

(2) The Administrator shall undertake a study to determine the total prior costs incurred by the Bonneville Power Administration for compliance with the provisions of the Endangered Species Act of 1973 and the total future costs anticipated to be incurred by the Administration for compliance with such provisions.

(3) The Administrator shall submit the results of the studies undertaken under this section to the Congress within 180 days after the date of the enactment of this Act.

## PART 2—RECLAMATION

### SEC. 9211. PREPAYMENT OF CERTAIN REPAYMENT CONTRACTS BETWEEN THE UNITED STATES AND THE CENTRAL UTAH WATER CONSERVANCY DISTRICT.

The second sentence of section 210 of the Central Utah Project Completion Act (106 Stat. 4624) is amended to read as follows: ''The Secretary of the Interior shall allow for prepayment of the repayment contract between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and supplemented on November 26, 1985, providing for repayment of the municipal and industrial water delivery facilities for which repayment is provided pursuant to such contract, under such terms and conditions as the Secretary deems appropriate to protect the interest of the United States, which shall be similar to the terms and conditions contained in the supplemental contract that provided for the prepayment of the Jordan Aqueduct dated October 28, 1993. The District shall exercise its right to prepayment pursuant to this section by the end of fiscal year 2002.''.

### SEC. 9212. TREATMENT OF CITY OF FOLSOM AS A CENTRAL VALLEY PROJECT CONTRACTOR.

For the purposes of being considered eligible to be a transferee of Central Valley Project water to be used for municipal and industrial purposes, the city of Folsom,

California, shall be treated as a Central Valley Project contractor as of November 1, 1990.

**SEC. 9213. SLY PARK.**

(a) SHORT TITLE.—This section may be cited as the ''Sly Park Unit Conveyance Act''.

(b) DEFINITIONS.—For purposes of this section:

(1) The term ''El Dorado Irrigation District'' or ''District'' means a political subdivision of the State of California duly organized, existing, and acting pursuant to the laws thereof with its principal place of business in the city of Placerville, El Dorado County, California.

(2) The term ''Secretary'' means the Secretary of the Interior.

(3) The term ''Sly Park Unit'' means the Sly Park Dam and Reservoir, Camp Creek Diversion Dam and Tunnel and conduits and canals as authorized under the American River Act of October 14, 1949 (63 Stat. 852), together with all other facilities owned by the United States including those used to convey and store water delivered from Sly Park, as well as all recreation facilities associated thereto.

(c) SALE OF THE SLY PARK UNIT.—

(1) IN GENERAL.—The Secretary shall, within one year after the date of enactment of this Act, sell

and convey to the El Dorado Irrigation District the Sly Park Unit. Within such one-year period, the Secretary shall also transfer and assign the water rights relating to the Sly Park Unit held in trust by the Secretary for diversion and storage under California State permits numbered 2631, 5645A, 10473, and 10474 to the El Dorado Irrigation District.

(2) SALE PRICE.—The sale price shall not exceed—

(A) the construction costs ($30,926,230), as included in the accounts of the Secretary, plus

(B) interest on the construction costs allocated to domestic use, at the authorized rate included in enactment of the Act of October 14, 1949 (63 Stat. 852), up to an agreed upon date, less

(C) all revenues to date as collected under the terms of the contract between the United States and the El Dorado Irrigation District, estimated at $9,146,885.

(3) TERMS OF PAYMENT.—The Secretary shall provide for a payment of the purchase price under paragraph (2) on terms not to exceed 20 years. The interest rate to be paid by the District shall be the

authorized rate included in the Act of October 14, 1949 (63 Stat. 852). Section 213(c) of the Reclamation Reform Act of 1982 (43 U.S.C. 390mm(c)) shall not apply to the purchase of the Sly Park Unit under this section.

(4) CONVEYANCE.—Upon signing the agreement to carry out the sale required by this section, the Secretary shall convey and assign to the El Dorado Irrigation District all right, title, and interest of the United States in and to the Sly Park Unit.

(5) NO ADDITIONAL ENVIRONMENTAL IMPACT.—The Congress specifically finds that (A) the sale, conveyance and assignment of the Sly Park Unit and water rights under this section involves the transfer of the ownership and operation of an existing ongoing water project, (B) the Sly Park Unit operation, facilities and water rights have been, and after the sale and transfer will continue to be, committed to maximum reasonable and beneficial use for existing services, and (C) the sale, conveyance and assignment of the Sly Park Unit and water rights does not involve any additional growth or expansion of the project or other environmental impacts. Consequently, the sale, conveyance and assignment of the Sly Park Unit and water rights shall not be sub-

ject to environmental review pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4332) or endangered species review or consultation pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536).

**SEC. 9214. HETCH HETCHY DAM.**

Section 7 of the Act of December 19, 1913 (38 Stat. 242), is amended—

(1) by striking ''$30,000'' in the first sentence and inserting ''$8,000,000'', and

(2) by amending the second and third sentences to read as follows: ''These funds shall be placed in a separate fund by the United States and, notwithstanding any other provision of law, shall not be available for obligation or expenditure until appropriated by the Congress. The highest priority use of the funds shall be for annual operation of Yosemite National Park, with the remainder of any funds to be used to fund operations of other national parks in the State of California.''.

# Subtitle C—National Parks, Forests, and Public Lands

## PART 1—CONCESSION REFORM

### SEC. 9301. SHORT TITLE.

This part may be cited as the ''Visitor Facilities and Services Enhancement Act of 1995''.

### SEC. 9302. PURPOSE.

The purpose of this part is to ensure that quality visitor facilities and services are provided by the Federal land management agencies (Forest Service, United States Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Reclamation and United States Army Corps of Engineers). Each Federal land management agency shall implement a program to encourage appropriate development and operation of services and facilities for the accommodation of visitors. The program implemented by each such agency shall consist of actions which—

(1) recognize the importance of the private sector in providing a quality visitor experience on Federal lands by encouraging private sector investments for facilities and services on Federal lands under a fair and competitive process;

(2) establish the basis for an effective relationship between the land management agencies and pri-

vate businesses operating on public lands and waters in efforts to serve the public and to protect the resources of these areas;

(3) measure quality and value of services provided by concessioners and provide incentives for consistent excellence.

(4) ensure a fair return to the Federal Government; and

(5) are consistent among the various agencies to the extent practicable in order to increase efficiency of the Federal Government and simplify requirements for concessioners.

**SEC. 9303. DEFINITIONS.**

For the purposes of this part:

(1) The term ''adjusted gross receipts'' means gross receipts less revenue derived from goods and services provided on other than Federal lands or conveyed to units of Government for hunting or fishing licenses or for entrance or recreation fees, or from such other exclusions as the Secretary concerned might apply.

(2) The term ''agency head'' means the head of an agency or his or her designated representative.

(3) The term ''concessioner'' means a person or other entity acting under a concession authorization

which provides public services, facilities, or activities on Federal lands or waters pursuant to a concession services agreement or concession license.

(4) The term ''concession license'' means a written contract between the agency head and the concessioner which sets forth the terms and conditions under which the concessioner is authorized to provide recreation services or activities on a limited basis as well as the rights and obligations of the Federal Government.

(5) The term ''concession service agreement'' means a written contract between the agency head and the concessioner which sets forth the terms and conditions under which the concessioner is authorized to provide visitor services, facilities, or activities as well as the rights and obligations of the Federal Government.

(6) The term ''gross receipts'' means revenue from goods or services provided by concession services, facilities, or activities on Federal lands and waters.

(7) The term ''performance incentive'' means a credit based on past performance toward the score awarded by the Secretary to a concessioner's pro-

posal submitted in response to a solicitation for the reissuance of such contract.

(8) The term ''proposal'' means the complete submission for a concession service agreement offered in response to the solicitation for such concession service agreement.

(9) The term ''prospectus'' means a document or documents issued by the Secretary concerned and included with a solicitation which sets forth the minimum requirements for the award of a concession service agreement.

(10) The term ''Secretary concerned'' means—

(A) the Secretary of the Interior with respect to the United States Fish and Wildlife Service, National Park Service, Bureau of Land Management, and Bureau of Reclamation;

(B) the Secretary of Agriculture with respect to the Forest Service; and

(C) the Secretary of the Army with respect to the United States Army Corps of Engineers.

(11) The term ''solicitation'' means a request by the Secretary concerned for proposals in response to a prospectus.

**SEC. 9304. NATURE AND TYPES OF CONCESSION AUTHORIZATIONS.**

(a) IN GENERAL.—The Secretary concerned may enter into concession authorizations, as follows:

(1) CONCESSION SERVICES AGREEMENT.—A concession service agreement shall be entered into for all concessions where the Secretary concerned makes a finding that the provision of concession services is in the interest of the Federal Government and issues either a competitive offering for concession services, facilities or activities or a noncompetitive offering for such services, facilities, or activities based on a finding that due to special circumstances it is not in the public interest of the United States to award a concession service agreement on a competitive basis. Where the concessioner develops or uses fixed facilities on Federal lands, the Secretary concerned shall issue a lease.

(2) CONCESSION LICENSE.—Whenever the Secretary concerned makes a finding that public enjoyment of Federal lands would be enhanced through the provision of concession services and that there exists no need to limit the number of concessioners providing such services, he shall consider entering into a concession license with a qualified concessioner. Activities covered under a concession license

would typically be one-time, intermittent, or infrequently scheduled. The Secretary concerned may not limit the number of concession licenses issued for the same types of activities in a particular geographic area. The Secretary concerned shall monitor such concession licenses to determine whether issuance of a concession service agreement would be a more appropriate authorization.

(3) LANDS UNDER MULTIPLE JURISDICTIONS.—The Secretaries of the Departments concerned shall designate an agency to be the lead agency concerning concessions which conduct a single operation on lands or waters under the jurisdiction of more than one agency. Unless otherwise agreed to by each such Secretary concerned, the lead agency shall be that agency under whose jurisdiction the concessioner generates the greatest amount of gross receipts. The agency so designated shall issue a single authorization and collect a single fee under paragraphs (1) and (2) for such operation. Such authorization shall provide for use in a manner consistent with the plans and policies for each agency.

(b) LEASES OF AREAS TO STATES AND STATE THIRD PARTY AGREEMENT NOT COVERED.—This part does not apply to leases or licenses of entire areas to States or other

political subdivisions or to any third party agreement issued by any such State or political subdivisions with respect to such entire area.

**SEC. 9305. COMPETITIVE SELECTION PROCESS FOR CONCESSION SERVICE AGREEMENTS.**

(a) AWARD TO BEST PROPOSAL.—The Secretary shall enter into, and reissue, a concession service agreement with the person whom the Secretary determines in accordance with this section submits the best proposal through a competitive process as defined in this section.

(b) SOLICITATION AND PROSPECTUS.—The Secretary concerned shall prepare a solicitation and prospectus which describes the concession service opportunity and shall publish, in appropriate locations, announcements of the availability of the solicitation, prospectus, and the concession service opportunity. The solicitation shall include (but need not be limited to) the following:

(1) A description of the services and facilities to be provided by the concessioner.

(2) The level of capital investment required by the concessioner (if any).

(3) Terms and conditions of the concession service agreement.

(4) Minimum facilities and services to be provided by the Secretary to the concessioner and the public.

(5) Minimum fees to the United States.

(c) FACTORS AND MINIMUM STANDARDS IN DETERMINING BEST PROPOSAL.—The prospectus shall assign a weight to each factor indentified therein related to the importance of such factor in the selection process. Points shall be awarded for each such factor, based on the relative strength of the proposal concerning that factor. In determining the best proposal, the Secretary concerned shall take into consideration (but shall not be limited to) the following, including whether the proposal meets the minimum requirements (if any) of the Secretary for each of the following:

(1) Responsiveness to the prospectus.

(2) Quality of visitor services taking into account the nature of equipment and facilities to be provided.

(3) Experience and performance in providing similar services. This factor shall account for not less than 20 percent of the maximum points available under any prospectus. Where the Secretary concerned determines it to be warranted to provide for a high quality visitor experience, the prospectus for

a concession service agreement shall provide greater weight to this factor based on such aspects of the concession service agreement as scope or size, complexity, nature of technical skills required, and site-specific knowledge of the area. The similarity of the qualifying experience outlined in the proposal to the nature of the services required under the concession service agreement and the length of such qualifying experience shall be the basis for awarding points for this factor.

(4) Record of resource protection (as appropriate for services and activities with potential to impact natural or cultural resources).

(5) Financial capability.

(6) Fees to the United States.

(d) SELECTION PROCESS.—The process for selecting the best proposal shall consist of the following:

(1) First, the Secretary concerned shall identify those proposals which meet the minimum standards (if any) for the factors identified under subsection (c).

(2) Second, the Secretary concerned shall evaluate all proposals identified under paragraph (1), considering all factors identified under subsection (c), as well as performance incentives earned under

section 9306(c) and renewal penalties incurred under section 9306(d).

(3) Third, the Secretary concerned shall offer the concession service agreement to the best qualified applicant as determined by the evaluation under paragraph (2).

(e) INAPPLICABILITY OF NEPA TO TEMPORARY EXTENSIONS AND SIMILAR REISSUANCE OF CONCESSIONS AGREEMENTS.—The temporary extension of a concession authorization, or reissuance of a concession authorization to provide concession services similar in nature and amount to concession services provided under the previous authorization, is hereby determined to be a categorical exclusion as provided for under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.).

(f) PROVISION FOR ADDITIONAL RELATED SERVICES.—The Secretary concerned may modify the concession service agreement to allow concessioners to provide services closely related to such agreement, if the Secretary concerned determines that such changes would enhance the safety or enjoyment of visitors and would not unduly restrict the award of future concession service agreements.

**SEC. 9306. CONCESSIONER EVALUATIONS.**

(a) IN GENERAL.—The Secretary concerned shall develop a program of evaluations of the concessioners oper-

ating under a concession service agreement who are providing visitor services in areas under the jurisdiction of the Secretary. The evaluations shall be on an annual basis over the duration of the concession service agreement. In developing the evaluation program, the Secretary concerned shall seek broad public input from concessioners, State agencies, and other interested persons. The evaluation program shall—

(1) include the four program areas of: quality of visitor services provided; resource protection (as applicable); financial performance; and compliance with concession service agreement provisions and pertinent laws and regulations;

(2) define three levels of performance—

(A) good, which shall be defined as a level of performance which exceeds the requirements outlined in the prospectus, but which is attainable;

(B) satisfactory, which shall be defined as meeting the requirements as contained in the prospectus; and

(C) unsatisfactory, which shall be defined as not meeting the requirements contained in the prospectus;

(3) be based on criteria which—

(A) are objective, measurable, and attainable; and

(B) shall include as applicable general standards for all concession operations, industry-specific standards, and standards developed by the Secretary concerned in consultation with the concessioner for each concession service agreement;

(4) be designed in such a manner that the annual evaluation represents the overall performance of the concessioner without undue weight to matters of limited importance; and

(5) take into account factors beyond the control of the concessioner, such as general market and other economic fluctuations, as well as weather and other natural phenomena, so that such factors may not be used as a justification for denial of performance incentives.

(b) ANNUAL EVALUATIONS.—

(1) REQUIREMENTS.—The Secretary concerned shall at least semiannually review the performance of each concessioner and shall assign an overall rating for each concessioner for each year. The procedure for any performance evaluation shall be provided to the concessioner prior to the beginning of any eval-

uation period. Such procedure shall provide for adequate notification of the concessioner prior to any on-site evaluation and permit a representative of the concessioner to observe the evaluation. The concessioner shall be entitled to a complete explanation of any rating given. If the Secretary's performance evaluation for any year results in an unsatisfactory rating of the concessioner, the Secretary concerned shall so notify the concessioner, in writing. Such notification shall identify the nature of conditions which require corrective action and shall provide the concessioner with a list of corrective actions necessary to meet the standards.

(2) SUSPENSION, REVOCATION, AND TERMINATION OF AUTHORIZATION.—The Secretary concerned may suspend, revoke, or terminate a concession authorization if the concessioner fails to correct the conditions identified by the Secretary within the limitations established by the Secretary at the time notice of the unsatisfactory rating is provided to the concessioner. The Secretary may immediately suspend or revoke a concession authorization where necessary to protect the public health or welfare.

(c) PERFORMANCE INCENTIVES.—

(1) In evaluating the performance of a concessioner, the incumbent concessioner is entitled to a performance incentive of—

(A) one percent of the maximum points available under such evaluations for performance in each year in which the concessioner's annual performance is rated good, as specified in subsection (a)(2)(A), and

(B) a one-time three year merit term extension upon a finding that a concessioner has been rated as good in each annual performance evaluation through the term of the concession service agreement.

(2) A performance incentive awarded under paragraph (1)(A) may not exceed 10 percent of the maximum points available under such evaluations over the life of the concession service agreement.

(d) RENEWAL PENALTY.—In evaluating the performance of a concessioner, a concessioner shall be penalized one percent of the maximum points available under such evaluation for performance in each year in which the concessioner's annual performance is found to be unsatisfactory.

**SEC. 9307. CAPITAL IMPROVEMENTS.**

(a) PRIVATE SECTOR DEVELOPMENT.—It is the policy of the United States to encourage the private sector to develop, own, and maintain to the extent possible such public recreation facilities which would enhance public use and enjoyment of Federal lands as are contained in approved plans developed by the Secretary concerned. Under the terms of this part, concessioners may only construct or finance construction under terms of section 9312 such public facilities on Federal lands as are to be used by the concessioner under the terms of their concession service agreement or facilities which are necessary for the concessioner to administer such public facilities on Federal lands.

(b) INVESTMENT INTEREST.—

(1) IN GENERAL.—A concessioner, who is required or authorized under a concession service agreement pursuant to this part to acquire or construct any structure, improvement, or fixture pursuant to such agreement on Federal lands shall have an investment interest therein, to the extent provided by the agreement and this part. Such investment interest shall not be extinguished by the expiration of such agreement. Such investment interest may be assigned, transferred, encumbered or relinquished.

(2) LIMITATION.—Such investment interest shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity, and the use of any improvement in which the concessioner has an investment interest shall be wholly subject to the applicable provisions of the concession service agreement and of laws and regulations relating to the area.

(3) FEDERAL PROPERTY.—The agreement shall specify which new improvements required under terms of the concession service agreement, if any, shall become the property of the Federal Government at the end of the agreement. No concession service agreement shall provide for a concessioner to obtain an investment interest in any building which is wholly owned by the Federal Government. Title to the land on which such structure, improvement, or fixture is placed shall remain in the United States.

(c) SALE OF ASSETS.—If the existing concessioner is not selected as the best qualified applicant at the time of reissuance of a concession service agreement, the Secretary concerned shall require the new concessioner to buy the investment interest of the existing concessioner.

(d) CLOSURE OF CONCESSIONER FACILITIES.—In the event of a decision by the Secretary concerned, that the public interest, by reason of public and safety considerations or for other reasons beyond the control of the concessioner, requires the discontinuation or closure of facilities in which the concessioner has an investment interest, the Secretary shall compensate the concessioner in the amount equal to the value of the investment interest.

(e) DETERMINATION OF VALUE OF INVESTMENT INTEREST.—For purposes of this part, the investment interest of any capital improvement at the end of the concession service agreement period is the actual cost of construction of such capital improvement adjusted from the completion of such construction by changes in the Consumer Price Index (selected in the same manner as such Index is selected under section 9311(c)(2)) less depreciation evidenced by the condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value. Such value shall be determined by appraisal and included in any prospectus.

**SEC. 9308. DURATION OF CONCESSION AUTHORIZATION.**

(a) CONCESSION SERVICE AGREEMENT.—The standard term of a concession service agreement shall be ten years. The Secretary concerned may issue a concession service agreement for less than ten years if he determines

(in his discretion) that the average annual gross receipts over the life of the concession service agreement would be less than $100,000. The Secretary concerned may not issue a concession service agreement for less than five years. The Secretary concerned shall issue a concession service agreement for longer than ten years if the Secretary determines (in his discretion) that such longer term is in the public interest or necessary due to the extent of investment and associated financing requirements and to meet the obligations assumed. The term for a concession service agreement may not exceed 30 years.

(b) CONCESSION LICENSE.—The term for a concession license may not exceed two years.

(c) TEMPORARY EXTENSION.—The Secretary may agree to temporary extensions of concession service agreements for up to two years on a noncompetitive basis to avoid interruption of services to the public.

**SEC. 9309. RATES AND CHARGES TO THE PUBLIC.**

In general, rates and charges to the public shall be set by the concessioner. For concession service agreements only, a concessioner's rates and charges to the public shall be subject to the approval of the Secretary concerned in those instances where the Secretary determines that sufficient competition for such facilities and services does not exist within or in close proximity to the area in which the

concessioner operates. In those instances, the concession service agreement shall state that the reasonableness of the concessioner's rates and charges to the public shall be reviewed and approved by the Secretary concerned primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration for length of season, seasonal variations, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary concerned. Such review shall be completed within 90 days of receipt of all necessary information, or the requirement for the Secretary's approval shall be waived and such rates and charges as proposed by the concessioner considered to be approved for immediate use.

**SEC. 9310. TRANSFERABILITY OF CONCESSION AUTHORIZATIONS.**

(a) CONCESSION SERVICE AGREEMENTS.—

(1) APPROVAL REQUIRED.—A concession service agreement is transferable or assignable only upon the approval of the Secretary concerned, which approval may not be unreasonably withheld or delayed. The Secretary may not approve any such transfer or assignment if the Secretary determines that the prospective concessioner is or is likely to be unable to

completely satisfy all of the material requirements, terms, and conditions of the agreement or that the terms of the transfer or assignment would preclude providing appropriate facilities or services to the public at reasonable rates.

(2) CONSIDERATION PERIOD.—If the Secretary fails to approve or disapprove a transfer or assignment under paragraph (1) within 90 days after the date on which the Secretary receives all necessary information requested by the Secretary with respect to such transfer, the transfer or assignment shall be deemed approved.

(3) NO MODIFICATION OF TERMS AND CONDITIONS.—The terms and conditions of the concessions service agreement shall not be subject to modification by reason of any transfer or assignment under this section.

(4) PERFORMANCE INCENTIVE.—Upon approval of the sale or transfer, the prospective concessioner shall be entitled to the benefit of performance incentives earned by the previous concessioner.

(b) CONCESSION LICENSE.—A concession license may not be transferred.

**SEC. 9311. FEES CHARGED BY THE UNITED STATES FOR CONCESSION AUTHORIZATIONS.**

(a) IN GENERAL.—The Secretary concerned shall charge a fee for the privilege of providing concession services pursuant to this part. The fee for any concession service agreement may include any of the following:

(1) An annual cash payment for the privilege of providing concession services.

(2) The amount required for capital improvements required pursuant to section 9307(a).

(3) Fees for rental or lease of Government-owned facilities or lands occupied by the concessioner.

(4) Expenditures for maintenance of or improvements to Government-owned facilities occupied by the concessioner.

(b) ESTABLISHMENT OF AMOUNT.—

(1) MINIMUM ACCEPTABLE FEE.—The Secretary concerned shall establish a minimum fee for each applicable category specified in paragraphs (1) through (4) of subsection (a) which is acceptable to the Secretary under this section and shall include the minimum fee in the prospectus under section 9305. This fee shall be based on historical data, where available, as well as industry-specific and

other market data available to the Secretary concerned.

(2) FINAL FEE.—Except as provided by paragraph (3), the final fee shall be the amount bid by the selected applicant under section 9305.

(3) SUBSTANTIALLY SIMILAR SERVICES IN A SPECIFIC GEOGRAPHIC AREA.—Where the Secretary concerned simultaneously offers authorizations for more than one river runner, outfitter, or guide concession operation to provide substantially similar services in a defined geographic area, the concession fee for all such concessioners shall be specified by the Secretary concerned in the prospectus. The Secretary concerned shall base the fee on historical data, where available, as well as on industry-specific and other market data available to the Secretary concerned or may establish a charge per user day.

(c) ADJUSTMENT OF FEES.—

(1) IN GENERAL.—The amount of any fee for the term of the concession service agreement shall be set at the beginning of the concession authorization and may only be modified on the basis of inflation, if the annual payment is not determined by a percentage of adjusted gross receipts (as measured by changes in the Consumer Price Index), to reflect

substantial changes from the conditions specified in the prospectus, or in the event of an unforeseen disaster.

(2) CPI.—For the purposes of adjustments for inflation under paragraph (1), the Federal agencies shall select a Consumer Price Index published by the Bureau of Labor Statistics and shall use such index in a consistent manner.

(d) CONCESSION LICENSE FEE.—The fee for a concession license shall at least cover the program administrative costs and may not be changed over the term of the license.

**SEC. 9312. DISPOSITION OF FEES.**

(a) CONCESSION IMPROVEMENT ACCOUNT.—

(1) IN GENERAL.—The Secretary concerned shall, whenever the concession service agreement requires or authorizes the concessioner to make capital improvements or occupy Government-owned facilities, require the concessioner to establish a concession improvement account. The concessioner shall deposit into this account—

(A) all funds for capital improvements as specified in the concession service agreement;

(B) all funds for maintenance of or improvements to Government-owned facilities occupied by the concessioner; and

(C) all amounts received from the Secretary concerned pursuant to subsection (b).

(2) TERMS AND CONDITIONS.—The account shall be maintained by the concessioner in an interest bearing account in a Federally insured financial institution. The concessioner shall maintain the account separately from any other funds or accounts and shall not commingle the monies in the account with any other moneys. The Secretary concerned may establish such other terms, conditions, or requirements as the Secretary determines to be necessary to ensure the financial integrity of the account.

(3) DISBURSEMENTS.—The concessioner shall make disbursements from the account for improvements and other activities, only as specified in the concession service agreement and subsection (b)(2)(C).

(4) RECORDS.—The concessioner shall maintain proper records for all disbursements made from the account. Such records shall include (but not be limited to) invoices, bank statements, canceled checks,

and such other information as the Secretary concerned determines to be necessary.

(5) ANNUAL FINANCIAL STATEMENT.—The concessioner shall annually submit to the Secretary concerned a statement reflecting total activity in the account for the preceding financial year. The statement shall reflect monthly deposits, expenditures by project, interest earned, and such other information as the Secretary concerned requires.

(6) TRANSFER OF REMAINING BALANCE.—Upon the termination of a concession authorization, or upon the transfer of a concession service agreement, any remaining balance in the account shall be transferred by the concessioner to the successor concessioner, to be used solely as set forth in this subsection. In the event there is no successor concessioner, the account balance shall be deposited in the Treasury as miscellaneous receipts.

(b) AMOUNTS RECEIVED RELATING TO PRIVILEGE OF PROVIDING CONCESSION SERVICES AND RENTAL OF GOVERNMENT-OWNED FACILITIES.—

(1) DEPOSIT INTO TREASURY.—The Secretary concerned shall deposit into the Treasury of the United States as miscellaneous receipts amounts received for a fiscal year for the privilege of providing

concession services and the rental of Government-owned facilities up to the amount specified in the table in paragraph (3) for the National Park Service for that fiscal year. For the other agencies covered under this part, the Secretary concerned shall develop a schedule of anticipated receipts to be deposited to the Treasury and submit such schedule to the appropriate Congressional committees within 18 months of the date of enactment of this Act. Nothing in this part shall be construed to modify any provision of law relating to sharing of Federal receipts with any other level of Government.

(2) DEPOSIT INTO CONCESSION IMPROVEMENT ACCOUNTS.—(A) Amounts received by the Secretary concerned for a fiscal year for the privilege of providing concession services and the use of Government-owned facilities which exceed the amount specified in the table in paragraph (3) for that fiscal year shall be available for deposit in the succeeding fiscal year into concession improvement accounts.

(B) Of the amounts available for deposit into concession improvement accounts, the Secretary shall make available to each concessioner a percentage of such excess amounts which bears the same ratio as the amount paid by the concessioner to the

Secretary concerned for a fiscal year for the privilege of providing concession services and the use of Government-owned facilities bears to the total amount paid to the Secretary concerned by all concessioners for that fiscal year for such privilege on an agency-wide basis.

(C) Amounts made available to a concessioner under this paragraph may be used only for expenditures on visitor services and facilities at the area at which the funds were generated.

(3) DEPOSIT INTO CONCESSION IMPROVEMENT ACCOUNTS.—The table referred to in paragraph (2), expressed by fiscal year on an agency basis, is as follows:

**National Park Service**

| Fiscal year: | Amount: |
|---|---|
| 1997 | $15,800,000 |
| 1998 | $21,100,000 |
| 1999 | $26,700,000 |
| 2000 | $32,300,000 |
| 2001 | $38,200,000 |
| 2002 | $44,400,000. |

(c) AUDIT REQUIREMENT.—Beginning with fiscal year 1998, the Inspector General of the Department concerned shall conduct a biennial audit of concession fees generated pursuant to this part. The Inspector General shall make a determination as to whether concession fees are being collected and expended in accordance with this part and shall submit copies of each audit to the Commit-

tee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

**SEC. 9313. DISPUTE RESOLUTION.**

(a) BOARD OF CONTRACT APPEALS.—The Board of Contract Appeals within each Department shall adjudicate disputes between the Federal Government and concessioners arising under this part, including disputes regarding the revocation, suspension, or termination of a concession authorization, transfers of concession service agreements, and performance evaluations of concessions. Such disputes shall be subject to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.). The expiration of a concession authorization shall not be subject to appeal to the Board.

(b) ADMINISTRATIVE REVIEW.—Appeals of decisions may be taken to the Board of Contract Appeals after one level of review of decisions made within an agency.

(c) EXPEDITED PROCEDURE.—Appeals of decisions to suspend, revoke, or terminate a concession authorization shall be considered under an expedited procedure, as provided by the Secretary concerned by regulation.

(d) JUDICIAL REVIEW.—

(1) IN GENERAL.—A person may seek judicial review of decisions made by the Board. Such review

shall be conducted by the court with jurisdiction on a de novo basis.

(2) CONCESSION SERVICE AGREEMENTS.—Judicial review of decisions rendered by the Board regarding concession service agreements shall be to the United States Court of Federal Claims in accordance with section 1491 of title 28, United States Code (commonly referred to as the ''Tucker Act'').

(3) CONCESSION LICENSES.—Judicial review of decisions rendered by the Board regarding concession licenses shall be to the appropriate Federal District Court.

(d) INAPPLICABILITY OF CERTAIN PROVISIONS.—Disputes arising under this part shall not be subject to the jurisdiction of the General Accounting Office to review bid protests under the Competition in Contracting Act of 1984.

**SEC. 9314. RECORDKEEPING.**

(a) MAINTENANCE AND ACCESS.—Each concessioner shall keep such records as the Secretary concerned may prescribe to enable the Secretary to determine that all terms of the concession authorization have been and are being faithfully performed, and the Secretary and his duly authorized representatives shall, for the purpose of audit and examination, have access at reasonable times and lo-

cations to such records and to other books, documents, and papers of the concessioner pertinent to the concession authorization and all the terms and conditions thereof.

(b) ACCESS BY COMPTROLLER GENERAL.—The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five calendar years after the close of the business year of each concessioner have access to and the right to examine any pertinent books, documents, papers, and records of the concessioner related to the concession authorization involved.

**SEC. 9315. APPLICATION OF GENERAL GOVERNMENTAL ACQUISITION REQUIREMENTS.**

The following laws and regulations shall not apply to concession service agreements and concession licenses under this part:

(1) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251–266).

(2) The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).

(3) The Federal Acquisition Streamlining Act of 1994 (Public Law 103–355).

(4) The Brooks Automatic Data Processing Act (40 U.S.C. 759).

(5) Chapters 137 and 141 of title 10, United States Code.

(6) The Federal Acquisition Regulation and any laws not listed in paragraphs (1) through (5) providing authority to promulgate regulations in the Federal Acquisition Regulation.

(7) The Act of June 20, 1936 (20 U.S.C. 107; commonly referred to as the ''Randolph-Sheppard Act'') and the Service Contract Act of 1965 (41 U.S.C. 351 et seq.).

**SEC. 9316. RULES OF CONSTRUCTION.**

Concession programs of an agency on Federal lands and waters subject to this part shall be fully consistent with the agency's mission and laws applicable to the agency. Nothing in this part shall be construed as limiting or restricting any right, title, or interest of the United States in any land or resources.

**SEC. 9317. REGULATIONS.**

(a) IN GENERAL.—Pursuant to enactment of this part, no new concession authorization may be issued, nor may any existing concession authorization remain in effect after two years after the date of the enactment of this Act, unless regulations fully implementing this part are in effect. During such two-year period, the Secretary may only extend an existing concession authorization for a pe-

riod ending at the end of such two-year period. Such extensions shall be made in accordance with the applicable provisions of law specified in section 9318, as such provisions were in effect on the day before the date of the enactment of this Act. The Secretary of the Interior, Secretary of Agriculture, and Secretary of the Army shall develop a single set of regulations which specify a uniform set of recordkeeping requirements for all concessioners with respect to implementation of this part.

(b) QUALIFICATIONS OF AGENCY PERSONNEL ASSIGNED CONCESSION MANAGEMENT DUTIES.—The Secretary, by regulation under subsection (a) and taking into account the provisions of this part, shall specify the minimum training and qualifications required for agency personnel assigned predominantly to concession management duties, including (but not limited to) competency in business management, public health and safety, and the delivery of quality customer services.

**SEC. 9318. RELATIONSHIP TO OTHER EXISTING LAWS.**

(a) REPEALS.—

(1) The Act entitled ''An Act relating to the establishment of concession policies in the areas administered by the National Park Service and for other purposes'' (16 U.S.C. 20–20g) approved October 9, 1965, is repealed.

(2) The last paragraph under the heading ''FOREST SERVICE'' in the Act of March 4, 1915 (38 Stat. 1101), as amended by the Act of July 28, 1956 (chap. 771; 70 Stat. 708) (16 U.S.C. 497), is repealed.

(3) Section 7 of the Act of April 24, 1950 (16 U.S.C. 580d) is repealed.

(b) SUPERSEDED PROVISIONS.—The provisions of this part shall supersede the provisions of the following Acts as they pertain to concessions management:

(1) The Federal Land Policy and Management Act of 1976 (Oct. 21, 1976).

(2) Public Law 87–714 (16 U.S.C. 460k et seq.; commonly known as the ''Refuge Recreation Act'').

(3) The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd).

(c) CONFORMING AMENDMENT.—The fourth sentence of section 3 of the Act of August 25, 1916 (16 U.S.C. 3; 39 Stat. 535), is amended by striking all through ''no natural'' and inserting in lieu thereof ''No natural''.

(d) MODIFIED PROVISIONS.—The second sentence of section 4 of the Act entitled ''An Act authorizing the construction of certain public works on rivers and harbors for

flood control, and for other purposes'' (16 U.S.C. 460d) is amended by inserting '', except for commercial concessions purposes'' the first place it appears after ''public interest''.

(e) SAVINGS.—

(1) IN GENERAL.—The repeal of any provision, the superseding of any provision, and the amendment of any provision, of an Act referred to in subsections (a), (b), or (c) shall not affect the validity of any authorizations entered into under any such Act. The provisions of this part shall apply to any such authorizations, except to the extent such provisions are inconsistent with the express terms and conditions of such authorizations.

(2) RIGHT OF RENEWAL.—The right of renewal explicitly provided for by any concession contract under any such provision shall be preserved for a single renewal of a contract following the enactment of, or concession authorization under, this part.

(3) VALUE OF CAPITAL IMPROVEMENTS OR POSSESSORY INTEREST.—Nothing in this part shall be construed to change the value of existing capital improvements or possessory interest as identified in concession contracts entered into before the enactment of this Act.

(4) ANILCA.—Nothing in this part shall be construed to amend, supersede or otherwise affect any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) relating to revenue-producing visitor services.

(5) SKI AREA PERMITS.—No provision of this part shall apply to any ski area permittee operating on lands administered by the Forest Service.

(6) PROCEDURES FOR CONSIDERING EXISTING CONCESSIONERS IN REISSUANCE OF CONTRACTS.—In the case of any concession contract which has expired prior to the date of the enactment of this Act, or within five years after the date of the enactment of this Act, the incumbent concessioner shall be entitled to a one-time bonus of five percent of the maximum points available in the reissuance of a previous concession authorization. For any concession contract entered into prior to the date of enactment of this Act, which is projected to terminate five years or later after the enactment of this Act, any concessioner shall be entitled to a performance incentive as outlined in this part. The concessioner shall be entitled to an evaluation for the purposes of section 9306 of good for each year in which the Secretary

concerned does not complete an evaluation as provided for in this part.

## PART 2—NATIONAL FOREST SKI AREAS

### SEC. 9321. PRIVATIZATION OF FOREST SERVICE SKI AREAS.

(a) AUTHORIZATION TO SELL.—

(1) IN GENERAL.—Not later than five years after the date of enactment of this part, the Secretary of Agriculture shall offer to sell not less than 40 ski areas to the qualifying ski area operator. Any such sale shall provide for continuation of public access for diverse recreational uses. The Secretary shall offer such areas for sale only after consultation with State and local governments. Any such sale shall be at fair market value and, subject to valid existing rights, shall transfer all right, title, and interest of the United States in and to the lands. In any such sale, the Secretary shall establish the minimum acceptable bid based on the appraised fair market value of such lands.

(2) QUALIFYING LANDS.—For the purposes of subsection (a), lands are qualifying concession lands if such lands are—

(A) subject to a lease on the date of the enactment of this Act for use as a ski area with

improvements with a fair market value greater than $2,000,000; and

(B) located either adjacent to the boundary of the Federal lands or adjacent to other significant private inholdings.

(b) APPRAISAL.—

(1) IN GENERAL.—The Secretary shall provide for an independent appraisal of the lands and interests therein to be transferred pursuant to subsection (a). The appraiser shall—

(A) utilize nationally recognized appraisal standards, including to the extent appropriate the uniform appraisal standards for Federal land acquisition; and

(B) not include the value of any improvement placed on the lands by the concessioner.

(2) APPRAISAL REPORT.—The appraiser shall submit a detailed report to the Secretary.

(c) ADDITIONAL LANDS.—In addition to the national forest ski area, the Secretary may transfer by sale or exchange additional National Forest System lands for the purpose of adding such lands to and operating them as part of a ski area sold under subsection (a). The transfer of additional lands under this subsection shall be in ac-

cordance with this part and the laws generally applicable to the National Forest System.

(d) USE OF PROCEEDS BY THE APPROPRIATE SECRETARY.—The Secretary may retain 50 percent of the funds generated through sales under this section to acquire other high priority lands identified for acquisition in any forest land and resource management plan. The remaining 50 percent of such amount shall be deposited in the Treasury as miscellaneous receipts.

**SEC. 9322. SKI AREA PERMIT FEES AND WITHDRAWAL OF SKI AREAS FROM OPERATION OF MINING LAWS.**

The National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) is amended by adding at the end the following new sections:

**"SEC. 4. SKI AREA PERMIT FEES.**

''(a) SKI AREA PERMIT FEE.—

''(1) IN GENERAL.—Except as provided by paragraph (2), after the date of the enactment of this section, the fee for all ski area permits on National Forest System lands shall be calculated, charged, and paid only as set forth in subsection (b).

''(2) EXCEPTION.—Paragraph (1) does not apply to any ski area where the existing permit in effect on the date of enactment of this section speci-

fies a different method to calculate the fee. In any such situation the terms of such permit shall prevail, unless the permit holder notifies the Forest Service that the permit holder agrees to adopt the method of fee calculation specified in this section. The Forest Service should encourage such permit holders to consider adopting the new method of fee calculation in order to reduce its administrative costs.

''(b) METHOD OF CALCULATION.—

''(1) DETERMINATION OF ADJUSTED GROSS REVENUE SUBJECT TO FEE.—The Secretary of Agriculture shall calculate the ski area permit fee to be charged a ski area permittee by first determining the permittee's adjusted gross revenue to be subject to the permit fee. The permittee's adjusted gross revenue is equal to the sum of the following:

''(A) The permittee's gross revenues from alpine lift ticket and alpine season pass sales plus revenue from alpine ski school operations, with such total multiplied by the permittee's slope transport feet percentage on National Forest System lands.

''(B) The permittee's gross revenues from nordic ski use pass sales and nordic ski school operations, with such total multiplied by the

permittee's percentage of nordic trails on National Forest System lands.

''(C) The permittee's gross revenues from ancillary facilities physically located on National Forest System lands, including all permittee or subpermittee lodging, food service, rental shops, parking, and other ancillary operations.

''(2) DETERMINATION OF SKI AREA PERMIT FEE.—The Secretary shall determine the ski area permit fee to be charged a ski area permittee by multiplying adjusted gross revenue determined under paragraph (1) for the permittee by the following percentages for each revenue bracket and adding the total for each revenue bracket:

''(A) 1.5 percent of all adjusted gross revenue below $3,000,000.

''(B) 2.5 percent for adjusted gross revenue between $3,000,000 and $15,000,000.

''(C) 2.75 percent for adjusted gross revenue between $15,000,000 and $50,000,000.

''(D) 4.0 percent for the amount of adjusted gross revenue that exceeds $50,000,000.

''(3) SLOPE TRANSPORT FEET PERCENTAGE.—In cases where ski areas are only partially located on National Forest System lands, the slope transport

feet percentage on national forest land referred to in paragraph (1) shall be calculated as generally described in the Forest Service Manual in effect as of January 1, 1992.

''(4) ANNUAL ADJUSTMENT OF ADJUSTED GROSS REVENUE.—In order to insure that the ski area permit fee set forth in this subsection remains fair and equitable to both the United States and ski area permittees, the Secretary shall adjust, on an annual basis, the adjusted gross revenue figures for each revenue bracket in subparagraphs (A) through (D) of paragraph (2) by the percent increase or decrease in the national Consumer Price Index for the preceding calendar year.

''(c) MINIMUM FEE.—In cases where an area of National Forest System land is under a ski area permit but the permittee does not have revenue or sales qualifying for fee payment pursuant to subsection (a), the permittee shall pay an annual minimum fee of $2 for each acre of National Forest System land under permit. Rental fees imposed under this subsection shall be paid at the time specified in subsection (d).

''(d) TIME FOR PAYMENT.—The fee set forth in subsection (b) shall be due on June 1 of each year and shall be paid or prepaid by the permittee on a monthly, quar-

terly, annual, or other schedule as determined appropriate by the Secretary in consultation with the permittee. It is the intention of Congress that unless mutually agreed otherwise by the Secretary and the permittee, the payment or prepayment schedule shall conform to the permittee's schedule in effect prior to the enactment of this section. To simplify bookkeeping and fee calculation burdens on the permittee and the Forest Service, the Secretary shall each year provide the permittee with a standardized form and worksheets (including annual fee calculations brackets and rates) to be utilized for fee calculation and submitted with the fee payment. Information provided on such forms shall be compiled by the Secretary annually and kept in the Office of the Chief, United States Forest Service.

''(e) DEFINITIONS.—To simplify bookkeeping and administrative burdens on ski area permittees and the Forest Service, as used in this section, the terms 'revenue' and 'sales' mean actual income from sales. Such terms do not include sales of operating equipment, refunds, rent paid to the permittee by sublessees, sponsor contributions to special events or any amounts attributable to employee gratuities, discounts, complimentary lift tickets, or other goods or services (except for bartered goods) for which the permittee does not receive money.

"(f) EFFECTIVE DATE FOR FEES.—The ski area permit fees as provided under this section shall become effective on July 1, 1996, and cover receipts retroactive to July 1, 1995. If a ski area permittee has paid fees for the 12-month period ending on June 30, 1996, under the graduated rate fee system formula in effect prior to the date of the enactment of this section, such fees shall be credited toward the new ski area permit fee due for that period under this section.

"(g) REPORT ON FAIR MARKET VALUE.—No later than five years after the date of enactment of this section and every 10 years thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committees of Agriculture and Resources of the United States House of Representatives a report analyzing whether the ski area permit fee system legislated by this section is returning a fair market value rental to the United States together with any recommendations the Secretary may have for modifications in the system.

"(h) TRANSITION PERIOD.—Where the new fee provided for in this section results in an increase in permit fee greater than one percent of the permittee's adjusted gross revenue (as defined in subsection (b)(1)), the new

fee shall be phased in over a three year period in a manner providing for increases of approximately equal increments.

''(i) APPLICABILITY OF NEPA TO REISSUANCE OF SKI AREA PERMITS.—The reissuance of a ski area permit to provide activities similar in nature and amount to the activities provided under the previous permit is hereby determined to be a categorical exclusion as provided for under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.).

**''SEC. 5. WITHDRAWAL OF SKI AREAS FROM OPERATION OF MINING LAWS.**

''Subject to valid existing rights, all lands located within the boundaries of ski area permits issued prior to, on, or after the date of the enactment of this section pursuant to the authority of the Act of March 4, 1915 (16 U.S.C. 497), the Act of June 4, 1897 (16 U.S.C. 473 et seq.), or section 3 of this Act are hereby and henceforth automatically withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral and geothermal leasing. Such withdrawal shall continue for the full term of the permit and any modification, reissuance, or renewal of the permit. Such withdrawal shall be canceled automatically upon expiration or other termination of the permit unless, at the request of the Secretary of Agriculture, the Secretary of

the Interior determines to continue the withdrawal. Upon cancellation of the withdrawal, the land shall be automatically restored to all appropriation not otherwise restricted under the public land laws.''.

## PART 3—DOMESTIC LIVESTOCK GRAZING

### SEC. 9331. APPLICABLE REGULATIONS.

(a) BLM LANDS.—Except as otherwise provided by this part, grazing of domestic livestock on lands administered by the Bureau of Land Management shall be in accordance with part 1780 and part 4100 of title 43, Code of Federal Regulations, as in effect on January 1, 1995.

(b) FOREST SERVICE LANDS.—Except as otherwise provided by this part, grazing of domestic livestock on lands administered by the Forest Service shall, to the extent possible, be in accordance with regulations, which the Secretary of Agriculture shall promulgate, which are substantially similar to the regulations referred to in subsection (a). Regulations promulgated under this subsection may differ from the regulations referred to in subsection (a) to the extent necessary to conform to the laws governing the National Forest System (other than this part).

(c) FEDERAL LANDS.—For the purposes of this part, the term ''Federal lands'' means lands administered by

the Bureau of Land Management and lands administered by the Forest Service.

**SEC. 9332. FEES AND CHARGES.**

(a) BASIC FEE.—The basic fee for each animal unit month in a grazing fee year to be determined by the Bureau of Land Management and the Forest Service shall be equal to the 3-year average of the total gross value of production for beef cattle, as compiled by the Economic Research Service of the Department of Agriculture in accordance with subsection (b) on the basis of economic data published by the Service in the Economic Indicators of the Farm Sector: Cost of Production—Major Field Crops & Livestock and Dairy for the 3 years preceding the grazing fee year, multiplied by the 10 year average of the United States Treasury Securities 6-month bill ''new issue'' rate and divided by 12.

(b) CRITERIA.—The Economic Research Service of the Department of Agriculture shall continue to compile the gross production value of production of beef cattle as reported in a dollar per bred cow basis in the ''U.S. Cow-Calf Production Cash Costs and Returns''.

(c) SURCHARGE.—

(1) IN GENERAL.—A surcharge shall be added to the grazing fee billings for authorized grazing of

livestock owned by persons other than the permittee or lessee except where—

(A) such use is made by livestock owned by a spouse, child, or grandchild or their respective spouse of the permittee and lessee; or

(B) the permittee or lessee is unable to make full grazing use, as authorized by a grazing permit or lease, due to the infirmed condition or death of the permittee or lessee.

(2) TREATMENT AS ADDITIONAL FEE.—The surcharge shall be over and above any other fees that may be charged for using public land forage.

(3) PRIOR PAYMENT REQUIRED.—Surcharges shall be paid prior to grazing use.

(4) AMOUNT.—The surcharge for authorized pasturing of livestock owned by persons other than the permittee or lessee shall be equal to 25 percent of the difference between the current year's Federal grazing fee and the prior year's private grazing land lease rate per AUM for the appropriate State as compiled by the National Agricultural Statistics Service.

(5) IN GENERAL.—The Bureau of Land Management and the Forest Service shall make a determination under subsection (a) based on the following

information gathered by the National Agriculture Statistics Service of the Department of Agriculture with respect to the largest single grazing lease of each grazing operator (in terms of dollars):

(A) Whether the operator charged—

(i) per acre;

(ii) per head per month;

(iii) per pound of gain;

(iv) per hundredweight of gain; or

(v) by another measure, and the rate charged.

(B)(i) The estimated average pounds gained per season for the grazing lease.

(ii) The total dollar amount estimated to be realized from the grazing lease.

(iii) Grazing lease acreage.

(iv) The State and county where the grazing lease is located.

(C) The classes of livestock grazed.

(D) The term of the grazing lease.

(E)(i) Whether grazing lease payments are paid if no grazing occurred.

(ii) Whether the grazing lease contains a take or pay provision.

(F) Additional information on whether the following are provided by the landlord on a 5-year basis:

(i) Fencing maintenance.

(ii) Animal management and oversight.

(iii) Water maintenance.

(iv) Salt and minerals.

(v) Other service (specified).

(vi) No services.

(vii) Hunting.

(viii) Fishing.

(ix) Other (specified).

(x) None.

(6) PRIVATE NATIVE RANGELAND.—For the purpose of determining rates for grazing leases of private native rangeland, rates for irrigated pasture, crop aftermath, and dryland winter wheat shall be excluded.

**SEC. 9333. ANIMAL UNIT MONTH.**

(a) DEFINITION OF ANIMAL UNIT MONTH.—The term ''animal unit month'' means 1 month's use and occupancy of range by—

(1) 1 cow, bull, steer, heifer, horse, burro, or mule, 7 sheep, or 7 goats, each of which is 6 months

of age or older on the date on which the animal begins grazing on Federal land;

(2) any such animal regardless of age if the animal is weaned on the date on which the animal begins grazing on Federal land; and

(3) any such animal that will become 12 months of age during the period of use authorized under a grazing permit or grazing lease.

(b) LIVESTOCK NOT COUNTED.—There shall not be counted as an animal unit month the use of Federal land for grazing by an animal that is less than 6 months of age on the date on which the animal begins grazing on Federal land and is the natural progeny of an animal on which a grazing fee is paid if the animal is removed from the Federal land before becoming 12 months of age.

**SEC. 9334. TERM OF GRAZING PERMITS OR GRAZING LEASES.**

A grazing permit or grazing lease shall be issued for a term of 15 years unless—

(1) the land is pending disposal;

(2) the land will be devoted to a public purpose that precludes grazing prior to the end of 15 years; or

(3) the Secretary determines that it would be in the best interest of sound land management to speci-

fy a shorter term, if the decision to specify a shorter term is supported by appropriate and accepted resource analysis and evaluation.

**SEC. 9335. CONFORMANCE WITH LAND USE PLAN.**

Livestock grazing activities and management actions approved by the Secretary of the Interior or the Secretary of Agriculture, as the case may be—

(1) may include any such activities as are not clearly prohibited by a land use plan; and

(2) shall not require any consideration under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in addition to the studies supporting the land use plan.

**SEC. 9336. EFFECTIVE DATE.**

This part shall apply to grazing on Federal lands on and after the date of the enactment of this Act.

## PART 4—REGIONAL DISPOSAL FACILITY OF SOUTHWESTERN LOW LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT

**SEC. 9341. CONVEYANCE OF PROPERTY.**

(a) CONVEYANCE.—Upon the tendering of $500,000 on behalf of the State of California and the release of the United States by the State of California from any liability for claims relating to the property described in subsection (b), all right, title and interest of the United States in

and to said lands and improvements thereon are conveyed to the Department of Health Services of the State of California: *Provided*, That the property shall revert to the United States if the property is not used as a low-level radioactive waste disposal facility.

(b) DESCRIPTION.—The lands conveyed are those depicted on a map designated USGS 7.5 minute quadrangle, west of Flattop Mtn, CA 1984, entitled ''Location Map for Ward Valley Site'', located in San Bernardino Meridian, Township 9 North, Range 19 East.

(c) TITLE.—The Secretary of the Interior shall issue evidence of title pursuant to this Act notwithstanding any other provision of law. The Southwestern Low-Level Radioactive Waste Disposal Compact's Ward Valley regional disposal facility and transfer of the land are in compliance with any applicable provisions of section 7 of Endangered Species Act of 1973 (16 U.S.C. 1536) and the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(d) DEPOSIT OF FUNDS.—Sums received pursuant to subsection (a) shall be deposited as miscellaneous receipts in the Treasury of the United States.

(e) EXPIRATION OF AUTHORITY.—This authority expires October 1, 2010.

**SEC. 9342. CONVEYANCE OF EASEMENTS.**

Concurrent with the conveyance property described in section 9341(b) to the Department of Health Services of the State of California, all necessary easements for utilities and ingress and egress to said lands described in section 9341(b) of this Act and the right to improve those easements, are also conveyed to the Department of Health Services of the State of California: *Provided*, That the Department of Health Services right-of-way easements revert to the United States if the lands referenced in section 9341 are not licensed and used as a low-level radioactive waste disposal facility.

# Subtitle D—Territories

## PART 1—COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**SEC. 9401. TERMINATION OF ANNUAL DIRECT GRANT ASSISTANCE.**

(a) TERMINATION.—Pursuant to section 704(d) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (48 U.S.C. 1681 note), the annual payments under section 702 of the Covenant shall terminate as of September 30, 1995.

(b) REPEAL.—Sections 3 and 4 of the Act of March 24, 1976 (Public Law 94–241; 48 U.S.C. 1681 note), as amended, are repealed, effective October 1, 1995.

(c) REMOVAL OF AUTHORITY TO OBLIGATE CERTAIN FUNDS.—Amounts appropriated under title VII of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and under sections 3 and 4 of Public Law 94–241 (48 U.S.C. 1681), which are not obligated as of the date of the enactment of this Act may not be obligated after such date.

(d) CONFORMING AMENDMENTS.—Section 5 of such Act (48 U.S.C. 1681 note) is amended—

(1) by striking out ''agreement identified in section 3 of this Act'' and inserting in lieu thereof ''Agreement of the Special Representatives on Future United States Financial Assistance for the Government of the Northern Mariana Islands, executed July 10, 1985, between the special representative of the President of the United States and the special representatives of the Governor of the Northern Mariana Islands''; and

(2) by striking out ''Committee on Interior and Insular Affairs'' and inserting in lieu thereof ''Committee on Resources''.

## PART 2—TERRITORIAL ADMINISTRATIVE CESSATION ACT

### SEC. 9421. SHORT TITLE.

This part may be cited as the ''Territorial Administrative Cessation Act''.

### SEC. 9422. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) each of the four political subdivisions of the United Nations Trust Territory of the Pacific Islands, known as the Japanese Mandated Islands, have successfully entered into distinct self-governing entities, thereby culminating in the final termination of the Trusteeship and the end of the trusteeship responsibilities of the United States as administering authority of the Trust Territory on October 1, 1994;

(2) the United States territories have developed progressively increased local self-government over the past five decades;

(3) the territories predominantly deal directly with Federal agencies and departments, as a State would;

(4) the administering responsibilities of the Department of the Interior with respect to the insular areas has declined substantially during the past five decades; and

(5) Federal-territorial relations can be enhanced and Federal fiscal conditions improved by the elimination of unnecessary Federal bureaucracy.

**SEC. 9423. ELIMINATION OF OFFICE OF TERRITORIAL AND INTERNATIONAL AFFAIRS.**

(a) IN GENERAL.—The Office of Territorial and International Affairs of the Department of the Interior, established pursuant to the Order of the Secretary of the Interior 3046, of February 14, 1980, as amended, is hereby abolished.

(b) TERMINATION OF POSITION OF ASSISTANT SECRETARY.—Section 5315 of title 5, United States Code, is amended by striking ''Assistant Secretaries of the Interior (6)'' and inserting ''Assistant Secretaries of the Interior (5)''.

(c) EFFECTIVE DATE.—Subsection (a) and the amendment made by subsection (b) shall take effect on the first day of the first fiscal year that begins after the date of the enactment of this Act.

**SEC. 9424. CERTAIN ACTIVITIES NOT FUNDED.**

Amounts may not be made available for the following program activities for assistance to territories for fiscal years beginning after September 30, 1995, as identified under the appropriations account numbered 14–0412–0–1–808:

(1) technical assistance, item 00.12;

(2) maintenance assistance, item 00.14;

(3) disaster fund, item 00.17; and

(4) insular management controls, item 00.19.

# Subtitle E—Minerals

## PART 1—HARDROCK MINING

### SEC. 9501. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds and declares that—

(1) a secure and reliable supply of locatable minerals is essential to the industrial base of the United States, national security, and balance of trade;

(2) many of the deposits of locatable minerals that may be commercially developed are on Federal lands as that term is defined in this Act, and are difficult and expensive to discover, mine, extract and process;

(3) the national need for locatable minerals will continue to expand, and without a strong mining industry the demand for the minerals will exceed domestic sources of supply;

(4) mining of locatable minerals is an extremely high-risk, capital-intensive endeavor, which, to attract necessary investment, requires certainty and predictability in access to Federal lands in establish-

ment of mining titles, and in the rights of owners of mining claims or sites to develop minerals;

(5) the national interest is to foster and encourage private enterprise in the development of a domestic minerals industry to maintain and create high-paying jobs and the various Federal, State, and local taxes paid by the mining industry in the United States;

(6) changes in the general mining laws of the United States to provide more direct economic return to the United States and greater protection of public resources are desirable, so long as these changes do not act as a disincentive to development of minerals, adversely affect employment in the mining industry or in industries that provide goods and services required for mining activities, interfere with a secure and reliable domestic supply of minerals, or adversely affect the balance of trade of the United States; and

(7) mining claims, mill sites and tunnel sites located under the general mining laws are property interests, and any law or regulation that substantially impairs existing property rights may expose the Federal Government to takings claims under the fifth amendment to the United States Constitution.

(b) PURPOSE.—It is the purpose of this subtitle to—

(1) affirm and maintain the policy established in section 2 of the Mining and Minerals Policy Act of 1970;

(2) promote exploration for and the development of a secure and reliable domestic source of locatable minerals;

(3) provide for increased Federal revenue from the location and production of locatable minerals from Federal lands through patent payments and royalties; and

(4) recognize that unpatented mining claims, mill sites and tunnel sites are property rights in the fullest sense and avoid, to the greatest extent possible, claims of takings of existing property rights under the general mining laws that could require compensation under the fifth amendment to the United States Constitution.

**SEC. 9502. PATENTS UNDER THE GENERAL MINING LAW.**

(a) IN GENERAL.—Any patent issued by the United States under the general mining laws after the date of the enactment of this Act for any interest in land covered by a mining claim or site under such laws shall be issued only—

(1) upon payment by the owner of the mining claim or site of the fair market value for the interest in the land owned by the United States exclusive of, and without regard to, the mineral deposits in the land or the use of such land for mineral activities unless the requirements of subsection (b) are met, and

(2) subject to a reservation by the United States of the royalty provided in section 9503(a), unless the requirements in subsection (b) are met.

(b) PATENT TRANSITION.—(1) Subsection (a) shall not apply to any mining claim or site if—

(A) the claimant establishes that the claim or site constituted a valid mining claim as of the date of the enactment of this Act; and

(B) the claimant has filed a patent application or mineral survey application prior to the date of the enactment of this Act, or files such an application with the Bureau of Land Management before the date 2 years after the date of the enactment of this Act. A patent application or mineral survey application referred to in this subparagraph shall be deemed timely, notwithstanding that the application may be corrected or supplemented and resubmitted thereafter.

(2) During the 2-year period in paragraph (1)(B), or while there is pending a mineral survey or patent application to which this subsection applies, an owner of the mining claim or site may continue work on a mining claim or site directed toward establishment and confirmation of entitlement to a patent, and may amend the application as necessary.

(3) Where access to any mining claim or site has been denied or impeded by the action or inaction of any Federal official, agency, or court during all or part of the 5-year period preceding the date of enactment of this Act, including any mining claim or site within the area described in section 106 of Public Law 103–433, and the mining claim or site may require further exploration or development in order for the claimant to file a patent application or a mineral survey application and otherwise meet the requirements of paragraph (1), the claimant may, within 1 year after the date of enactment of this Act, submit a certified written statement to the Secretary describing the access denial or impediment, and shall then have a period of 10 years from the date of enactment of this Act or the termination of such access denial or impediment, whichever occurs first, to conduct such mineral exploration or development activities, file a patent application or mineral survey

application, and otherwise meet the requirements of paragraph (1).

(c) PAYMENT PLAN.—(1) Any owner grossing less than $500,000 annually shall qualify for a payment plan. Upon completion of the patent process, the owner of the mining claim may purchase the surface estate under the following conditions:

(A) Payment to be amortized over 5 years with 5 equal annual payments, including principal and interest.

(B) Interest shall be calculated per annum at a rate of 2 percent over the ''Treasury Current Value of Funds Rate'' on the date of execution of the payment plan agreement.

(2) The purchaser shall be notified by certified mail after 60 days of delinquent payments and have 90 days from receipt of notification to correct the delinquency. Repossession shall be by and under the laws of repossession, foreclosure, and replevin of the State wherein the land is situated.

(d) REPEAL OF PATENTING MORATORIUM; PROCESSING OF PATENT APPLICATIONS.—Sections ____ and ____ of Public Law ____ are hereby repealed. The Secretary of the Interior shall diligently process all patent applications under the general mining laws pending on the date

of enactment and shall make determinations for all such applications regarding patent issuance within 2 years.

**SEC. 9503. ROYALTY UNDER THE GENERAL MINING LAW.**

(a) IN GENERAL.—The production and sale of locatable minerals (including associated minerals) from any unpatented mining claim (other than those from Federal lands to which subsection 9502(b) applies) or any mining claim patented under section 9502(a) shall be subject to a royalty of 3.5 percent on the net proceeds from such production mined and sold from such claim.

(b) ROYALTY EXCLUSION.—(1) The royalty payable under this section shall be waived for any person or corporation with annual net proceeds from mineral production subject to subsection (a) of less than $50,000.

(2) Where mining operations subject to this section are conducted in 2 or more places by 1 person or corporation, the operations shall be considered a single operation the aggregate net proceeds from which shall be subject to the $50,000 limitation set forth in this subsection.

(3) No royalty shall be payable under this section with respect to minerals processed at a facility by the same person or entity which extracted the minerals if an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974 with respect to any portion of such facility.

(4) The obligation to pay royalties under this section shall accrue only upon the sale of locatable minerals or mineral products produced from a mining claim subject to such royalty, and not upon the stockpiling of the same for future processing.

(c) DEFINITIONS.—For the purposes of this subtitle:

(1) The term ''net proceeds'' means gross yield, less the sum of the following deductions for costs incurred prior to sale or value determination, and none other:

(A) The actual cost of extracting the locatable mineral.

(B) The actual cost of transporting the locatable mineral from the claim to the place or places of reduction, beneficiation, refining, and sale.

(C) The actual cost of crushing, processing, reduction, beneficiation, refining, and sale of the locatable mineral.

(D) The actual cost of marketing and delivering the locatable mineral and the conversion of the locatable mineral into money.

(E) The actual cost of maintenance and repairs of—

(i) all machinery, equipment, apparatus, and facilities used in the mine;

(ii) all crushing, milling, leaching, refining, smelting, and reduction works, plants, and facilities; and

(iii) all facilities and equipment for transportation.

(F) The actual cost for support personnel and support services at the mine site, including without limitation, accounting, assaying, drafting and mapping, computer services, surveying, housing, camp, and office expenses, safety, and security.

(G) The actual cost of engineering, sampling, and assaying pertaining to development and production.

(H) The actual cost of permitting, reclamation, environmental compliance and monitoring.

(I) The actual cost of fire and other insurance on the machinery, equipment, apparatus, works, plants, and facilities mentioned in subparagraph (E).

(J) Depreciation of the original capitalized cost of the machinery, equipment, apparatus,

works, plants, and facilities listed in subparagraph (E). The annual depreciation charge shall consist of amortization of the original cost in the manner consistent with the Internal Revenue Code of 1986, as amended from time to time. The probable life of the property represented by the original cost must be considered in computing the depreciation charge.

(K) All money expended for premiums for industrial insurance, and the owner paid cost of hospital and medical attention and accident benefits and group insurance for all employees engaged in the production or processing of locatable minerals.

(L) All money paid as contributions or payments under State unemployment compensation law, all money paid as contributions under the Federal Social Security Act, and all money paid to State government in real property taxes and severance or other taxes measured or levied on production, or Federal excise tax payments and payments as fees or charges for use of the Federal lands from which the locatable minerals are produced.

(M) The actual cost of the developmental work in or about the mine or upon a group of mines when operated as a unit.

(2) The term ''gross yield'' shall having the following meaning:

(A) In the case of sales of gold and silver ore, concentrates or bullion, or the sales of other locatable minerals in the form of ore or concentrates, the term ''gross yield'' means the actual proceeds of sale of such ore, concentrates or bullion.

(B) In the case of sales of beneficiated products from locatable minerals other than those subject to subparagraph (A) (including cathode, anode or copper rod or wire, or other products fabricated from the locatable minerals), the term ''gross yield'' means the gross income from mining derived from the first commercially marketable product determined in the same manner as under section 613 of the Internal Revenue Code of 1986.

(C) If ore, concentrates, beneficiated or fabricated products, or locatable minerals are used or consumed and are not sold in an arms length transaction, the term ''gross yield''

means the reasonable fair market value of the ore, concentrates, beneficiated or fabricated products at the mine or wellhead determined from the first applicable of the following:

(i) Published or other competitive selling prices of locatable minerals of like kind and grade.

(ii) Any proceeds of sale.

(iii) Value received in exchange for any thing or service.

(iv) The value of any locatable minerals in kind or used or consumed in a manufacturing process or in providing a service.

Without limiting the foregoing, the profits or losses incurred in connection with forward sales, futures or commodity options trading, metal loans, or any other price hedging or speculative activity or arrangement shall not be included in gross yield.

(3) The term ''Secretary'' means the Secretary of the Interior.

(d) LIMITATIONS AND ALLOCATIONS OF NET PROCEEDS, GROSS YIELD, AND ALLOWABLE COSTS.—(1) The deductions listed in subsection (c)(1) are intended to allow

a reasonable allowance for overhead. Such deductions shall not include any expenditures for salaries, or any portion of salaries, of any person not actually engaged in—

(A) the working of the mine;

(B) the operating of the leach pads, ponds, plants, mills, smelters, or reduction works;

(C) the operating of the facilities or equipment for transportation; or

(D) superintending the management of any of those operations described in subparagraphs (A) through (C).

(2) Ores or solutions of locatable minerals subject to the royalty requirements of this section may be extracted from mines comprised of mining claims and lands other than mining claims and ore or solutions of locatable minerals subject to the royalty requirements of this section may be commingled with ores or solutions from lands other than mining claims. In any such case, for purposes of determining the amount of royalties payable under this section—

(A) the operator shall first sample, weigh or measure, and assay the same in accordance with accepted industry standards; and

(B) gross yield, allowable costs and net proceeds for royalty purposes shall be allocated in pro-

portion to mineral products recovered from the mining claims in accordance with accepted industry standards.

(e) LIABILITY FOR ROYALTY PAYMENTS.—The owner or co-owners of a mining claim subject to a royalty under this section shall be liable for such royalty to the extent of the interest in such claim owned. As used in this subsection, the terms ''owner'' and ''co-owner'' mean the person or persons owning the right to mine locatable minerals from such claim and receiving the net proceeds of such sale. No person who makes any royalty payment attributable to the interest of the owner or co-owners liable therefor shall become liable to the United States for such royalty as a result of making such payment on behalf of such owner or co-owners.

(f) TIME AND MANNER OF PAYMENT.—(1) Royalty payments for production from any mining claim subject to the royalty payable under this section shall be due to the United States at the end of the month following the end of the calendar quarter in which the net proceeds from the sale of such production are received by the owner or co-owners. Royalty payments may be made based upon good faith estimates of the gross yield, net proceeds and the quantity of ore, concentrates, or other beneficiated or fabricated products of locatable minerals, subject to ad-

justment when the actual annual gross yield, net proceeds and quantity are determined by the owner of the mining claim or site or co-owners.

(2) Each royalty payment or adjustment shall be accompanied by a statement containing each of the following:

(A) The name and Bureau of Land Management serial number of the mining claim or claims from which ores, concentrates, solutions or beneficiated products of locatable minerals subject to the royalty required in this section were produced and sold for the period covered by such payment or adjustment.

(B) The estimated (or actual, if determined) quantity of such ore, concentrates, solutions or beneficiated or fabricated products produced and sold from such mining claim or claims for such period.

(C) The estimated (or actual, if determined) gross yield from the production and sale of such ore, concentrates, solutions or beneficiated products for such period.

(D) The estimated (or actual, if determined) net proceeds from the production and sale of such ores, concentrates, solutions or beneficiated products

for such period, including an itemization of the applicable deductions described in subsection (c)(1).

(E) The estimated (or actual, if determined) royalty due to the United States, or adjustment due to the United States or such owner or co-owners, for such period.

(3) In lieu of receiving a refund under subsection (h), the owner or co-owners may elect to apply any adjustment due to such owner or co-owners as an offset against royalties due from such owner or co-owners to the United States under this Act, regardless of whether such royalties are due for production and sale from the same mining claim or claims.

(g) RECORDKEEPING AND REPORTING REQUIREMENTS.—(1) An owner, operator, or other person directly involved in the conduct of mineral activities, transportation, purchase, or sale of locatable minerals, concentrates, or products derived therefrom, subject to the royalty under this section, through the point of royalty computation, shall establish and maintain any records, make any reports, and provide any information that the Secretary may reasonably require for the purposes of implementing this section or determining compliance with regulations or orders under this section. Upon the request of the Secretary when conducting an audit or investigation

pursuant to subsection (i), the appropriate records, reports, or information required by this subsection shall be made available for inspection and duplication by the Secretary.

(2) Records required by the Secretary under this section shall be maintained for 3 years after the records are generated unless the Secretary notifies the record holder that he or she has initiated an audit or investigation specifically identifying and involving such records and that such records must be maintained for a longer period. When an audit or investigation is under way, such records shall be maintained until the earlier of the date that the Secretary releases the record holder of the obligation to maintain such records or the date that the limitations period applicable to such audit or investigation under subsection (i) expires.

(h) INTEREST ASSESSMENTS.—(1) If royalty payments under this section are not received by the Secretary on the date that such payments are due, or if such payments are less than the amount due, the Secretary shall charge interest on such unpaid amount. Interest under this subsection shall be computed at the rate published by the Department of the Treasury as the ''Treasury Current Value of Funds Rate.'' In the case of an underpayment or partial payment, interest shall be com-

puted and charged only on the amount of the deficiency and not on the total amount, and only for the number of days such payment is late. No other late payment or underpayment charge or penalty shall be charged with respect to royalties under this section.

(2) In any case in which royalty payments are made in excess of the amount due, or amounts are held by the Secretary pending the outcome of any appeal in which the Secretary does not prevail, the Secretary shall promptly refund such overpayments or pay such amounts to the person or persons entitled thereto, together with interest thereon for the number of days such overpayment or amounts were held by the Secretary, with the addition of interest charged against the United States computed at the rate published by the Department of the Treasury as the ''Treasury Current Value of Funds Rate.''

(i) AUDITS, PAYMENT DEMANDS AND LIMITATIONS.—(1) The Secretary may conduct, after notice, any audit reasonably necessary and appropriate to verify the payments required under this section.

(2) The Secretary shall send or issue any billing or demand letter for royalty due on locatable minerals produced and sold from any mining claim subject to royalty required by this section not later than 3 years after the date such royalty was due and must specifically identify

the production involved, the royalty allegedly due and the basis for the claim. No action, proceeding or claim for royalty due on locatable minerals produced and sold, or relating to such production, may be brought by the United States, including but not limited to any claim for additional royalties or claim of the right to offset the amount of such additional royalties against amounts owed to any person by the United States, unless judicial suit or administrative proceedings are commenced to recover specific amounts claimed to be due prior to the expiration of 3 years from the date such royalty is alleged to have been due.

(j) TRANSITIONAL RULES.—Any mining claim for which a patent is issued pursuant to section 9502(b) shall not be subject to the obligation to pay the royalty pursuant to this section. Royalty payments for any claim processed under section 9502(b) shall be suspended pending final determination of the right to patent. For any such claim that is determined not to qualify for the issuance of a patent under section 9502(b), royalties shall be payable under this section on production after the date of enactment of this Act, plus interest computed at the rate published by the Department of the Treasury as the ''Treasury Current Value of Funds Rate'' on production

after such date of enactment and before the date of such determination.

(k) DISBURSEMENT OF REVENUES.—The receipts from royalties collected under this section shall be disbursed as follows:

(1) Two-thirds of such receipts shall be paid into the Treasury of the United States and deposited as miscellaneous receipts.

(2) One-third of such receipts shall be paid by the Secretary of the Treasury to the State in which the mining claim from which production occurred is located.

(l) NO IMPLIED COVENANTS.—The owner of a mining claim subject to the provisions of this title shall have no obligation, express or implied, to explore for, develop, produce or market locatable minerals as a result of the obligation to pay a royalty hereunder, and the timing, nature, extent and manner of exploring, developing, mining and marketing such locatable minerals shall be in the sole discretion of the claim owner.

**SEC. 9504. MINERAL MATERIALS.**

(a) DETERMINATIONS.—Section 3 of the Act of July 23, 1955 (30 U.S.C. 611), is amended as follows:

(1) Insert ''(a)'' before the first sentence.

(2) Add the following new subsection at the end thereof:

''(b)(1) Subject to valid existing rights, after the date of enactment of this subsection, notwithstanding the reference to common varieties in subsection (a) and to the exception to such term relating to a deposit of materials with some property giving it distinct and special value, all deposits of mineral materials referred to in such subsection, including the block pumice referred to in such subsection, shall be subject to disposal only under the terms and conditions of the Materials Act of 1947.

''(2) For purposes of paragraph (1), the term 'valid existing rights' means that a mining claim located for any such mineral material had some property giving it the distinct and special value referred to in subsection (a), or as the case may be, met the definition of block pumice referred to in such subsection, was properly located and maintained under the general mining laws prior to the date of the enactment of this subsection, and was supported by a discovery of a valuable mineral deposit within the meaning of the general mining laws as in effect immediately prior to such date of enactment and that such claim continues to be valid under this Act.''.

(b) IDENTIFIED DEPOSITS.—In order to assure that the Secretary has the authority to provide for the develop-

ment of mineral materials which, in order to justify the investment necessary for the development of the appropriate mine, quarry or other workings and related facilities, may require longer and more secure tenure than is provided by sales contracts under the Act entitled ''An Act to provide for the disposal of materials on the public lands of the United States'', approved July 31, 1947 (30 U.S.C. 602), and in order to provide flexibility with regard to the manner of disposition of mineral materials section 2 of such Act is amended by adding at the end the following:

''(b) IDENTIFIED DEPOSITS.—(1) Lands known to contain valuable deposits of mineral materials subject to this Act and subsequent amendments and not covered by any contract, permit, or lease under this section shall also be subject to disposition by lease under this Act by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, and in such reasonably compact areas as he shall fix.

''(2) All leases will be conditioned upon—

''(A) the payment by the lessee of such royalty as may be fixed in the lease, not less than two percent of the quantity or gross value of the output of mineral materials, and

''(B) the payment in advance of a rental of 25 cents per acre for the first calendar year or fraction thereof; 50 cents per acre for the second, third, fourth, and fifth years, respectively; and $1 per acre per annum thereafter during the continuance of the lease, such rental for that year being credited against royalties accruing for that year.

''(3)(A) Any lease issued under this subsection shall be for a term of 20 years and so long thereafter as the lessee complies with the terms and conditions of the lease and upon the further condition that at the end of each 20-year period succeeding the date of the lease such reasonable adjustment of the terms and conditions thereof may be made therein as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such periods.

''(B) Leases shall be conditioned upon a minimum annual production or the payment of a minimum royalty in lieu thereof, except when production is interrupted by strikes, the elements, or casualties not attributable to the lessee.

''(C) The Secretary of the Interior may permit suspension of operations under any such leases when marketing conditions are such that the leases cannot be operated except at a loss.

"(D) The Secretary upon application by the lessee prior to the expiration of any existing lease in good standing shall amend such lease to provide for the same tenure and to contain the same conditions, including adjustment at the end of each 20-year period succeeding the date of said lease, as provided for in this subsection.

"(c) OTHER LANDS.—(1) The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for mineral materials in lands belonging to the United States which are not subject to subsection (b), and are not covered by a contract, permit, or lease under this Act, except that a prospecting permit shall not exceed a period of 2 years and the area to be included in such a permit shall not exceed 2,560 acres of land in reasonably compact form.

"(2) The Secretary of the Interior shall reserve and may exercise the authority to cancel any prospecting permit upon failure by the permittee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit, and shall insert in every such permit issued under the provisions of this Act appropriate provisions for its cancellation by him.

''(3) Upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one of the mineral materials subject to the Materials Act of 1947 have been discovered by the permittee within the area covered by his permit, and that such land is valuable therefor, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit, at a royalty of not less than two percent of the quantity or gross value of the output of the mineral materials at the point of shipment to market, such lease to be taken in compact form by legal subdivisions of the public land surveys, or if the land be not surveyed, by survey executed at the cost of the permittee in accordance with regulations prescribed by the Secretary of the Interior.''.

(d) MINERAL MATERIALS DISPOSAL CLARIFICATION.—Section 4 of the Act of July 23, 1955 (30 U.S.C. 612), as amended as follows:

(1) In subsection (b) insert ''and mineral material'' after ''vegetative''.

(2) In subsection (c) insert ''and mineral material'' after ''vegetative''.

(e) CONFORMING AMENDMENT.—Section 1 of the Act of July 31, 1947, entitled ''An Act to provide for the disposal of materials on the public lands of the United

States'' (30 U.S.C. 601 and following) is amended by striking ''common varieties of'' in the first sentence.

(f) SHORT TITLES.—

(1) SURFACE RESOURCES.—The Act of July 23, 1955, is amended by inserting after section 7 the following new section:

''SEC. 8. This Act may be cited as the 'Surface Resources Act of 1955'.''.

(2) MINERAL MATERIALS.—The Act of July 31, 1947, entitled ''An Act to provide for the disposal of materials on the public lands of the United States'' (30 U.S.C. 601 and following) is amended by inserting after section 4 the following new section:

''SEC. 5. This Act may be cited as the 'Materials Act of 1947'.''.

(g) REPEALS.—(1) Subject to valid existing rights, the Act of August 4, 1892 (27 Stat. 348, 30 U.S.C. 161), commonly known as the Building Stone Act, is hereby repealed.

(2) Subject to valid existing rights, the Act of January 31, 1901 (30 U.S.C. 162), commonly known as the Saline Placer Act, is hereby repealed.

(h) AUTHORIZATION FOR DISPOSAL OF MINERAL MATERIALS BY CONTRACT.—Section 2(a) of the Act entitled ''An Act to provide for the disposal of materials on

the public lands of the United States'', approved July 31, 1947 (30 U.S.C. 602(a)), is amended—

(1) by striking the period at the end of paragraph (3) and inserting ''or, if''; and

(2) by adding after paragraph (3) the following: ''(4) the material is a mineral material.''.

(i) SODIUM.—Section 24 of the Mineral Leasing Act (30 U.S.C. 181 et seq.) is amended by inserting after ''2 per centum'' in each place it appears the following: ''and not greater than five and one-half per centum''. Any rate under section 24 of the Mineral Leasing Act (30 U.S.C. 181) in excess of five and one-half per centum shall not be allowed unless the following conditions are met:

(1) the Secretary, in consultation with the Secretary of Commerce and the United States Trade Representative, finds that any increase in the royalty rate for sodium will not have an adverse effect on the export of domestically produced soda ash;

(2) the Secretary reports this finding of no ''adverse effect'' to Congress and recommends an additional proposed royalty rate increase; and

(3) the Congress, within 360 days, approves the Secretary's recommendation.

The Secretary shall, within 90 days, offer for competitive bid all tracts for which there are applications pending on sodium leases.

**SEC. 9505. CLAIM MAINTENANCE REQUIREMENTS.**

(a) MAINTENANCE FEES.—

(1) ANNUAL MAINTENANCE FEE.—After the date of enactment of this Act, the owner of each unpatented mining claim or site located pursuant to the general mining laws, whether located before or after the enactment of this Act, shall pay to the Secretary in advance on or before September 1 of each year, until a patent has been issued therefor, an annual maintenance fee per mining claim or site.

(2) INITIAL MAINTENANCE FEE.—The owner of each unpatented mining claim or site located after the date of enactment of this Act pursuant to the general mining laws shall pay to the Secretary, at the time the copy of the notice or certificate of location is filed with the Bureau of Land Management pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(b)), the location fee required under subsection (i) of this section, in lieu of the annual maintenance fee of $100 per mining claim or site for the assess-

ment year which includes the date of location of such mining claim or site.

(3) EXEMPTION.—The owner of any mining claim or site who certifies in writing to the Secretary on or before the first day of any assessment year that access to such mining claim or site was denied or impeded during the prior assessment year by the action or inaction of any local, State, or Federal governmental officer, agency, or court, or by any Indian tribal authority, shall be exempt from the annual maintenance fee requirements of paragraph (1) for the assessment year following the filing of the certification.

(4) AMOUNT OF ANNUAL MAINTENANCE FEE.—For each assessment year the annual maintenance fee payable under paragraph (1) for a claim or site referred to in paragraph (1) shall be in the amount specified in Table 1.

**TABLE 1**

| Assessment Year | Amount of Fee Per Site or Claim |
|---|---|
| 1 through 3 | $100 per year |
| 4 through 5 | $150 per year |
| 6 through 10 | $200 per year |
| 11 through 15 | $300 per year |
| 16 and thereafter | $500 per year |

For purposes of applying Table 1 in the case of claims filed before the enactment of this Act, the portion of the

assessment year in which this Act is enacted shall be treated as the first assessment year.

(5) EFFECT OF FORFEITURE.—No owner or co-owner of a mining claim or site which has been forfeited because the maintenance fee has not been paid and no person who is a related person of any such owner or co-owner may relocate a new claim on any part of lands located within the forfeited claim for a period of 18 months after the date of forfeiture.

(6) DEPOSIT OF FEES.—The full amount of all fees paid under this subsection shall be deposited in the General Fund of the Treasury.

(b) ANNUAL LABOR.—(1) Amounts expended on activities that qualify as annual labor under the general mining laws may be credited on a dollar for dollar basis towards up to 75 percent of the annual maintenance fee payable under this section for the following assessment year.

(2) Subject to the 75 percent limit set forth in paragraph (1), the excess of amounts expended for annual labor performed in any one year over such 75 percent limit may be applied to the maintenance fee due in subsequent years for a period of up to three years.

(3) In order to receive credit under this subsection for annual labor work or excess annual labor, the description and value of the work must be included in the state-

ment required in subsection (e) and the statement must be timely filed.

(4) Annual labor performed on an individual mining claim or site within a group of contiguous claims may be credited towards the aggregate amount of maintenance fees due on all of the contiguous claims within that group.

(c) WORK QUALIFYING AS ANNUAL LABOR.—(1) Only work which directly benefits or develops a mining claim or facilitates the extraction of ore qualifies as annual labor. Acceptable labor and improvements include any of the following:

(A) Drilling or excavating, including ore extraction.

(B) Mining costs directly associated with the production of ore.

(C) Prospecting work which benefits the location or a contiguous location.

(D) Development work toward an actual mine, such as shafts, tunnels, crosscuts and drifts, settling ponds and dams.

(E) Bringing in water for direct mining or milling purposes.

(F) Clearing of brush, timber, debris, or overburden where necessary to facilitate the extraction or processing of minerals.

(G) Construction of trails, roads, or landing strips providing access to claims.

(H) Construction costs of worker housing, mills, and equipment storage buildings where reasonably necessary for the development of the location.

(I) Reasonable value of the use of equipment for prospecting, mining, or development purposes on the location.

(J) Repairs of equipment used for prospecting, sampling, or production of minerals provided that such equipment has been on site during the assessment year.

(K) Cost of moving workers, materials, and equipment among contiguous locations.

(L) Watchman services of a bona fide employed watchman on the property where reasonably necessary to protect mining equipment of substantial value.

(M) Activities covered under section 1 of the Act of September 2, 1958 (30 U.S.C. 28–1), as amended.

(N) Reclamation conducted pursuant to State or Federal surface management regulations.

(O) Other activities which the Secretary may determine qualify as annual labor.

(2) The following activities do not qualify as annual labor:

(A) Work involved in maintaining the location such as brushing and marking boundaries or replacing corner posts and location notices.

(B) Transportation of workers to or from the location.

(C) Prospecting or exploration work not conducted within the location or a contiguous location.

(d) AMENDMENTS OF PUBLIC LAW 85–876.—The Act of September 2, 1958 (Public Law 85–876; 30 U.S.C. 28–1), is amended as follows:

(1) Section 1 is amended by inserting ''mineral activities, environmental baseline monitoring, and'' after ''without being limited to'' and before ''geological, geochemical and geophysical surveys'' and by striking ''Such'' at the beginning of the last sentence and inserting ''Airborne''.

(2) Section 2(d) is amended by inserting ''environmental baseline monitoring or'' after ''experience to conduct'' and before ''geological, geochemical or geophysical surveys''.

(3) Section 2 is amended by adding at the end of the following new subsection at the end thereof:

"(e) The term 'environmental baseline monitoring' means activities for collecting, reviewing and analyzing information concerning soil, vegetation, wildlife, mineral, air, water, cultural, historical, archaeological or other resources related to planning for or complying with Federal and State environmental or permitting requirements applicable to potential or proposed mineral activities on the claim(s).".

(e) MAINTENANCE FEE STATEMENT.—Each payment under subsection (a) of this section shall be accompanied by a statement which reasonably identifies the mining claim or site for which the maintenance fee is being paid. The statement required under this subsection shall be in lieu of any annual filing requirements for mining claims or sites, under any other Federal law, but shall not supersede any such filing requirement under applicable State law.

(f) ANNUAL LABOR REPORT.—When the value of annual labor is credited towards part or all of the maintenance fee, subject to the 75-percent limit set forth in subsection (b)(1), the following shall apply:

(1) The maintenance fee statement required in subsection (e) must also state the dates of performance of the labor, describe the character and total value of the improvements made or the labor per-

formed, the amount of labor used as a credit toward the maintenance fee for the current year, and the value of excess labor performed in previous years which is to be applied to the maintenance fee for the current year.

(2) Documentation which reasonably supports the activities or improvements claimed must accompany the maintenance fee statement. Such documentation may include, but is not limited to, copies of maps showing sample locations, drill locations, or survey data; environmental baseline data; reports on geology, geochemistry, or geophysics by qualified experts; drill results; or engineering reports by qualified engineers.

(3) All supporting material filed pursuant to paragraph (2) shall remain confidential in accordance with section 552 of title 5 of the United States Code as long as the location is maintained and for a period of one year after the location is abandoned, after which all data filed shall be considered public information.

(g) EFFECT OF COMPLIANCE AS AGAINST SUBSEQUENT LOCATORS.—(1) Except as provided in paragraph (2), after the date of enactment of this Act, compliance with the requirements of this section shall, from the time

the location notice or certificate is posted on the land under applicable State law, confer upon the owner of any unpatented mining claim or site, whether located before or after the date of enactment of this Act, an exclusive right of possession, as against subsequent locators, of the land included in such mining claim or site under the general mining laws. If more than one mining claim or site owned or controlled by the same claim or site owner covers substantially the same land, by reason of the location of one or more mining claims or sites on such land, the amendment or relocation of any such mining claim or site, or otherwise, such exclusive right of possession shall extend to all such mining claims or sites, effective from the time the location notice or certificate for the initial mining claim or site was posted on such land under applicable State law. The order of location, amendment, or relocation of any such mining claims or sites on such land shall not affect the validity of any such mining claim or site. Such owner of the mining claim or site shall not be required to be in actual, physical occupation of such land and shall not be required to exclude rival locators from such land. Such exclusive right of possession shall be subject to applicable Federal law, including the Multiple Mineral Development Act of 1954 (30 U.S.C. 521–31), the Materials Act of 1947 (30 U.S.C. 601–604) and the Surface Resources

Act of 1955 (30 U.S.C. 611–15) to the extent applicable, and shall neither enlarge nor diminish any rights of such owner of the mining claim or site as against the United States in such land. This paragraph shall supersede the common law doctrine of pedis possessio.

(2) Conflicts over the right of exclusive possession of land included in any mining claim or site shall be determined in proceedings between owners of mining claims or sites under the provisions of section 910 of the Revised Statutes (30 U.S.C. 53) and other applicable law, including but not limited to each of the following:

(A) Any conflict based upon circumstances existing as of the date of enactment of this Act between mining claims or sites located before the date of enactment of this Act, shall be resolved under the law in effect on the day prior to the date of enactment of this Act, including the common law doctrine of pedis possessio.

(B) Any conflict arising on or after the date of enactment of this Act between mining claims or sites located before, on or after the date of enactment over whether either owner of the mining claim or site has complied with the requirements of this section, shall be resolved under this Act.

(h) FAILURE OF CO-OWNER TO CONTRIBUTE.—Upon the failure of any one or more of several co-owners of any mining claim or site to contribute such co-owner or owners' portion of any location or maintenance fee payable under this section, any co-owner who has paid such fee may, after the payment due date, serve the delinquent co-owner or owners with notice of such failure in writing or, if such delinquent co-owner or owners cannot be located after reasonable efforts, by publication in a general circulation newspaper published in a location nearest the mining claim or site at least once a week for at least 90 days. If at the expiration of 90 days after such notice in writing or by publication, any delinquent co-owner fails or refuses to contribute the owed portion, such co-owner or owners' interest shall become the property of the owner or co-owners who have paid the required fee.

(i) LOCATION FEE.—The owner of each unpatented mining claim or site located on or after the date of enactment of this Act pursuant to the general mining laws shall pay to the Secretary, at the time the notice or certificate of location is filed with the Bureau of Land Management pursuant to subsection 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(b)), a location fee of $25.00 per mining claim or site. The full amount of all fees paid under this subsection shall be de-

posited in the General Fund of the Treasury. Effective on the date of the enactment of this Act, section 10102 of the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 406; 30 U.S.C. 28g) is repealed.

(j) CREDIT AGAINST MAINTENANCE FEE.—(1) Except as provided in paragraph (2), the annual maintenance fee payable for any unpatented mining claim or site for any assessment year shall be reduced by the amount of royalty paid by such claimholder for such mining claim or site, or for any contiguous mining claim or site, during the prior assessment year.

(2) Royalties paid during any assessment year prior to the first full assessment year commencing after the enactment of this Act shall not reduce the amount of any maintenance fee.

(k) OIL SHALE CLAIMS SUBJECT TO CLAIM MAINTENANCE FEE UNDER ENERGY POLICY ACT OF 1992.—This section shall not apply to any oil shale claims for which a fee is required to be paid under paragraph 2511(e)(2) of the Energy Policy Act of 1992 (30 U.S.C. 242(e)(2)).

(l) FAILURE TO COMPLY.—The failure of the owner of the mining claim or site to pay any claim maintenance fee or location fee for a mining claim or site on or before the date such payment is due under this section shall con-

stitute forfeiture of the mining claim or site and such mining claim or site shall be null and void, effective as of the day after the date such payment is due, except that if such maintenance fee or location fee is paid or tendered on or before the 30th day after such payment was due under subsection of this section, such mining claim or site shall not be forfeited or null or void, and such maintenance fee or location fee shall be deemed timely paid.

(m) AMENDMENT OF FLPMA FILING REQUIREMENTS.—(1) Section 314(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(a)) is hereby repealed.

(2) Section 314(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(c)) is amended to read as follows:

''(c) FAILURE TO FILE AS CONSTITUTING FORFEITURE; DEFECTIVE OR UNTIMELY FILING.—The failure to timely file the copy of the notice or certificate of location as required by subsection (b) shall constitute forfeiture of the mining claim and such claim shall be null and void by operation of law; except that it shall not be considered a failure to file if the notice or certificate of location is defective or not timely filed for record under other State or Federal laws permitting or requiring the filing or recording thereof, or if the copy of the notice or certificate

is filed by or on behalf of some but not all of the owners of the claim.''.

(n) RELATED PERSONS.—As used in this section, the term ''related persons'' includes—

(1) the spouse and dependent children (as defined in section 152 of the Internal Revenue Code of 1986), of the owner of the mining claim or site; and

(2) a person controlled by, controlling, or under common control with the owner of the mining claim or site.

(o) REPEAL.—Section 10101 of the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 406; 30 U.S.C. 28g) is repealed, effective with respect to assessment year commencing after the enactment of this Act.

(p) PERIODIC REVIEW OF FEE STRUCTURE.—Beginning in the year 2005 and at 10 year intervals thereafter, the Secretary shall review the costs incurred by the Secretary to administer mining claims for locatable minerals under the general mining laws and the structure and level of maintenance and location fees received by the Secretary with respect to such claims. The Secretary shall determine if the revenues from such fees is adequate to cover such costs, taking inflation and other appropriate factors into account. The Secretary shall submit the results of each

such review to the Congress, together with such legislative recommendations as the Secretary deems appropriate.

## PART 2—FEDERAL OIL AND GAS ROYALTIES

### SEC. 9511. SHORT TITLE.

This part may be cited as the ''Federal Oil and Gas Royalty Simplification and Fairness Act of 1995''.

### SEC. 9512. DEFINITIONS.

(a) IN GENERAL.—Section 3 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended—

(1) by amending paragraph (7) to read as follows:

''(7) 'lessee' means any person to whom the United States, an Indian tribe, or an Indian allottee issues a lease or any person to whom operating rights have been assigned;''; and

(2) by striking ''and'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting a semicolon, and by adding at the end the following:

''(17) 'adjustment' means an amendment to a previously filed report on an obligation, and any additional payment or credit, if any, applicable thereto, to rectify an underpayment or overpayment on a lease;

''(18) 'administrative proceeding' means any agency process in which a demand, decision or order issued by the Secretary is subject to appeal or has been appealed;

''(19) 'assessment' means any fee or charge levied or imposed by the Secretary or the United States other than—

''(A) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

''(B) any interest; or

''(C) any civil or criminal penalty;

''(20) 'commence' means—

''(A) with respect to a judicial proceeding, the service of a complaint, petition, counterclaim, crossclaim, or other pleading seeking affirmative relief or seeking credit or recoupment; or

''(B) with respect to a demand, the receipt by the Secretary or a lessee of the demand;

''(21) 'credit' means the application of an overpayment (in whole or in part) against an obligation which has become due to discharge, cancel or reduce the obligation;

''(22) 'demand' means—

''(A) an order to pay issued by the Secretary; or

''(B) a separate written request by a lessee which asserts an obligation due the lessee,

but does not mean any royalty or production report, or any information contained therein, required by the Secretary;

''(23) 'obligation' means—

''(A) any duty of the Secretary or the United States—

''(i) to take oil or gas royalty in kind; or

''(ii) to pay, refund, offset, or credit monies including but not limited to—

''(I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale; or

''(II) any interest;

''(B) any duty of a lessee—

''(i) to deliver oil or gas royalty in kind; or

''(ii) to pay, offset or credit monies including but not limited to—

''(I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

''(II) any interest;

''(III) any penalty; or

''(IV) any assessment,

which arises from or relates to any lease administered by the Secretary for, or any mineral leasing law related to, the exploration, production and development of oil or gas on Federal lands or the Outer Continental Shelf;

''(24) 'order to pay' means a written order issued by the Secretary or the United States which—

''(A) asserts a definite and quantified obligation; and

''(B) specifically identifies the obligation by lease, production month and amount of such obligation ordered to be paid, as well as the reason or reasons such obligation is claimed to be due,

but such term does not include any other communication or action by or on behalf of the Secretary or the United States;

''(25) 'overpayment' means any payment by a lessee in excess of an amount legally required to be paid on an obligation and includes the portion of any estimated payment for a production month that is in excess of the royalties due for that month;

''(26) 'payment' means satisfaction, in whole or in part, of an obligation;

''(27) 'penalty' means a statutorily authorized civil fine levied or imposed by the Secretary or the United States for a violation of this Act, any mineral leasing law, or a term or provision of a lease administered by the Secretary;

''(28) 'refund' means the return of an overpayment by the Secretary or the United States by the drawing of funds from the United States Treasury;

''(29) 'State concerned' means, with respect to a lease, a State which receives a portion of royalties under this Act from such lease; and

''(30) 'underpayment' means any payment or nonpayment by a lessee that is less than the amount legally required to be paid on an obligation.''.

(b) LESSEE LIABILITY.—Section 102(a) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1712(a)) is amended to read as follows:

''(a) A lessee who is required to make any royalty or other payment under a lease or under the mineral leasing laws, shall make such payments in the time and manner as may be specified by the Secretary. A lessee may designate a person to act on the lessee's behalf and shall notify the Secretary in writing of such designation. The person to whom the United States issues a lease or the person by whom operating rights are currently owned, but not both, shall remain primarily liable for its obligations.''.

**SEC. 9513. LIMITATION PERIODS.**

(a) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended by adding after section 114 the following new section:

**"SEC. 115. LIMITATION PERIODS AND AGENCY ACTIONS.**

''(a) IN GENERAL.—A judicial proceeding or demand which arises from, or relates to an obligation, shall be commenced within six years from the date on which the obligation becomes due and if not so commenced shall be barred, except as otherwise provided by this section.

''(b) OBLIGATION BECOMES DUE.—

''(1) IN GENERAL.—For purposes of this Act, an obligation becomes due when the right to enforce the obligation is fixed.

"(2) ROYALTY OBLIGATIONS.—The right to enforce the royalty obligation for a production month for a lease is fixed for purposes of this Act on the last day of the calendar month following the month in which oil or gas is produced.

"(c) TOLLING OF LIMITATION PERIOD.—The running of the limitation period under subsection (a) shall not be suspended, tolled, extended, or enlarged for any obligation for any reason by any action, including an action by the Secretary or the United States, other than the following:

"(1) TOLLING AGREEMENT.—A written agreement executed during the limitation period between the Secretary and a lessee which tolls the limitation period for the amount of time during which the agreement is in effect.

"(2) SUBPOENA.—The issuance of a subpoena in accordance with the provisions of section 107(c) shall toll the limitation period with respect to the obligation which is the subject of a subpoena only for the period beginning on the date the lessee receives the subpoena and ending on the date on which (A) the lessee has produced such subpoenaed records for the subject obligation, (B) the Secretary receives written notice that the subpoenaed records for the

subject obligation are not in existence or are not in the lessee's possession or control, or (C) a court has determined in a final decision that such records are not required to be produced, whichever occurs first.

''(3) FRAUD OR CONCEALMENT.—Any fraud or concealment by a lessee in an attempt to defeat or evade an obligation in which case the limitation period shall be tolled for the period of such fraud or such concealment.

''(4) TOLLING REQUEST.—A written tolling request from a lessee based upon the lessee's representation that the lessee's entitlement to an overpayment has not been finally determined. The limitation period shall be tolled pursuant to this paragraph from the date the Secretary receives the tolling request until the earlier of the end of the requested period or 12 months after the date the Secretary receives the tolling request, but is subject to successive 12-month renewals by the lessee made prior to the expiration of the then applicable 12-month period. The tolling request shall be sufficient if it identifies—

''(A) the person who made the potential overpayment;

"(B) the leases and production months involved in the potential overpayment; and

"(C) the reasons the lessee believes that it may later be entitled to a refund of the overpayment.

"(5) ORDER TO PERFORM A RESTRUCTURED ACCOUNTING.—The issuance of a notice under section 107(d)(4) that the lessee has not adequately performed a restructured accounting shall toll the limitation period with respect to the obligation which is the subject of the notice only for the period beginning on the date the lessee receives the notice and ending on the date on which (A) the Secretary receives written notice the accounting or other requirement has been performed, or (B) a court has determined in a final decision that the lessee is not required to perform the accounting, whichever occurs first.

"(d) TERMINATION OF LIMITATION PERIOD.—The limitation period shall be terminated in the event—

"(1) the Secretary has notified the lessee in writing that a time period is closed to further audit; or

"(2) the Secretary and a lessee have so agreed in writing.

"(e) FINAL AGENCY ACTION.—

"(1) 3-YEAR PERIOD.—The Secretary shall issue a final decision in any administrative proceeding, including any administrative proceedings pending on the date of enactment of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1995, within three years from the date such proceeding was initiated or three years from the date of such enactment, whichever is later. The three-year period may be extended by any period of time agreed upon in writing by the Secretary and the lessee.

"(2) EFFECT OF FAILURE TO ISSUE DECISION.—

"(A) IN GENERAL.—If no such decision has been issued by the Secretary within the three-year period referred to in paragraph (1)—

"(i) the Secretary shall be deemed to have issued and granted a decision in favor of the lessee or lessees as to any nonmonetary obligation and any monetary obligation the principal amount of which is less than $2,500; and

"(ii) the Secretary shall be deemed to have issued a final decision in favor of the Secretary, which decision shall be deemed

to affirm those issues for which the agency rendered a decision prior to the end of such period, as to any monetary obligation the principal amount of which is $2,500 or more, and the lessee shall have a right to a de novo judicial review of such deemed final decision.

''(B) NO PRECEDENTIAL EFFECT ON OTHER PROCEEDINGS.—Deemed decisions under subparagraph (A) shall have no precedential effect in any judicial or administrative proceeding or for any other purpose.

''(f) ADMINISTRATIVE SETTLEMENT.—During the pendency of any administrative proceeding, the parties shall hold at least one settlement consultation for the purpose of discussing disputed matters between the parties. For purposes of settlement, the Secretary may take such action as is appropriate to compromise and settle a disputed obligation, including interest and allowing offsetting of obligations among leases. The Secretary and the State concerned shall seek to resolve disputes with a lessee in as expeditious a manner as possible, through settlement negotiations and other alternative dispute resolution processes methods. If any dispute involving an obligation due is not resolved by the end of the six-year period beginning

on the date the obligation became due, the amount of interest otherwise payable with respect to the obligation shall accrue after such six-year period at the rate—

"(1) for purposes of section 111(h), reduced each year thereafter by two additional percentage points from the rate in effect under this subsection for the previous year (but not less than zero); and

"(2) for purposes of section 111(a), reduced each year thereafter by one additional percentage point from the rate in effect under this subsection for the previous year (but not less than zero).

"(g) LIMITATION ON CERTAIN ACTIONS.—When an action on or enforcement of an obligation under the mineral leasing laws is barred under this section—

"(1) no other or further action regarding that obligation, including (but not limited to) the issuance of any order, request, demand or other communication seeking any document, accounting, determination, calculation, recalculation, payment, principal, interest, assessment, or penalty or the initiation, pursuit or completion of an audit with respect to that obligation may be taken; and

"(2) no other equitable or legal remedy, whether under statute or common law, with respect to an

action on or an enforcement of said obligation may be pursued.

''(h) JUDICIAL REVIEW.—In the event a demand subject to this section is timely commenced, a judicial proceeding challenging the final agency action with respect to such demand shall be deemed timely so long as such judicial proceeding is commenced within 180 days from receipt of notice by the lessee of the final agency action.

''(i) IMPLEMENTATION OF FINAL DECISION.—In the event a judicial proceeding or demand subject to this section is timely commenced and thereafter the limitation period in this section lapses during the pendency of such proceeding, any party to such proceeding shall not be barred from taking such action as is required or necessary to implement a final unappealable judicial or administrative decision, including any action required or necessary to implement such decision by the recovery or recoupment of an underpayment or overpayment by means of refund or credit.

''(j) STAY OF PAYMENT OBLIGATION PENDING REVIEW.—Any party ordered by the Secretary or the United States to pay any obligation (other than an assessment) shall be entitled to a stay of such payment without bond or other surety instrument pending an administrative or judicial proceeding if the party periodically demonstrates

to the satisfaction of the Secretary that such party is financially solvent or otherwise able to pay the obligation. In the event the party is not able to so demonstrate, the Secretary may require a bond or other surety instrument satisfactory to cover the obligation. Any party ordered by the Secretary to pay an assessment shall be entitled to a stay without bond or other surety instrument.

''(k) INAPPLICABILITY OF THE OTHER STATUTES OF LIMITATION.—The limitations set forth in sections 2401, 2415, 2416, and 2462 of title 28, United States Code, section 42 of the Mineral Leasing Act (30 U.S.C. 226-2) and section 3716 of title 31, United States Code, shall not apply to any obligation to which this Act applies.''.

(b) SUBPOENA.—Section 107 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1717) is amended by adding at the end the following:

''(c) RULES REGARDING ISSUANCE OF SUBPOENA RELATING TO REPORTING AND PAYMENT OF AN OBLIGATION DUE.—

''(1) IN GENERAL.—A subpoena which requires a lessee to produce records necessary to determine the proper reporting and payment of an obligation due the Secretary may be issued under this section only by an Assistant Secretary of the Interior and an acting Assistant Secretary of the Interior who is

a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations) and may not be delegated.

''(2) PRIOR WRITTEN REQUEST REQUIRED.—A subpoena described in paragraph (1) may only be issued against a lessee during the limitation period provided in section 115 and only after the Secretary has in writing requested the records from the lessee related to the obligation which is the subject of the subpoena and has determined that—

''(A) the lessee has failed to respond within a reasonable period of time to the Secretary's written request for such records necessary for an audit, investigation or other inquiry made in accordance with the Secretary's responsibilities under this Act;

''(B) the lessee has in writing denied the Secretary's written request to produce such records in the lessee's possession or control necessary for an audit, investigation or other inquiry made in accordance with the Secretary's responsibilities under this Act; or

''(C) the lessee has unreasonably delayed in producing records necessary for an audit, investigation or other inquiry made in accordance

with the Secretary's responsibilities under this Act after the Secretary's written request.

''(3) REASONABLE PERIOD FOR COMPLIANCE WITH WRITTEN REQUEST.—In seeking records, the Secretary shall afford the lessee a reasonable period of time after a written request by the Secretary in which to provide such records prior to the issuance of any subpoena.''.

(c) RESTRUCTURED ACCOUNTING.—Section 107 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1717), as amended by subsection (b) of this section, is amended by adding at the end the following:

''(d) RESTRUCTURED ACCOUNTING.—

''(1) IN GENERAL.—The Secretary shall issue an order to perform a restructured accounting when the Secretary determines during an in-depth audit of a lessee that the lessee should recalculate royalty due on an obligation based upon the Secretary's finding that the lessee has made identified underpayments or overpayments which are demonstrated by the Secretary to be based upon repeated, systemic reporting errors for a significant number of leases or a single lease for a significant number of reporting months with the same type of error which constitutes a pattern of violations and which are likely

to result in either significant underpayments or overpayments.

''(2) DELEGATION.—The power of the Secretary to issue an order to perform a restructured accounting may not be delegated below the most senior career professional position having responsibility for the royalty management program, which position is currently designated as the 'Associate Director for Royalty Management'. An order to perform a restructured accounting shall—

''(A) be issued within a reasonable period of time from when the audit identifies the systemic, reporting errors;

''(B) specify the reasons and factual bases for such order; and

''(C) be specifically identified as an 'order to perform a restructured accounting'.

''(3) ORDER TO PERFORM.—An order to perform a restructured accounting shall not include any other communication or action by or on behalf of the Secretary or the United States.

''(4) NOTICE.—If a lessee fails to adequately perform a restructured accounting pursuant to this subsection, a notice shall be issued to the lessee that the restructured accounting has not been adequately

performed. Such notice may be issued under this section only by an Assistant Secretary of the Interior or an acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations) and may not be delegated.''.

(d) STATE SUITS.—Section 204 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1751) is amended by adding at the end the following:

''(d) With respect to an obligation, a State bringing an action under this section shall enjoy no greater rights than the Secretary enjoys under this Act.''.

(e) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act (30 U.S.C. 1701) is amended by adding after the item relating to section 114 the following new item:

''Sec. 115. Limitation periods and agency actions.''.

**SEC. 9514. ADJUSTMENT AND REFUNDS.**

(a) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended by adding after section 111 the following new section:

**''SEC. 111A. ADJUSTMENTS AND REFUNDS.**

''(a) ADJUSTMENTS.—

''(1) If, during the adjustment period, a lessee determines that an adjustment or refund request is

necessary to correct an underpayment or overpayment of an obligation, the lessee shall make such adjustment or request a refund within a reasonable period of time and only during the adjustment period. The filing of a royalty report which reflects the underpayment or overpayment of an obligation shall constitute prior written notice to the Secretary of an adjustment.

''(2)(A) For any adjustment, the lessee shall calculate and report the interest due attributable to such adjustment at the same time the lessee adjusts the principal amount of the subject obligation, except as provided by subparagraph (B).

''(B) In the case of a lessee on whom the Secretary determines that subparagraph (A) would impose a hardship, the Secretary shall calculate the interest due and notify the lessee within a reasonable time of the amount of interest due, unless such lessee elects to calculate and report interest in accordance with subparagraph (A).

''(3) An adjustment or a request for a refund for an obligation may be made after the adjustment period only upon written notice to and approval by the Secretary during an audit of the period which includes the production month for which the adjust-

ment is being made. If an overpayment is identified during an audit, then the Secretary shall allow a credit or refund in the amount of the overpayment.

''(4) For purposes of this section, the adjustment period for any obligation shall be the five-year period following the date on which an obligation became due. The adjustment period shall be suspended, tolled, extended, enlarged, or terminated by the same actions as the limitation period in section 115.

''(b) REFUNDS.—

''(1) IN GENERAL.—A request for refund is sufficient if it—

''(A) is made in writing to the Secretary and, for purposes of section 115, is specifically identified as a demand;

''(B) identifies the person entitled to such refund;

''(C) provides the Secretary information that reasonably enables the Secretary to identify the overpayment for which such refund is sought; and

''(D) provides the reasons why the payment was an overpayment.

"(2) PAYMENT BY SECRETARY OF THE TREASURY.—The Secretary shall certify the amount of the refund to be paid under paragraph (1) to the Secretary of the Treasury who shall make such refund. Such refund shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act and the Outer Continental Shelf Lands Act, which are not payable to a State or the Reclamation Fund. The portion of any such refund attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any recipient prescribed by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.

"(3) PAYMENT PERIOD.—A refund under this subsection shall be paid or denied (with an explanation of the reasons for the denial) within 120 days of the date on which the request for refund is received by the Secretary. Such refund shall be subject

to later audit by the Secretary and subject to the provisions of this Act.

''(4) PROHIBITION AGAINST REDUCTION OF REFUNDS OR CREDITS.—In no event shall the Secretary directly or indirectly claim any amount or amounts against, or reduce any refund or credit (or interest accrued thereon) by the amount of any obligation the enforcement of which is barred by section 115.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act (30 U.S.C. 1701) is amended by adding after the item relating to section 111 the following new item:

''Sec. 111A. Adjustments and refunds.''.

**SEC. 9515. REQUIRED RECORDKEEPING.**

Section 103 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1713(b)) is amended by adding at the end the following:

''(c) Records required by the Secretary for the purpose of determining compliance with any applicable mineral leasing law, lease provision, regulation or order with respect to oil and gas leases from Federal lands or the Outer Continental Shelf shall be maintained for the same period of time during which a judicial proceeding or demand may be commenced under section 115(a). If a judicial proceeding or demand is timely commenced, the

record holder shall maintain such records until the final nonappealable decision in such judicial proceeding is made, or with respect to that demand is rendered, unless the Secretary authorizes in writing an earlier release of the requirement to maintain such records. Notwithstanding anything herein to the contrary, under no circumstance shall a record holder be required to maintain or produce any record relating to an obligation for any time period which is barred by the applicable limitation in section 115.''.

**SEC. 9516. ROYALTY INTEREST, PENALTIES, AND PAYMENTS.**

(a) PERIOD.—Section 111(f) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721(f)) is amended to read as follows:

''(f) Upon a determination that it will further the effective and efficient performance of his duties and responsibilities, the Secretary may waive or forego such interest in whole or in part. Interest shall be charged under this section only for the number of days a payment is late.''.

(b) LESSEE INTEREST.—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721) is amended by adding after subsection (g) the following:

''(h) Interest shall be allowed and the Secretary shall pay or credit such interest on any overpayment, with such interest to accrue from the date such overpayment was made, at the rate obtained by applying the provisions of subparagraphs (A) and (B) of section 6621(a)(1) of the Internal Revenue Code of 1986. Interest which has accrued on any overpayment may be applied to reduce an underpayment. This subsection applies to overpayments made later than six months after the date of enactment of this subsection or September 1, 1996, whichever is later. Such interest shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act, and the Outer Continental Shelf Lands Act, which are not payable to a State or the Reclamation Fund. The portion of any such interest payment attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any other recipient designated by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.''.

(c) LIMITATION ON INTEREST.—Section 111 of such Act, as amended by subsection (b) of this Act, is further amended by adding at the end the following:

''(i) Upon a determination by the Secretary that an excessive overpayment (based upon all obligations of a lessee for a given reporting month) was made for the sole purpose of receiving interest, interest shall not be paid on the excessive amount of such overpayment. For purposes of this Act, an 'excessive overpayment' shall be the amount that any overpayment a lessee pays for a given reporting month (excluding payments for demands for obligations as a result of judicial or administrative proceedings for settlement agreements and for other similar payments) for the aggregate of all of its Federal leases exceeds 25 percent of the total royalties paid that month for those leases.''.

(d) ESTIMATED PAYMENT.—Section 111 of such Act, as amended by subsections (b) and (c) of this Act, is further amended by adding at the end the following:

''(j) A lessee may make a payment for the approximate amount of royalties (hereinafter in this subsection 'estimated payment') that would otherwise be due to the Secretary for such lease to avoid underpayment or nonpayment interest charges. When an estimated payment is made, actual royalties become due at the end of the

month following the period covered by the estimated payment. If the lessee makes a payment for such actual royalties, the lessee may apply the estimated payment to future royalties. Any estimated payment may be adjusted, recouped, or reinstated at any time by the lessee.''.

(e) VOLUME ALLOCATION OF OIL AND GAS PRODUCTION.—Section 111 of such Act (30 U.S.C. 1721), as amended by subsections (b) through (d) of this Act, is amended by adding at the end the following:

''(k)(1) Except as otherwise provided by this subsection—

''(A) a lessee of a lease in a unit or communitization agreement which contains only Federal leases with the same royalty rate and funds distribution must report and pay royalties on oil and gas production for each production month based on the actual volume of production sold by or on behalf of that lessee;

''(B) a lessee of a lease in any other unit or communitization agreement must report and pay royalties on oil and gas production for each production month based on the volume of oil and gas produced from such agreement and allocated to the lease in accordance with the terms of the agreement; and

''(C) a lessee of a lease that is not contained in a unit or communitization agreement must report and pay royalties on oil and gas production for each production month based on the actual volume of production sold by or on behalf of that lessee.

''(2) This subsection applies only to requirements for reporting and paying royalties. Nothing in this subsection is intended to alter a lessee's liability for royalties on oil or gas production based on the share of production allocated to the lease in accordance with the terms of the lease, a unit or communitization agreement, or any other agreement.

''(3) For any unit or communitization agreement, if all lessees contractually agree to an alternative method of royalty reporting and payment, the lessees may submit such alternative method to the Secretary for approval and make payments in accordance with such approved alternative method so long as such alternative method does not reduce the amount of the royalty obligation.

''(4) The Secretary shall grant an exception from the reporting and payment requirements for marginal properties by allowing for any calendar year or portion thereof royalties to be paid each month based on the volume of production sold. Interest shall not accrue on the difference for the entire calendar year or portion thereof between the

amount of oil and gas actually sold and the share of production allocated to the lease until the beginning of the month following calendar year or portion thereof. Any additional royalties due or overpaid royalties and associated interest shall be paid, refunded, or credited within six months after the end of each calendar year in which royalties are paid based on volumes of production sold. For the purpose of this subsection, the term 'marginal property' means a lease that produces on average the combined equivalent of less than 15 barrels of oil per day or 90 thousand cubic feet of gas per day, or a combination thereof, determined by dividing the average daily production of domestic crude oil and domestic natural gas from producing wells on such lease by the number of such wells, unless the Secretary, together with the State concerned, determines that a different production is more appropriate.

''(5) Not later than two years after the date of the enactment of this subsection, the Secretary shall issue any appropriate demand for all outstanding royalty payment disputes regarding who is required to report and pay royalties on production from units and communitization agreements outstanding on the date of the enactment of this subsection, and collect royalty amounts owed on such production.''.

(f) PRODUCTION ALLOCATION.—Section 111 of such Act (30 U.S.C. 1721), as amended by subsections (b) through (e) of this Act, is amended by adding at the end the following:

''(l) The Secretary shall issue all determinations of allocations of production for units and communitization agreements within 120 days of a request for determination. If the Secretary fails to issue a determination within such 120-day period, the Secretary shall waive interest due on obligations subject to the determination until the end of the month following the month in which the determination is made.''.

**SEC. 9517. LIMITATION ON ASSESSMENTS.**

Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721), as amended by section 9516, is further amended by adding at the end the following:

''(m)(1) After the date of enactment of this subsection, the Secretary shall not impose any assessment for any late payment or underpayment. After the date of enactment of this subsection, the Secretary may impose an assessment only for erroneous reports submitted by lessees subject to the limitations of paragraph (2). Nothing in this section shall prohibit the Secretary from imposing pen-

alties or interest under other sections of this Act for late payments or underpayments.

''(2) No assessment for erroneous reports shall be imposed for 18 months following the date of enactment of this subsection, or until the Secretary issues a final rule which provides for imposition of an assessment only on a lessee who chronically submits erroneous reports and which establishes what constitutes chronic errors for a lessee, whichever is later. However, if the Secretary determines during that 18-month period that the reporting error rate for all reporters for all Federal leases has increased by one-third for three consecutive report months for either production reporting or royalty reporting over the 12 months preceding the date of enactment of this subsection, the Secretary may impose an assessment for erroneous reports only for the increased category of report under regulations in effect on the date of enactment of this subsection.''.

**SEC. 9518. ALTERNATIVES FOR MARGINAL PROPERTIES.**

(a) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), as amended by section 9513 of this Act, is further amended by adding at the end the following:

**''SEC. 116. ALTERNATIVES FOR MARGINAL PROPERTIES.**

''(a) SELLING THE REVENUE STREAM.—

"(1) IN GENERAL.—Notwithstanding the provisions of any lease to the contrary, upon request of the lessee or a State under section 205(g), the Secretary shall authorize a lessee for a marginal property and for a lease, the administration of which is not cost-effective for the Secretary to administer, to make a prepayment in lieu of royalty payments under the lease for the remainder of the lease term. For the purposes of this section, the term 'marginal property' has the same meaning given such term in section 111(k)(4), unless the Secretary, together with each State in which such marginal production occurs, determines that a different definition of marginal property better achieves the purpose of this section.

"(2) MARGINAL PROPERTIES.—For marginal properties, prepayments under paragraph (1) shall begin—

"(A) in the case of those properties producing on average $500 or less per month in total royalties to the United States, two years after the date of the enactment of this section;

"(B) in the case of those properties producing on average more than $500 but $1,000 or less per month in total royalties to the

United States, three years after the date of the enactment of this section;

''(C) in the case of those properties producing on average more than $1,000 but $1,500 or less per month in total royalties to the United States, four years after the date of the enactment of this section; and

''(D) in the case of those properties not described in subparagraphs (A) through (C), five years after the date of the enactment of this section.

''(3) ADMINISTRATION NOT COST-EFFECTIVE.—For a lease, the administration of which is not cost-effective for the Secretary to administer, prepayments under paragraph (1) shall begin on the date of the enactment of this section.

''(4) SATISFACTION OF ROYALTY OBLIGATION.—A lessee who makes a prepayment under this section shall have satisfied in full its obligation to pay royalty on production from the lease or a portion of a lease and shall not be required to submit any royalty reports to the Secretary. The prepayment shall be shared by the Secretary with any State or other recipient to the same extent as any royalty payment for such lease.

"(5) VALUATION.—The prepayment authorized under this section shall only occur if the Secretary, the State concerned, and the lessee determine that such prepayment is based on the present value of the projected remaining royalties from the production from the lease, based on appropriate nominal discount rate for a comparable term. Prior to accepting such prepayment, the Secretary and State concerned shall agree that such prepayment is in the best interest of the United States and the State concerned.

"(b) ALTERNATIVE ACCOUNTING AND AUDITING REQUIREMENTS.—

"(1) IN GENERAL.—Within one year after the date of the enactment of this section, for the marginal properties referenced in subsection (a)(1), the Secretary shall provide accounting, reporting, and auditing relief that will encourage lessees to continue to produce and develop such properties: *Provided,* That such relief will only be available to lessees in a State that concurs. Prior to granting such relief, the Secretary and the State concerned shall agree that the type of marginal wells and relief provided under this paragraph is in the best interest of the United States and the State concerned.

"(2) PAYMENT DATE.—For leases subject to this section, the Secretary may allow royalties to be paid later than the time specified in the lease.".

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act (30 U.S.C. 1701) is amended by adding after the item relating to section 115 the following new item:

"Sec. 116. Alternatives for marginal properties.".

**SEC. 9519. ROYALTY IN KIND.**

(a) IN GENERAL.—

(1) OCS.—Section 27(a)(1) of the Outer Continental Shelf Lands Act (43 U.S.C. 1353(a)(1)) is amended by adding at the end the following:

"Any royalty or net profit share of oil or gas accruing to the United States under any such lease, at the Secretary's option, may be taken in kind at or near the lease (unless the lease expressly provides for delivery at a different location) upon prior written notice given reasonably in advance by the Secretary to the lessee. Once the United States has commenced taking royalty in kind, it shall continue to do so until a reasonable time after the Secretary has provided written notice reasonably in advance to the lessee that it will resume taking royalty in value. Delivery of royalty in kind by the lessee shall satisfy in full the lessee's royalty obligation. Once the oil or gas is delivered,

the lessee shall not be subject to the reporting and recordkeeping requirements under section 103 for its share of oil and gas production other than records necessary to verify the quantity of oil or gas delivered.''.

(2) ONSHORE.—Section 36 of the Mineral Leasing Act (30 U.S.C. 192) is amended by adding at the end the following undesignated paragraph:

''Notwithstanding the provisions of the previous paragraph, any royalty or net profit share of oil or gas accruing to the United States under any lease issued or maintained by the Secretary for the exploration, production and development of oil and gas on Federal lands, at the Secretary's option, may be taken in kind at or near the lease (unless the lease expressly provides for delivery at a different location) after prior written notice given reasonably in advance by the Secretary to the lessee. Once the United States has commenced taking royalty in kind, it shall continue to do so until a reasonable time after the Secretary has provided written notice reasonably in advance to the lessee that it will resume taking royalty in value. Delivery of royalty in kind by the lessee shall satisfy in full the lessee's royalty obligation. Once the oil or gas is delivered, the lessee shall not be subject to the reporting and recordkeeping requirements under section 103 for its

share of oil and gas production other than records necessary to verify the quantity of oil or gas delivered.''.

(b) SALE.—Sections 27(b)(1) and (c)(1) of the Outer Continental Shelf Lands Act (43 U.S.C. 1353(c)(1)) are each amended by striking ''competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value'' and inserting ''competitive bidding or private sale''.

**SEC. 9520. ROYALTY SIMPLIFICATION AND COST-EFFECTIVE AUDIT AND COLLECTION REQUIREMENTS.**

(a) IN GENERAL.—Section 101 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1711) is amended by adding at the end the following:

''(d)(1) For the purpose of reducing costs and increasing net royalties to the United States and the States, the Secretary, in consultation with States concerned, shall, within one year after the date of the enactment of this subsection, streamline and simplify current royalty management requirements and practices, including royalty reporting, instructions, audits and collections. This streamlining and simplification shall specifically include—

''(A) elimination of all unnecessary royalty and production reports;

''(B) modification and simplification of remaining reports and associated instructions to eliminate redundant or unnecessary reports and information that are provided or can be obtained from other required reports, forms, computer databases or government agencies;

''(C) elimination or modifications of accounting, reporting, audit and collection requirements that are not cost-effective, particularly those associated with de minimis monetary amounts;

''(D) implementation of specific recommendations and comments contained in Secretarial sponsored teams, rulemakings, and studies or those participated in by the Secretary to the extent these recommendations simplify and streamline royalty management requirements without adversely affecting the Secretary's ability to meet obligations under this Act or other mineral leasing statutes;

''(E) recommendations and comments submitted by interested parties to the extent these recommendations and comments simplify and streamline royalty management requirements without adversely affecting the Secretary's ability to meet obligations under this Act or other mineral leasing statutes.

''(2) The Secretary shall submit to the Congress a progress report on the implementation of this section within six months from date of enactment of this Act, and a final report within 12 months from date of enactment of this Act. These reports shall include—

''(A) a description of the extent to which the Secretary has implemented the requirements in paragraph (1), including a list of specific initiatives implemented;

''(B) a list and description of additional initiatives identified by the Secretary to simplify and streamline royalty management requirements and practices; and

''(C) cost savings of implemented initiatives including impact on net-receipts sharing for States.

''(3) If the Secretary and the State concerned determines that the cost of accounting and auditing for and collecting of any obligation due for any oil and gas production exceeds the amount of the obligation to be collected, the Secretary shall waive such obligation.

''(4) The Secretary and the State concerned shall not perform accounting, reporting, or audit activities if the Secretary and the State concerned determines that the cost of conducting the activity exceeds the expected amount to be collected by the activity.

"(5) The Secretary and the State concerned shall develop a reporting and audit strategy which eliminates multiple or redundant reporting of information.".

(b) PAPERWORK REDUCTION.—Section 107 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1717), as amended by section 9513(b) and (c), is amended by adding at the end the following:

"(e) PAPERWORK REDUCTION.—Administrative actions and investigations (including, but not limited to, accounting collection and audits) under this Act involving obligations shall be subject to section 3518(c)(1)(B) of title 44, United States Code.".

**SEC. 9521. REPEALS.**

(a) FOGRMA.—Section 307 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1755), is repealed. Section 1 of such Act (relating to the table of contents) is amended by striking out the item relating to section 307.

(b) OCSLA.—Effective on the date of the enactment of this Act, section 10 of the Outer Continental Shelf Lands Act (43 U.S.C. 1339) is repealed.

**SEC. 9522. DELEGATION TO STATES.**

(a) GENERAL AUTHORITY.—Section 205(a) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1735(a)) is amended to read as follows:

''(a) Upon written request of any State, the Secretary is authorized to delegate, in accordance with the provisions of this section, all or part of the authorities and responsibilities of the Secretary under this Act to conduct inspections, such production and royalty accounting duties and responsibilities as the Secretary determines are legally delegable, all audit coverage, and investigations to any State with respect to all Federal lands within the State.''.

(b) STANDARDIZED REPORTING.—Section 205(b) of such Act (30 U.S.C. 1735(b)) is amended—

(1) by striking ''and'' at the end of paragraph (2);

(2) by striking the comma at the end of paragraph (3) and inserting ''; and''; and

(3) by inserting after paragraph (3) the following:

''(4) the State agrees to adopt Federal standardized reporting for Federal royalty accounting and collection purposes,''.

(c) COST EFFECTIVE COLLECTION OF DE MINIMIS ROYALTY AMOUNTS.—Section 205 of such Act (30 U.S.C. 1735) is amended by adding at the end the following:

''(g) Upon written request of any State, the Secretary is authorized to delegate for any year the responsibility to collect royalties from all Federal leases within the State

if the average amount per year of mineral revenues received by the State on all such leases under all Federal mineral leasing laws for the previous five years is less than $100,000. The State may also request that the Secretary sell the revenue stream from all or part of the Federal leases within the State in accordance with section 116 of the Federal Oil and Gas Royalty Management Act of 1982, as added by section 9518 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1995.''.

**SEC. 9523. PERFORMANCE STANDARD.**

Section 109 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1719) is amended in subsections (c) and (d), by striking ''knowingly or willfully'' and inserting ''by willful misconduct or gross negligence'' each place it appears.

**SEC. 9524. INDIAN LANDS.**

The amendments made by this part shall not apply with respect to Indian lands, and the provisions of the Federal Oil and Gas Royalty Management Act of 1982 as in effect on the day before the date of enactment of this Act shall continue to apply after such date with respect to Indian lands.

**SEC. 9525. PRIVATE LANDS.**

This part shall not apply to any privately owned minerals.

**SEC. 9526. EFFECTIVE DATE.**

Except as provided by section 115(e), section 111(h), section 111(k)(5), and section 116 of the Federal Oil and Gas Royalty Management Act of 1982 (as added by this part), this part, and the amendments made by this part, shall apply with respect to the production of oil and gas after the first day of the month following the date of the enactment of this Act.

# Subtitle F—Indian Gaming

**SEC. 9601. INDIAN GAMING.**

(a) COMMISSION FUNDING.—Section 18(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2717(a)) is amended by striking out ''$1,500,000'' each place it appears and inserting in lieu thereof ''$2,500,000''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 19(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2718(a)) is amended by striking out all after ''(a)'' and inserting in lieu thereof the following: ''Notwithstanding the provisions of section 18, no funds may be authorized to be appropriated for the operation of the Commission.''.

# Subtitle G—Consultation

**SEC. 9701. CONSULTATION.**

Section 7(d) of the Endangered Species Act of 1973 (16 U.S.C. 1536(d)) is amended to read as follows:

''(d) LIMITATION ON COMMITMENT OF RESOURCES.—After initiation of consultation required under

subsection (a)(2) of this section, the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section. This limitation on the commitment of resources is only applicable to consultations regarding site-specific projects and activities, and shall not apply to any consultation regarding an agency's periodic or long-term planning activities, mission or policy statements, programmatic documents, or general policies, regulations, or activities, whether or not such consultation has previously been initiated pursuant to a court order, and regardless of the date on which consultation was ordered or initiated.''.

# Subtitle H—Mapping

**SEC. 9801. SHORT TITLE.**

This subtitle may be cited as the ''Department of the Interior Surveying and Mapping Efficiency and Economic Opportunity Act of 1995''.

**SEC. 9802. SURVEYING AND MAPPING CONTRACTING PROGRAM.**

In order to provide private firms, including small and small disadvantaged businesses, ample opportunities to

provide quality services to the Department of the Interior (hereinafter referred to as the ''Department''), the Secretary of the Interior (hereinafter referred to as the ''Secretary'') shall conduct a surveying and mapping contracting program.

**SEC. 9803. INVENTORY OF ACTIVITIES.**

(a) PUBLICATION OF INVENTORY.—Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Administrator of the Office of Federal Procurement Policy, the Administrator of the Small Business Administration and the trade association of private surveying and mapping firms, shall publish an inventory of surveying and mapping activities in the Department of the Interior for the last fiscal year completed prior to the date of enactment of this Act.

(b) ITEMS INCLUDED.—The inventory shall include each of the following:

(1) The total dollar value of surveying and mapping activities in each agency of the Department.

(2) The total dollar value of surveying and mapping activities in each agency of the Department performed by contract with private sector firms.

(3) The total dollar value of surveying and mapping activities in each agency of the Department performed by personnel of the Department.

(4) The total dollar value of surveying and mapping activities in each agency of the Department performed for any other department or agency of the Federal Government.

(5) The total dollar value of surveying and mapping activities in each agency of the Department performed for any State or political subdivision thereof, or for any foreign government.

(6) The total number of personnel involved in surveying and mapping activities in each agency of the Department.

**SEC. 9804. PLAN TO INCREASE USE OF CONTRACTS.**

(a) ESTABLISHMENT.—Based on the inventory conducted pursuant to section 9803 of this Act, not later than 180 days after the date of enactment of this Act, the Secretary, in consultation with the Administrator of the Office of Federal Procurement Policy, the Administrator of the Small Business Administration and the trade association of private surveying and mapping firms, shall develop and implement a plan to increase the use of contracts with private firms for surveying and mapping services.

(b) ITEMS INCLUDED IN PLAN.—The plan established pursuant to subsection (a) of this section shall include, but not be limited to each of the following:

(1) A reduction of surveying and mapping activities by personnel in the Department that duplicate capabilities available by contract from the private sector.

(2) A reduction of acquisition and maintenance of surveying and mapping equipment that duplicate capabilities and capital investment already made by the private sector.

(3) The elimination of unfair Government competition in activities in which the Department uses its personnel to perform surveying and mapping for which it shares the cost with, is reimbursed for, or makes a grant to any other agency of the Federal Government, a State or political subdivision thereof, or a foreign government, for such activities, when such activities can be obtained by contract from the private sector.

(4) The use of contracts to perform surveying and mapping requirements of the Department created through attrition.

(5) The enhancement of the leadership role of the Department of the Interior in—

(A) the preparation of standards and specifications;

(B) research in surveying and mapping instrumentation and procedures, and the prompt transfer of technology to the private sector;

(C) providing technical guidance, coordination, cost sharing, cooperative efforts and administration in the use of Federal funds for surveying and mapping activities, and the development of geographic information systems, that are performed by the private sector by the contract to Federal, State, and local government agencies;

(D) establishing a schedule with quantifiable goals for increasing the use of contracts with private sector for current and future surveying and mapping activities; and

(E) using Department personnel to perform only those surveying and mapping activities that are inherently governmental in nature, necessary to keep current the skills of such personnel for evaluating contractor performance and administering contracts, and to perform basic research.

**SEC. 9805. REPORTS.**

The Secretary shall transmit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on implementation of the program not later than January 15 of each year.

**SEC. 9806. DEFINITIONS.**

As used in this subtitle:

(1) The term ''surveying and mapping'' means collecting, storing, retrieving, or disseminating graphical or digital data depicting natural or man-made physical features, phenomena and boundaries of the earth and any information related thereto, including but not limited to data shown on or in relation to surveys, maps, and charts.

(2) The ''contract'' means an instrument to retain private firms with licensed, certified, or otherwise qualified professionals in such fields as surveying, photogrammetry, cartography, and geodesy, which shall be awarded in accordance with the selection procedures in title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 and following).

# TITLE X—COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

## Subtitle A—Water Resources

### SEC. 10001. COMMERCIAL CONCESSIONS AT CORPS OF ENGINEERS PROJECTS.

Notwithstanding part 1 of subtitle C of title IX of this Act, the Secretary of the Army shall not modify any concession service agreement, concession license, or similar instrument (or any policy or procedure relating to such agreement, license, or agreement) except to the extent that such modification is permitted under laws in effect on the day before the date of the enactment of this Act.

### SEC. 10002. FEMA RADIOLOGICAL EMERGENCY PREPAREDNESS FEES.

(a) IN GENERAL.—The Director of the Federal Emergency Management Agency may assess and collect fees applicable to persons subject to radiological emergency preparedness regulations issued by the Director.

(b) REQUIREMENTS.—The assessment and collection of fees by the Director under subsection (a) shall be fair and equitable and shall reflect the full amount of costs to the Agency of providing radiological emergency planning, preparedness, response, and associated services. Such fees shall be assessed by the Director in a manner

which reflects the use of resources of the Agency for classes of regulated persons and the administrative costs of collecting such fees.

(c) AMOUNT OF FEES.—The aggregate amount of fees assessed under subsection (a) in a fiscal year shall approximate, but not be less than, 100 percent of the amounts anticipated by the Director to be obligated for the radiological emergency preparedness program of the Agency for such fiscal year.

(d) DEPOSIT OF FEES IN TREASURY.—Fees received pursuant to subsection (a) shall be deposited in the general fund of the Treasury as offsetting receipts.

(e) EXPIRATION OF AUTHORITY.—The authority of the Director to assess and collect fees under subsection (a) shall expire on September 30, 2002.

# Subtitle B—Ocean Shipping Reform

**SEC. 10201. SHORT TITLE.**

This subtitle may be cited as the ''Ocean Shipping Reform Act of 1995''.

## CHAPTER 1—OCEAN SHIPPING REFORM

**SEC. 10211. PURPOSES.**

Section 2 of the Shipping Act of 1984 (46 U.S.C. App. 1701) is amended—

(1) by striking ''and'' at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting ''; and''; and

(3) by adding at the end the following:

''(4) to permit carriers and shippers to develop transportation arrangements to meet their specific needs.''.

**SEC. 10212. DEFINITIONS.**

Section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702) is amended—

(1) effective January 1, 1997—

(A) by striking paragraph (9); and

(B) by redesignating paragraphs (10) through (19) as paragraphs (9) through (18), respectively; and

(2) effective June 1, 1997—

(A) by striking paragraph (4);

(B) in paragraph (7) by striking ''a common tariff;'' and inserting ''a common schedule of transportation rates, charges, classifications, rules, and practices;'';

(C) by striking paragraph (10) (as redesignated by paragraph (1) of this section);

(D) by striking paragraph (13) (as redesignated by paragraph (1) of this section);

(E) by striking paragraph (16) (as redesignated by paragraph (1) of this section);

(F) by striking paragraph (18) (as redesignated by paragraph (1) of this section) and inserting the following:

''(18) 'ocean freight forwarder' means a person that—

''(A)(i) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; or

''(ii) processes the documentation or performs related activities incident to those shipments; or

''(B) acts as a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.'';

(G) by striking paragraph (21);

(H) in paragraph (23)—

(i) by striking ''or'' the second place it appears and inserting a comma; and

(ii) by striking the period and inserting '', a shippers' association, or an ocean freight forwarder that accepts responsibility for payment of the ocean freight.'';

(I) by striking paragraph (24) and inserting the following:

''(24) 'shippers' association' means a group of shippers that consolidates or distributes freight, on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or ocean transportation contracts.''; and

(J) by inserting after paragraph (18) (as redesignated by paragraph (1) of this section) the following:

''(19) 'ocean transportation contract' means a contract in writing separate from the bill of lading or receipt between 1 or more common carriers or a conference and 1 or more shippers to provide specified services under specified rates and conditions.''.

**SEC. 10213. AGREEMENTS WITHIN THE SCOPE OF THE ACT.**

Effective June 1, 1997, section 4(a) of the Shipping Act of 1984 (46 U.S.C. App. 1703(a)) is amended—

(1) in paragraph (5) by striking ''non-vessel-operating common carriers'' and inserting ''ocean freight forwarders''; and

(2) by striking paragraph (7) and inserting the following:

''(7) discuss any matter related to ocean transportation contracts, and enter ocean transportation contracts and agreements related to those contracts.''.

**SEC. 10214. AGREEMENTS.**

Section 5 of the Shipping Act of 1984 (46 U.S.C. App. 1704) is amended—

(1) effective January 1, 1997—

(A) in subsection (b)(4) by striking ''at the request of any member, require an independent neutral body to police fully'' and inserting ''state the provisions, if any, for the policing of'';

(B) in subsection (b)(7) by striking ''and'' at the end;

(C) in subsection (b)(8) by striking the period and inserting ''; and''; and

(D) by adding at the end of subsection (b) the following:

''(9) provide that a member of the conference may enter individual and independent negotiations and may conclude individual and independent service contracts under section 8 of this Act.'';

(2) effective June 1, 1997—

(A) by striking subsection (b)(8) and inserting the following:

''(8) provide that any member of the conference may take independent action on any rate or service item agreed upon by the conference for transportation provided under section 8(a) of this Act upon not more than 3 business days' notice to the conference, and that the conference will provide the new rate or service item for use by that member, effective no later than 3 business days after receipt of that notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference provision for that rate or service item;'';

(B) in subsection (b)(9) by striking ''service'' and inserting ''ocean transportation'' and by striking the period at the end and inserting ''; and'';

(C) by adding at the end of subsection (b) the following:

''(10) prohibit the conference from—

''(A) prohibiting or restricting the members of the conference from engaging in individual negotiations for ocean transportation contracts under section 8(b) with 1 or more shippers; and

''(B) issuing mandatory rules or requirements affecting ocean transportation contracts that may be entered by 1 or more members of the conference, except that a conference may require that a member of the conference disclose the existence of an existing individual ocean transportation contract or negotiations on an ocean transportation contract, when the conference enters negotiations on an ocean transportation contract with the same shipper.''; and

(D) in subsection (e) by striking ''carrier that are required to be set forth in a tariff,'' and inserting ''carrier,''.

**SEC. 10215. EXEMPTION FROM ANTITRUST LAWS.**

Section 7 of the Shipping Act of 1984 (46 U.S.C. App. 1706) is amended—

(1) by striking subsection (a)(6) and inserting the following:

''(6) subject to section 20(e)(2) of this Act, any agreement, modification, or cancellation, in effect before the effective date of this Act and any tariff, rate, fare, charge, classification, rule, or regulation explanatory thereof implementing that agreement, modification, or cancellation.''; and

(2) in subsection (c)(1) by striking ''agency'' and inserting ''agency, department,''.

**SEC. 10216. COMMON AND CONTRACT CARRIAGE.**

(a) IN GENERAL.—Effective June 1, 1997—

(1) section 502 of the High Seas Driftnet Fisheries Enforcement Act (46 U.S.C. App. 1707a) is repealed; and

(2) section 8 of the Shipping Act of 1984 (46 U.S.C. App. 1707) is amended to read as follows:

**''SEC. 8. COMMON AND CONTRACT CARRIAGE.**

''(a) COMMON CARRIAGE.—

''(1) A common carrier and a conference shall make available a schedule of transportation rates which shall include the rates, terms, and conditions for transportation services not governed by an ocean transportation contract, and shall provide the schedule of transportation rates, in writing, upon the re-

quest of any person. A common carrier and a conference may assess a reasonable charge for complying with a request for a rate, term, and condition, except that the charge may not exceed the cost of providing the information requested.

''(2) A dispute between a common carrier or conference and a person as to the applicability of the rates, terms, and conditions for ocean transportation services shall be decided in an appropriate State or Federal court of competent jurisdiction, unless the parties otherwise agree.

''(3) A claim concerning a rate for ocean transportation services which involves false billing, false classification, false weighing, false report of weight, or false measurement shall be decided in an appropriate State or Federal court of competent jurisdiction, unless the parties otherwise agree.

''(b) CONTRACT CARRIAGE.—

''(1) 1 or more common carriers or a conference may enter into an ocean transportation contract with 1 or more shippers. A common carrier may enter into ocean transportation contracts without limitations concerning the number of ocean transportation contracts or the amount of cargo or space involved. The status of a common carrier as an

ocean common carrier is not affected by the number or terms of ocean transportation contracts entered.

''(2) A party to an ocean transportation contract entered under this section shall have no duty in connection with services provided under the contract other than the duties specified by the terms of the contract.

''(3)(A) An ocean transportation contract or the transportation provided under that contract may not be challenged in any court on the grounds that the contract violates a provision of this Act.

''(B) The exclusive remedy for an alleged breach of an ocean transportation contract is an action in an appropriate State or Federal court of competent jurisdiction, unless the parties otherwise agree.

''(4) The requirements and prohibitions concerning contracting by conferences contained in sections 5(b) (9) and (10) of this Act shall also apply to any agreement among one or more ocean common carriers that is filed under section 5(a) of this Act.''.

(b) CONFIDENTIALITY OF CONTRACTS.—Effective January 1, 1998, section 8(b) of the Shipping Act of 1984 (46 U.S.C. App. 1707(b)), as amended by subsection (a)

of this section, is amended by adding at the end the following:

''(5) A contract entered under this section may be made on a confidential basis, upon agreement of the parties. An ocean common carrier that is a member of a conference agreement may not be prohibited or restricted from agreeing with 1 or more shippers that the parties to the contract will not disclose the rates, services, terms, or conditions of that contract to any other member of the agreement, to the conference, to any other carrier, shipper, conference, or to any other third party.''.

**SEC. 10217. PROHIBITED ACTS.**

Section 10 of the Shipping Act of 1984 (46 U.S.C. App. 1709) is amended—

(1) effective January 1, 1997, in subsection (b)—

(A) by striking paragraph (1) and inserting the following:

''(1) except for service contracts, subject a person, place, port, or shipper to unreasonable discrimination;''; and

(B) by striking paragraphs (2), (3), (4), and (8);

(2) effective June 1, 1997, by striking subsection (b) and inserting the following:

''(b) COMMON CARRIERS.—No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—

''(1) except for ocean transportation contracts, subject a person, place, port, or shipper to unreasonable discrimination;

''(2) retaliate against any shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier or has filed a complaint, or for any other reason;

''(3) employ any fighting ship;

''(4) subject any particular person, locality, class, or type of shipper or description of traffic to an unreasonable refusal to deal;

''(5) refuse to negotiate with a shippers' association;

''(6) knowingly and willfully accept cargo from or transport cargo for the account of an ocean freight forwarder that does not have a bond, insurance, or other surety as required by section 19;

''(7) knowingly and willfully enter into an ocean transportation contract with an ocean freight forwarder or in which an ocean freight forwarder is listed as an affiliate that does not have a bond, insurance, or other surety as required by section 19; or

''(8)(A) knowingly disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier without the consent of the shipper or consignee if that information—

''(i) may be used to the detriment or prejudice of the shipper or consignee;

''(ii) may improperly disclose its business transaction to a competitor; or

''(iii) may be used to the detriment or prejudice of any common carrier;

except that nothing in this paragraph shall be construed to prevent providing the information, in response to legal process, to the United States, or to an independent neutral body operating within the scope of its authority to fulfill the policing obligations of the parties to an agreement effective under this Act. Nor shall it be prohibited for any ocean

common carrier that is a party to a conference agreement approved under this Act, or any receiver, trustee, lessee, agent, or employee of that carrier, or any other person authorized by that carrier to receive information, to give information to the conference or any person, firm, corporation, or agency designated by the conference or to prevent the conference or its designee from soliciting or receiving information for the purpose of determining whether a shipper or consignee has breached an agreement with a conference or for the purpose of determining whether a member of the conference has breached the conference agreement or for the purpose of compiling statistics of cargo movement, but the use of that information for any other purpose prohibited by this Act or any other Act is prohibited; and

''(B) after December 31, 1997, the rates, services, terms, and conditions of an ocean transportation contract may not be disclosed under this paragraph if the contract has been made on a confidential basis under section 8(b) of this Act.

The exclusive remedy for a disclosure under this paragraph shall be an action for breach of contract as provided in section 8(b)(3) of this Act.'';

(3) effective June 1, 1997—

(A) by striking subsection (c)(1) and inserting the following:

''(1) boycott, take any concerted action resulting in an unreasonable refusal to deal, or implement a policy or practice that results in an unreasonable refusal to deal;'';

(B) in subsection (c)(5) by inserting ''as defined in section 3(14)(A) of this Act'' after ''freight forwarder''; and

(C) in subsection (c)(6) by striking ''a service contract.'' and inserting ''an ocean transportation contract.''; and

(4) effective June 1, 1997, in subsection (d)(3) by striking ''subsection (b) (11), (12), and (16)'' and inserting ''paragraphs (1), (4), and (8) of subsection (b)''.

**SEC. 10218. REPARATIONS.**

Effective June 1, 1997, section 11(g) of the Shipping Act of 1984 (46 U.S.C. App. 1710(g)) is amended—

(1) by inserting ''or counter-complainant'' after ''complainant'' the second place it appears;

(2) by striking ''10(b) (5) or (7)'' and inserting ''10(b) (2) or (3)''; and

(3) by striking the last sentence.

**SEC. 10219. FOREIGN LAWS AND PRACTICES.**

Effective on June 1, 1997, section 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. App. 1710a) is amended—

(1) in subsection (a)(1)—

(A) by striking ''‘non-vessel-operating common carrier’,''; and

(B) by inserting ''‘ocean freight forwarder’,'' after ''‘ocean common carrier’,'';

(2) in subsection (a)(4) by striking ''non-vessel-operating common carrier operations,'';

(3) in subsection (e)(1) by striking subparagraphs (B), (C), and (D) and inserting the following:

''(B) suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Secretary, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers; and

''(C) a fee, not to exceed $1,000,000 per voyage.''; and

(4) in subsection (h) by striking ''section 13(b)(5) of the Shipping Act of 1984 (46 U.S.C. App. 1712(b)(5))'' and inserting ''section 13(b)(2)

of the Shipping Act of 1984 (46 U.S.C. App. 1712(b)(2))''.

**SEC. 10220. PENALTIES.**

Effective June 1, 1997, section 13 of the Shipping Act of 1984 (46 U.S.C. App. 1712) is amended—

(1) in subsection (b)—

(A) by striking paragraphs (1) and (3) and redesignating paragraphs (2), (4), (5), and (6) as paragraphs (1), (2), (3), and (4), respectively;

(B) by striking paragraph (1), as so redesignated, and inserting the following:

''(1) If the Secretary finds, after notice and an opportunity for a hearing, that a common carrier has failed to supply information ordered to be produced or compelled by subpoena under section 12 of this Act, the Secretary may request that the Secretary of the Treasury refuse or revoke any clearance required for a vessel operated by that common carrier. Upon request by the Secretary, the Secretary of the Treasury shall, with respect to the vessel concerned, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).''; and

(C) in paragraph (3), as so redesignated, by striking ''finds appropriate,'' and all that follows through the period at the end and inserting ''finds appropriate including the imposition of the penalties authorized under paragraph (2).''; and

(2) in subsection (f)(1) by striking ''section 10(a)(1), (b)(1), or (b)(4)'' and inserting ''section 10(a)(1)''.

**SEC. 10221. REPORTS.**

(a) IN GENERAL.—Effective January 1, 1997, section 15 of the Shipping Act of 1984 (46 U.S.C. App. 1714) is amended—

(1) in the section heading by striking ''**AND CERTIFICATES**'';

(2) by striking ''(a) REPORTS.—''; and

(3) by striking subsection (b).

(b) CLERICAL AMENDMENT.—The table of contents contained in the first section of such Act (46 U.S.C. App. 1701) is amended by striking the item relating to section 15 and inserting the following:

''Sec. 15. Reports.''.

**SEC. 10222. REGULATIONS.**

Section 17 of the Shipping Act of 1984 (46 U.S.C. App. 1716) is amended—

(1) by striking ''(a)''; and

(2) by striking subsection (b).

**SEC. 10223. REPEAL.**

(a) REPEAL.—Section 18 of the Shipping Act of 1984 (46 U.S.C. App. 1717) is repealed.

(b) CLERICAL AMENDMENT.—The table of contents contained in the first section of such Act (46 U.S.C. App. 1701) is amended by striking the item relating to section 18.

**SEC. 10224. OCEAN FREIGHT FORWARDERS.**

Effective June 1, 1997, section 19 of the Shipping Act of 1984 (46 U.S.C. App. 1718) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) LICENSE.—No person in the United States may act as an ocean freight forwarder unless that person holds a license issued by the Commission. The Commission shall issue a forwarder's license to any person that the Commission determines to be qualified by experience and character to render forwarding services.'';

(2) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively;

(3) by inserting after subsection (a) the following:

''(b) FINANCIAL RESPONSIBILITY.—

''(1) No person may act as an ocean freight forwarder unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility that is issued by a surety company found acceptable by the Secretary of the Treasury.

''(2) A bond, insurance, or other surety obtained pursuant to this section shall be available to pay any judgment for damages against an ocean freight forwarder arising from its transportation-related activities under this Act or order for reparation issued pursuant to section 11 or 14 of this Act.

''(3) An ocean freight forwarder not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.'';

(4) in subsection (c), as redesignated by paragraph (2) of this section, by striking ''a bond in accordance with subsection (a)(2)'' and inserting ''a bond, proof of insurance, or other surety in accordance with subsection (b)(1)''; and

(5) in subsection (e), as redesignated by paragraph (2) of this section—

(A) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3); and

(B) by adding at the end the following:

''(4) No conference or group of 2 or more ocean common carriers in the foreign commerce of the United States that is authorized to agree upon the level of compensation paid to an ocean freight forwarder, as defined in section 3(18)(A) of this Act, may—

''(A) deny to any member of the conference or group the right, upon notice of not more than 3 business days, to take independent action on any level of compensation paid to an ocean freight forwarder; or

''(B) agree to limit the payment of compensation to an ocean freight forwarder, as defined in section 3(18)(A) of this Act, to less than 1.25 percent of the aggregate of all rates and charges which are applicable under a common schedule of transportation rates provided under section 8(a) of this Act, and which are assessed against the cargo on which the forwarding services are provided.''.

**SEC. 10225. EFFECTS ON CERTAIN AGREEMENTS AND CONTRACTS.**

Section 20(e) of the Shipping Act of 1984 (46 U.S.C. App. 1719) is amended to read as follows:

''(e) SAVINGS PROVISIONS.—

''(1) Each service contract entered into by a shipper and an ocean common carrier or conference before the date of the enactment of the Ocean Shipping Reform Act of 1995 may remain in full force and effect according to its terms.

''(2) This Act and the amendments made by this Act shall not affect any suit—

''(A) filed before the date of the enactment of the Ocean Shipping Reform Act of 1995;

''(B) with respect to claims arising out of conduct engaged in before the date of the enactment of the Ocean Shipping Reform Act of 1995, filed within 1 year after the date of the enactment of the Ocean Shipping Reform Act of 1995;

''(C) with respect to claims arising out of conduct engaged in after the date of the enactment of the Ocean Shipping Reform Act of 1995 but before January 1, 1997, pertaining to a violation of section 10(b) (1), (2), (3), (4), or (8), as in effect before January 1, 1997, filed by June 1, 1997;

''(D) with respect to claims pertaining to the failure of a common carrier or conference to

file its tariffs or service contracts in accordance with this Act in the period beginning January 1, 1997, and ending June 1, 1997, filed by December 31, 1997; or

''(E) with respect to claims arising out of conduct engaged in on or after the date of the enactment of the Ocean Shipping Reform Act of 1995 but before June 1, 1997, filed by December 31, 1997.''.

**SEC. 10226. REPEAL.**

(a) REPEAL.—Effective June 1, 1997, section 23 of the Shipping Act of 1984 (46 U.S.C. App. 1721) is repealed.

(b) CLERICAL AMENDMENT.—Effective June 1, 1997, the table of contents contained in the first section of such Act (46 U.S.C. App. 1701) is amended by striking the item relating to section 23.

**SEC. 10227. MARINE TERMINAL OPERATOR SCHEDULES.**

(a) IN GENERAL.—Effective June 1, 1997, the Shipping Act of 1984 (46 U.S.C. App. 1701 et seq.) is amended by adding at the end the following:

**''SEC. 24. MARINE TERMINAL OPERATOR SCHEDULES.**

''A marine terminal operator shall make available to the public a schedule of rates, regulations, and practices, including limitations of liability, pertaining to receiving,

delivering, handling, or storing property at its marine terminal. The schedule shall be enforceable as an implied contract, without proof of actual knowledge of its provisions, for any activity by the marine terminal operator that is taken to—

''(1) efficiently transfer property between transportation modes;

''(2) protect property from damage or loss;

''(3) comply with any governmental requirement; or

''(4) store property in excess of the terms of any other contract or agreement, if any, entered into by the marine terminal operator.''.

(b) CLERICAL AMENDMENT.—The table of contents contained in the first section of such Act (46 U.S.C. App. 1701) is amended by adding at the end the following:

''Sec. 24. Marine terminal operator schedules.''.

## CHAPTER 2—CONTROLLED CARRIERS AMENDMENTS

### SEC. 10231. CONTROLLED CARRIERS.

Effective June 1, 1997, section 9 of the Shipping Act of 1984 (46 U.S.C. App. 1708) is amended—

(1)(A) in the first sentence of subsection (a)—

(i) by striking ''in its tariffs or service contracts filed with the Commission''; and

(ii) by striking ''in those tariffs or service contracts''; and

(B) in the last sentence of subsection (a) by striking ''filed by a controlled carrier'';

(2) in paragraphs (1) and (2) of subsection (b) by striking ''filed'' and inserting ''published'';

(3) in subsection (c) by striking the first sentence;

(4) by striking subsection (d) and inserting the following:

''(d) Within 120 days of the receipt of information requested by the Secretary under this section, the Secretary shall determine whether the rates, charges, classifications, rules, or regulations of a controlled carrier may be unjust and unreasonable. If so, the Secretary shall issue an order to the controlled carrier to show cause why those rates, charges, classifications, rules, or regulations should not be approved. Pending a determination, the Secretary may suspend the rates, charges, classifications, rules, or regulations at any time. No period of suspension may be greater than 180 days. Whenever the Secretary has suspended any rates, charges, classifications, rules, or regulations under this subsection, the affected carrier may publish and, after notification to the Secretary, assess new rates, charges, classifications, rules, or regulations—ex-

cept that the Secretary may reject the new rates, charges, classifications, rules, or regulations if the Secretary determines that they are unreasonable.'';

(5) in subsection (f) by striking ''This'' and inserting ''Subject to subsection (g), this''; and

(6) by adding at the end the following:

''(g) The rate standards, information submissions, remedies, reviews, and penalties in this section shall also apply to ocean common carriers that are not controlled, but who have been determined by the Secretary to be structurally or financially affiliated with nontransportation entities or organizations (government or private) in such a way as to affect their pricing or marketplace behavior in an unfair, predatory, or anticompetitive way that disadvantages an ocean common carrier or carriers. The Secretary may make such determinations upon request of any person or upon the Secretary's own motion, after conducting an investigation and a public hearing.

''(h) The Secretary shall issue regulations by June 1, 1997, that prescribe the procedures and requirements that would govern how price and other information is to be submitted by controlled carriers and carriers subject to determinations made under subsection (g) when such information would be needed to determine whether prices

charged by these carriers are unfair, predatory, or anti-competitive.

''(i) In any instance where information provided to the Secretary under this section does not result in an affirmative finding or enforcement action by the Secretary that information may not be made public and shall be exempt from disclosure under section 552 of title 5, United States Code, except as may be relevant to an administrative or judicial action or proceeding. This section does not prevent disclosure to either body of Congress or to a duly authorized committee or subcommittee of Congress.''.

**SEC. 10232. NEGOTIATING STRATEGY TO REDUCE GOVERNMENT OWNERSHIP AND CONTROL OF COMMON CARRIERS.**

Not later than January 1, 1997, the Secretary of Transportation shall develop, submit to Congress, and begin implementing a negotiation strategy to persuade foreign governments to divest themselves of ownership and control of ocean common carriers (as that term is defined in section 3(18) of the Shipping Act of 1984 (46 U.S.C. App. 1702).

**SEC. 10233. ANNUAL REPORT BY THE SECRETARY.**

Not later than September 30, 1998, and annually thereafter, the Secretary shall report to Congress on the actions taken under the Foreign Shipping Practices Act

(46 U.S.C. App. 1708), section 9 of the Shipping Act of 1984 (46 U.S.C. App. 1708), and section 10232 of this Act and the effect on United States maritime employment of laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country that result in the existence of conditions that adversely affect the operations of United States carriers in United States oceanborne trade.

## CHAPTER 3—ELIMINATION OF THE FEDERAL MARITIME COMMISSION

### SEC. 10241. PLAN FOR AGENCY TERMINATION.

(a) IN GENERAL.—No later than 30 days after the date of the enactment of this Act, the Director of the Office of Management and Budget, in consultation with the Secretary of Transportation, shall submit to Congress a plan to eliminate the Federal Maritime Commission no later than October 1, 1997. The plan shall include a timetable for the transfer of remaining functions of the Federal Maritime Commission to the Secretary of Transportation beginning as soon as feasible in fiscal year 1996. The plan shall also address matters related to personnel and other resources necessary for the Secretary of Transportation to perform the remaining functions of the Federal Maritime Commission.

(b) IMPLEMENTATION.—The Director of the Office of Management and Budget shall implement the plan to eliminate the Federal Maritime Commission submitted to Congress under subsection (a) beginning as soon as feasible in fiscal year 1996.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subtitle and the amendments made by this subtitle.

# Subtitle C—Midewin National Tallgrass Prairie

## CHAPTER 1—GENERAL PROVISIONS

### SEC. 10301. SHORT TITLE.

This subtitle may be cited as the ''Illinois Land Conservation Act of 1995''.

### SEC. 10302. DEFINITIONS.

For purposes of this subtitle, the following definitions apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the United States Environmental Protection Agency.

(2) AGRICULTURAL PURPOSES.—The term ''agricultural purposes'' means the use of land for row crops, pasture, hay, and grazing.

(3) ARSENAL.—The term ''Arsenal'' means the Joliet Army Ammunition Plant located in the State of Illinois.

(4) CERCLA.—The term ''CERCLA'' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(5) DEFENSE ENVIRONMENTAL RESTORATION PROGRAM.—The term ''Defense Environmental Restoration Program'' means the program of environmental restoration for defense installations established by the Secretary of Defense under section 2701 of title 10, United States Code.

(6) ENVIRONMENTAL LAW.—The term ''environmental law'' means all applicable Federal, State, and local laws, regulations, and requirements related to protection of human health, natural and cultural resources, or the environment, including CERCLA, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et

seq.), and the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(7) HAZARDOUS WASTE.—The term ''hazardous substance'' has the meaning given such term by section 101(14) of CERCLA (42 U.S.C. 9601(14)).

(8) MNP.—The term ''MNP'' means the Midewin National Tallgrass Prairie established pursuant to section 10314 and managed as a part of the National Forest System.

(9) NATIONAL CEMETERY.—The term ''national cemetery'' means a cemetery established and operated as part of the National Cemetery System of the Department of Veterans Affairs and subject to the provisions of chapter 24 of title 38, United States Code.

(10) PERSON.—The term ''person'' has the meaning given such term by section 101(21) of CERCLA (42 U.S.C. 9601(21)).

(11) POLLUTANT OR CONTAMINANT.—The term ''pollutant or contaminant'' has the meaning given such term by section 101(33) of CERCLA (42 U.S.C. 9601(33)).

(12) RELEASE.—The term ''release'' has the meaning given such term by section 101(22) of CERCLA (42 U.S.C. 9601(22)).

(13) RESPONSE ACTION.—The term ''response action'' has the meaning given the term ''response'' by section 101(25) of CERCLA (42 U.S.C. 9601(25)).

## CHAPTER 2—CONVERSION OF JOLIET ARMY AMMUNITION PLANT TO MIDEWIN NATIONAL TALLGRASS PRAIRIE

### SEC. 10311. PRINCIPLES OF TRANSFER.

(a) LAND USE PLAN.—The Congress ratifies in principle the proposals generally identified by the land use plan which was developed by the Joliet Arsenal Citizen Planning Commission and unanimously approved on May 30, 1995.

(b) TRANSFER WITHOUT REIMBURSEMENT.—The area constituting the Midewin National Tallgrass Prairie shall be transferred, without reimbursement, to the Secretary of Agriculture.

(c) MANAGEMENT OF MNP.—Management by the Secretary of Agriculture of those portions of the Arsenal transferred to the Secretary under this subtitle shall be in accordance with sections 10314 and 10315 regarding the Midewin National Tallgrass Prairie.

(d) SECURITY MEASURES.—The Secretary of the Army and the Secretary of Agriculture shall each provide and maintain physical and other security measures on

such portion of the Arsenal as is under the administrative jurisdiction of such Secretary. Such security measures (which may include fences and natural barriers) shall include measures to prevent members of the public from gaining unauthorized access to such portions of the Arsenal as are under the administrative jurisdiction of such Secretary and that may endanger health or safety.

(e) COOPERATIVE AGREEMENTS.—The Secretary of the Army, the Secretary of Agriculture, and the Administrator are individually and collectively authorized to enter into cooperative agreements and memoranda of understanding among each other and with other affected Federal agencies, State and local governments, private organizations, and corporations to carry out the purposes for which the Midewin National Tallgrass Prairie is established.

(f) INTERIM ACTIVITIES OF THE SECRETARY OF AGRICULTURE.—Prior to transfer and subject to such reasonable terms and conditions as the Secretary of the Army may prescribe, the Secretary of Agriculture may enter upon the Arsenal property for purposes related to planning, resource inventory, fish and wildlife habitat manipulation (which may include prescribed burning), and other such activities consistent with the purposes for which the Midewin National Tallgrass Prairie is established.

**SEC. 10312. TRANSFER OF MANAGEMENT RESPONSIBILITIES AND JURISDICTION OVER ARSENAL.**

(a) INITIAL TRANSFER OF JURISDICTION.—Within 6 months after the date of the enactment of this Act, the Secretary of the Army shall effect the transfer of those portions of the Arsenal property identified for transfer to the Secretary of Agriculture pursuant to subsection (d). The Secretary of the Army shall transfer to the Secretary of Agriculture only those portions of the Arsenal for which the Secretary of the Army and the Administrator concur that no further action is required under any environmental law and which therefore have been eliminated from the areas to be further studied pursuant to the Defense Environmental Restoration Program for the Arsenal. Within 4 months after the date of the enactment of this Act, the Secretary of the Army and the Administrator shall provide to the Secretary of Agriculture all existing documentation supporting such finding and all existing information relating to the environmental conditions of the portions of the Arsenal to be transferred to the Secretary of Agriculture pursuant to this subsection.

(b) ADDITIONAL TRANSFERS.—The Secretary of the Army shall transfer to the Secretary of Agriculture in accordance with section 10316(c) any portion of the property generally identified in subsection (d) and not transferred under subsection (a) after the Secretary of the

Army and the Administrator concur that no further action is required at that portion of property under any environmental law and that such portion is therefore eliminated from the areas to be further studied pursuant to the Defense Environmental Restoration Program for the Arsenal. At least 2 months before any transfer under this subsection, the Secretary of the Army and the Administrator shall provide to the Secretary of Agriculture all existing documentation supporting such finding and all existing information relating to the environmental conditions of the portion of the Arsenal to be transferred. Transfer of jurisdiction pursuant to this subsection may be accomplished on a parcel-by-parcel basis.

(c) EFFECT ON CONTINUED RESPONSIBILITIES AND LIABILITY OF SECRETARY OF THE ARMY.—Subsections (a) and (b), and their requirements, shall not in any way affect the responsibilities and liabilities of the Secretary of the Army specified in section 10313.

(d) IDENTIFICATION OF PORTIONS FOR TRANSFER FOR MNP.—The lands to be transferred to the Secretary of Agriculture under subsections (a) and (b) shall be identified on a map or maps which shall be agreed to by the Secretary of the Army and the Secretary of Agriculture. Generally, the land to be transferred to the Secretary of Agriculture shall be all the real property and improve-

ments comprising the Arsenal, except for lands and facilities described in subsection (e) or designated for transfer or disposal under section 10316 or chapter 3.

(e) PROPERTY USED FOR ENVIRONMENTAL CLEANUP.—

(1) RETENTION.—The Secretary of the Army shall retain jurisdiction, authority, and control over real property at the Arsenal to be used for—

(A) water treatment;

(B) the treatment, storage, or disposal of any hazardous substance, pollutant or contaminant, hazardous material, or petroleum products or their derivatives;

(C) other purposes related to any response action at the Arsenal; and

(D) other actions required at the Arsenal under any environmental law to remediate contamination or conditions of noncompliance with any environmental law.

(2) CONDITIONS.—The Secretary of the Army shall consult with the Secretary of Agriculture regarding the identification and management of the real property retained under this subsection and ensure that activities carried out on that property are consistent, to the extent practicable, with the pur-

poses for which the Midewin National Tallgrass Prairie is established, as specified in section 10314(c), and with the other provisions of sections 10314 and 10315.

(3) PRIORITY OF RESPONSE ACTIONS.—In the case of any conflict between management of the property by the Secretary of Agriculture and any response action, or any other action required under any other environmental law, including actions to remediate petroleum products of their derivatives, the response action or other action shall take priority.

(f) SURVEYS.—All costs of necessary surveys for the transfer of jurisdiction of Arsenal property from the Secretary of the Army to the Secretary of Agriculture shall be borne by the Secretary of Agriculture.

**SEC. 10313. CONTINUATION OF RESPONSIBILITY AND LIABILITY OF SECRETARY OF THE ARMY FOR ENVIRONMENTAL CLEANUP.**

(a) RESPONSIBILITY.—The liabilities and responsibilities of the Secretary of the Army under any environmental law shall not transfer under any circumstances to the Secretary of Agriculture as a result of the property transfers made under section 10312 or section 10316, or as a result of interim activities of the Secretary of Agriculture on Arsenal property under section 10311(f). With

respect to the real property at the Arsenal, the Secretary of the Army shall remain liable for and continue to carry out—

(1) all response actions required under CERCLA at or related to the property;

(2) all remediation actions required under any other environmental law at or related to the property; and

(3) all actions required under any other environmental law to remediate petroleum products or their derivatives (including motor oil and aviation fuel) at or related to the property.

(b) LIABILITY.—

(1) IN GENERAL.—Nothing in this Act shall be construed to effect, modify, amend, repeal, alter, limit, or otherwise change, directly or indirectly, the responsibilities or liabilities under any environmental law of any person (including the Secretary of Agriculture), except as provided in paragraph (3) with respect to the Secretary of Agriculture.

(2) LIABILITY OF SECRETARY OF THE ARMY.—The Secretary of the Army shall retain any obligation or other liability at the Arsenal that the Secretary may have under CERCLA and other environmental laws. Following transfer of any portions of

the Arsenal pursuant to this Act, the Secretary of the Army shall be accorded all easements and access to such property as may be reasonably required to carry out such obligation or satisfy such liability.

(3) SPECIAL RULES FOR SECRETARY OF AGRICULTURE.—The Secretary of Agriculture shall not be responsible or liable under any environmental law for matters which are in any way related directly or indirectly to activities of the Secretary of the Army, or any party acting under the authority of the Secretary in connection with the Defense Environmental Restoration Program, at the Arsenal and which are for any of the following:

(A) Costs of response actions required under CERCLA at or related to the Arsenal.

(B) Costs, penalties, or fines related to noncompliance with any environmental law at or related to the Arsenal or related to the presence, release, or threat of release of any hazardous substance, pollutant, contaminant, hazardous waste or hazardous material of any kind at or related to the Arsenal, including contamination resulting from migration of hazardous substances, pollutants, contaminants, hazardous materials, or petroleum products or their de-

rivatives disposed during activities of the Department of the Army.

(C) Costs of actions necessary to remedy such noncompliance or other problem specified in subparagraph (B).

(c) PAYMENT OF RESPONSE ACTION COSTS.—Any Federal department or agency that had or has operations at the Arsenal resulting in the release or threatened release of hazardous substances, pollutants, or contaminants shall pay the cost of related response actions, or related actions under other environmental laws, including actions to remediate petroleum products or their derivatives.

(d) CONSULTATION.—The Secretary of Agriculture shall consult with the Secretary of the Army with respect to the Secretary of Agriculture's management of real property included in the Midewin National Tallgrass Prairie subject to any response action or other action at the Arsenal being carried out by or under the authority of the Secretary of the Army under any environmental law. The Secretary of Agriculture shall consult with the Secretary of the Army prior to undertaking any activities on the Midewin National Tallgrass Prairie that may disturb the property to ensure that such activities will not exacerbate contamination problems or interfere with performance by the Secretary of the Army of response actions at the prop-

erty. In carrying out response actions at the Arsenal, the Secretary of the Army shall consult with the Secretary of Agriculture to ensure that such actions are carried out in a manner consistent with the purposes for which the Midewin National Tallgrass Prairie is established, as specified in section 10314(c), and the other provisions of sections 10314 and 10315.

**SEC. 10314. ESTABLISHMENT AND ADMINISTRATION OF MIDEWIN NATIONAL TALLGRASS PRAIRIE.**

(a) ESTABLISHMENT.—On the effective date of the initial transfer of jurisdiction of portions of the Arsenal to the Secretary of Agriculture under section 10312(a), the Secretary of Agriculture shall establish the Midewin National Tallgrass Prairie. The MNP shall—

(1) be administered by the Secretary of Agriculture; and

(2) consist of the real property so transferred and such other portions of the Arsenal subsequently transferred under section 10312(b) or 10316.

(b) ADMINISTRATION.—

(1) IN GENERAL.—The Secretary of Agriculture shall manage the Midewin National Tallgrass Prairie as a part of the National Forest System in accordance with this Act and the laws, rules, and regulations pertaining to the National Forest System, ex-

cept that the Bankhead-Jones Farm Tenant Act of 1937 (7 U.S.C. 1010–1012) shall not apply to the MNP.

(2) INITIAL MANAGEMENT ACTIVITIES.—In order to expedite the administration and public use of the Midewin National Tallgrass Prairie, the Secretary of Agriculture may conduct management activities at the MNP to effectuate the purposes for which the MNP is established, as specified in subsection (c), in advance of the development of a land and resource management plan for the MNP.

(3) LAND AND RESOURCE MANAGEMENT PLAN.—In developing a land and resource management plan for the Midewin National Tallgrass Prairie, the Secretary of Agriculture shall consult with the Illinois Department of Conservation and local governments adjacent to the MNP and provide an opportunity for public comment. Any parcel transferred to the Secretary of Agriculture under this Act after the development of a land and resource management plan for the MNP may be managed in accordance with such plan without need for an amendment to the plan.

(c) PURPOSES OF THE MIDEWIN NATIONAL TALLGRASS PRAIRIE.—The Midewin National Tallgrass

Prairie is established to be managed for National Forest System purposes, including the following:

(1) To manage the land and water resources of the MNP in a manner that will conserve and enhance the native populations and habitats of fish, wildlife, and plants.

(2) To provide opportunities for scientific, environmental, and land use education and research.

(3) To allow the continuation of agricultural uses of lands within the MNP consistent with section 10315(b).

(4) To provide a variety of recreation opportunities that are not inconsistent with the preceding purposes.

(d) OTHER LAND ACQUISITION FOR MNP.—

(1) LAND ACQUISITION FUNDS.—Notwithstanding section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–9), monies appropriated from the Land and Water Conservation Fund established under section 2 of such Act (16 U.S.C. 460l–5) shall be available for acquisition of lands and interests in land for inclusion in the Midewin National Tallgrass Prairie.

(2) ACQUISITION OF PRIVATE LANDS.—Acquisition of private lands for inclusion in the Midewin

National Tallgrass Prairie shall be on a willing seller basis only.

(e) COOPERATION WITH STATES, LOCAL GOVERNMENTS AND OTHER ENTITIES.—In the management of the Midewin National Tallgrass Prairie, the Secretary of Agriculture is authorized and encouraged to cooperate with appropriate Federal, State, and local governmental agencies, private organizations and corporations. Such cooperation may include cooperative agreements as well as the exercise of the existing authorities of the Secretary under the Cooperative Forestry Assistance Act of 1978 and the Forest and Rangeland Renewable Resources Research Act of 1978. The objects of such cooperation may include public education, land and resource protection and cooperative management among government, corporate, and private landowners in a manner which furthers the purposes for which the Midewin National Tallgrass Prairie is established.

**SEC. 10315. SPECIAL MANAGEMENT REQUIREMENTS FOR MIDEWIN NATIONAL TALLGRASS PRAIRIE.**

(a) PROHIBITION AGAINST THE CONSTRUCTION OF NEW THROUGH ROADS.—No new construction of any highway, public road, or any part of the interstate system, whether Federal, State, or local, shall be permitted through or across any portion of the Midewin National

Tallgrass Prairie. Nothing herein shall preclude construction and maintenance of roads for use within the MNP or the granting of authorizations for utility rights-of-way under applicable Federal law or preclude such access as is necessary. Nothing herein shall preclude necessary access by the Secretary of the Army for purposes of restoration and cleanup as provided in this subtitle.

(b) AGRICULTURAL LEASES AND SPECIAL USE AUTHORIZATIONS.—Within the Midewin National Tallgrass Prairie, use of the lands for agricultural purposes shall be permitted subject to the following terms and conditions:

(1) If, at the time of transfer of jurisdiction under section 10312, there exists any lease issued by the Department of the Army, Department of Defense, or any other agency thereof, for agricultural purposes upon the parcel transferred, the Secretary of Agriculture, upon transfer of jurisdiction, shall convert the lease to a special use authorization, the terms of which shall be identical in substance to the lease that existed prior to the transfer, including the expiration date and any payments owed the United States.

(2) The Secretary of Agriculture may issue special use authorizations to persons for use of the Midewin National Tallgrass Prairie for agricultural

purposes. Special use authorizations issued pursuant to this paragraph shall include terms and conditions as the Secretary of Agriculture may deem appropriate.

(3) No agricultural special use authorization shall be issued for agricultural purposes which has a term extending beyond the date 20 years from the date of the enactment of this Act, except that nothing in this Act shall preclude the Secretary of Agriculture from issuing agricultural special use authorizations or grazing permits which are effective after 20 years from the date of the enactment of this Act for purposes primarily related to erosion control, provision for food and habitat for fish and wildlife, or other resource management activities consistent with the purposes of the Midewin National Tallgrass Prairie.

(c) TREATMENT OF RENTAL FEES.—Monies received pursuant to subsection (b) shall be subject to distribution to the State of Illinois and affected counties pursuant to the Acts of May 23, 1908, and March 1, 1911 (16 U.S.C. 500). All such monies not distributed pursuant to such Acts shall be deposited into the Treasury and shall constitute a special fund, which shall be available to the Secretary of Agriculture, in such amounts as are provided in

advance in appropriation Acts, to cover the cost to the United States of such prairie-improvement work as the Secretary may direct. Any portion of any deposit made to the fund which the Secretary determines to be in excess of the cost of doing such work shall be transferred, upon such determination, to miscellaneous receipts, Forest Service Fund, as a National Forest receipt of the fiscal year in which such transfer is made.

(d) USER FEES.—The Secretary of Agriculture is authorized to charge reasonable fees for the admission, occupancy, and use of the Midewin National Tallgrass Prairie and may prescribe a fee schedule providing for reduced, or a waiver of, fees for persons or groups engaged in authorized activities including those providing volunteer services, research, or education. The Secretary shall permit admission, occupancy, and use at no additional charge for persons possessing a valid Golden Eagle Passport or Golden Age Passport.

(e) SALVAGE OF IMPROVEMENTS.—The Secretary of Agriculture may sell for salvage value any facilities and improvements which have been transferred to the Secretary pursuant to this subtitle.

(f) TREATMENT OF USER FEES AND SALVAGE RECEIPTS.—Monies collected pursuant to subsections (d) and (e) shall be covered into the Treasury and constitute

a special fund to be known as the Midewin National Tallgrass Prairie Restoration Fund. Deposits in the Midewin National Tallgrass Prairie Restoration Fund shall be available to the Secretary of Agriculture, in such amounts as are provided in advance in appropriation Acts, for restoration and administration of the Midewin National Tallgrass Prairie, including construction of a visitor and education center, restoration of ecosystems, construction of recreational facilities (such as trails), construction of administrative offices, and operation and maintenance of the MNP.

**SEC. 10316. SPECIAL DISPOSAL RULES FOR CERTAIN ARSENAL PARCELS INTENDED FOR MNP.**

(a) DESCRIPTION OF PARCELS.—Except as provided in subsection (b), the following areas are designated for transfer or disposal pursuant to subsection (c):

(1) Manufacturing Area—Study Area 1—Southern Ash Pile, Study Area 2—Explosive Burning Ground, Study Area 3—Flashing Grounds, Study Area 4—Lead Azide Area, Study Area 10—Toluene Tank Farms, Study Area 11—Landfill, Study Area 12—Sellite Manufacturing Area, Study Area 14—Former Pond Area, Study Area 15—Sewage Treatment Plant.

(2) Load Assemble Packing Area—Group 61: Study Area L1, Explosive Burning Ground: Study Area L2, Demolition Area: Study Area L3, Landfill Area: Study Area L4, Salvage Yard: Study Area L5, Group 1: Study Area L7, Group 2: Study Area L8, Group 3: Study Area L9, Group 3A: Study Area L10, Group 4: Study Area L14, Group 5: Study Area L15, Group 8: Study Area L18, Group 9: Study Area L19, Group 27: Study Area L23, Group 62: Study Area L25, PVC Area: Study Area L33, including all associated inventoried buildings and structures as identified in the Joliet Army Ammunition Plant Plantwide Building and Structures Report and the contaminate study sites for both the Manufacturing and Load Assembly and Packing sides of the Joliet Arsenal as delineated in the Dames and Moore Final Report, Proposed Future Land Use Map, dated May 30, 1995.

(b) EXCEPTION.—The parcels described in subsection (a) shall not include the property at the Arsenal designated for disposal under chapter 3.

(c) INITIAL OFFER TO SECRETARY OF AGRICULTURE.—Within 6 months after the construction and installation of any remedial design approved by the Administrator and required for any lands described in sub-

section (a), the Administrator shall provide to the Secretary of Agriculture all existing information regarding the implementation of such remedy, including information regarding its effectiveness. Within 3 months after the Administrator provides such information to the Secretary of Agriculture, the Secretary of the Army shall offer the Secretary of Agriculture the option of accepting a transfer of the areas described in subsection (a), without reimbursement, to be added to the Midewin National Tallgrass Prairie and subject to the terms and conditions, including the limitations on liability, contained in this subtitle. In the event the Secretary of Agriculture declines such offer, the property may be disposed of as the Secretary of the Army would ordinarily dispose of such property under applicable provisions of law. Any sale or other transfer of property conducted pursuant to this subsection may be accomplished on a parcel-by-parcel basis.

## CHAPTER 3—OTHER REAL PROPERTY DISPOSALS INVOLVING JOLIET ARMY AMMUNITION PLANT

### SEC. 10321. DISPOSAL OF CERTAIN REAL PROPERTY AT ARSENAL FOR A NATIONAL CEMETERY.

(a) TRANSFER REQUIRED.—Subject to section 10331, the Secretary of the Army shall transfer, without reimbursement, to the Secretary of Veterans Affairs the

parcel of real property at the Arsenal described in subsection (b) for use as a national cemetery.

(b) DESCRIPTION OF PROPERTY.—The real property to be transferred under subsection (a) is a parcel of real property at the Arsenal consisting of approximately 982 acres, the approximate legal description of which includes part of sections 30 and 31 Jackson Township, T34N R10E, and part of sections 25 and 36 Channahon Township, T34N R9E, Will County, Illinois, as depicted in the Arsenal Land Use Concept.

(c) SECURITY MEASURES.—The Secretary of Veterans Affairs shall provide and maintain physical and other security measures on the real property transferred under subsection (a). Such security measures (which may include fences and natural barriers) shall include measures to prevent members of the public from gaining unauthorized access to the portion of the Arsenal that is under the administrative jurisdiction of the Secretary of Veterans Affairs and that may endanger health or safety.

(d) SURVEYS.—All costs of necessary surveys for the transfer of jurisdiction of Arsenal properties from the Secretary of the Army to the Secretary of Veterans Affairs shall be borne solely by the Secretary of Veterans Affairs.

**SEC. 10322. DISPOSAL OF CERTAIN REAL PROPERTY AT ARSENAL FOR A COUNTY LANDFILL.**

(a) TRANSFER REQUIRED.—Subject to section 10331, the Secretary of the Army shall transfer, without compensation, to Will County, Illinois, all right, title, and interest of the United States in and to the parcel of real property at the Arsenal described in subsection (b), which shall be operated as a landfill by the County.

(b) DESCRIPTION OF PROPERTY.—The real property to be transferred under subsection (a) is a parcel of real property at the Arsenal consisting of approximately 455 acres, the approximate legal description of which includes part of sections 8 and 17, Florence Township, T33N R10E, Will County, Illinois, as depicted in the Arsenal Land Use Concept.

(c) CONDITION ON CONVEYANCE.—The conveyance shall be subject to the condition that the Army (or its agents or assigns) may use the landfill established on the real property transferred under subsection (a) for the disposal of construction debris, refuse, and other nonhazardous materials from the restoration and cleanup of the Arsenal property as provided for in this Act. Such use shall be at no cost to the Federal Government.

(d) REVERSIONARY INTEREST.—During the 5-year period beginning on the date the Secretary of the Army makes the conveyance under subsection (a), if the Sec-

retary of the Army determines that the conveyed real property is not being operated as a landfill or that Will County, Illinois, is in violation of the condition specified in subsection (c), then, at the option of the United States, all right, title, and interest in and to the property, including improvements thereon, shall be subject to reversion to the United States. In the event the United States exercises its option to cause the property to revert, the United States shall have the right of immediate entry onto the property. Any determination of the Secretary of the Army under this subsection shall be made on the record after an opportunity for a hearing.

(e) SURVEYS.—All costs of necessary surveys for the transfer of real property under this section shall be borne by Will County, Illinois.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of the Army may require such additional terms and conditions in connection with the conveyance under this section as the Secretary of the Army considers appropriate to protect the interests of the United States.

**SEC. 10323. DISPOSAL OF CERTAIN REAL PROPERTY AT ARSENAL FOR ECONOMIC DEVELOPMENT.**

(a) TRANSFER REQUIRED.—Subject to section 10331, the Secretary of the Army shall transfer to the State of Illinois, all right, title, and interest of the United

States in and to the parcel of real property at the Arsenal described in subsection (b), which shall be used for economic redevelopment to replace all or a part of the economic activity lost at the Arsenal.

(b) DESCRIPTION OF PROPERTY.—The real property to be transferred under subsection (a) is a parcel of real property at the Arsenal consisting of—

(1) approximately 1,900 acres, the approximate legal description of which includes part of section 30, Jackson Township, Township 34 North, Range 10 East, and sections or parts of sections 24, 25, 26, 35, and 36, Township 34 North, Range 9 East, in Channahon Township, an area of 9.77 acres around the Des Plaines River Pump Station located in the southeast quarter of section 15, Township 34 North, Range 9 East of the Third Principal Meridian, in Channahon Township, and an area of 511 feet by 596 feet around the Kankakee River Pump Station in the Northwest Quarter of section 5, Township 33 North, Range 9 East, east of the Third Principal Meridian in Wilmington Township, containing 6.99 acres, located along the easterly side of the Kankakee Cut-Off in Will County, Illinois, as depicted in the Arsenal Re-Use Concept, and the connecting piping to the northern industrial site, as

described by the United States Army Report of Availability, dated 13 December 1993; and

(2) approximately 1,100 acres, the approximate legal description of which includes part of sections 16, 17, 18 Florence Township, Township 33 North, Range 10 East, Will County, Illinois, as depicted in the Arsenal Land Use Concept.

(c) CONSIDERATION.—The transfer under subsection (a) shall be made without consideration. However, the transfer shall be subject to the condition that, if the State of Illinois reconveys all or any part of the transferred property to a non-Federal entity, the State shall pay to the United States an amount equal to the fair market value of the reconveyed property. The Secretary of the Army shall determine the fair market value of any property reconveyed by the State as of the time of the reconveyance, excluding the value of improvements made to the property by the State. The Secretary may treat a lease of the property as a reconveyance if the Secretary determines that the lease was used in an effort to avoid operation of this subsection. Amounts received under this subsection shall be deposited in the general fund of the Treasury for purposes of deficit reduction.

(d) OTHER CONDITIONS OF CONVEYANCE.—

(1) REDEVELOPMENT AUTHORITY.—The transfer under subsection (a) shall be subject to the further condition that the Governor of the State of Illinois establish a redevelopment authority to be responsible for overseeing the economic redevelopment of the transferred land.

(2) TIME FOR ESTABLISHMENT.—To satisfy the condition specified in paragraph (1), the redevelopment authority shall be established within 1 year after the date of the enactment of this Act.

(e) REVERSIONARY INTEREST.—During the 20-year period beginning on the date the Secretary of the Army makes the transfer under subsection (a), if the Secretary determines that a condition specified in subsection (c) or (d) is not being satisfied or that the transferred land is not being used for economic development purposes, then, at the option of the United States, all right, title, and interest in and to the property, including improvements thereon, shall be subject to reversion to the United States. In the event the United States exercises its option to cause the property to revert, the United States shall have the right of immediate entry onto the property. Any determination of the Secretary under this subsection shall be made on the record after an opportunity for a hearing.

(f) SURVEYS.—All costs of necessary surveys for the transfer of real property under this section shall be borne by the State of Illinois.

(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of the Army may require such additional terms and conditions in connection with the transfer under this section as the Secretary considers appropriate to protect the interests of the United States.

## CHAPTER 4—MISCELLANEOUS PROVISIONS

### SEC. 10331. DEGREE OF ENVIRONMENTAL CLEANUP.

(a) IN GENERAL.—Nothing in this Act shall be construed to restrict or lessen the degree of cleanup at the Arsenal required to be carried out under provisions of any environmental law.

(b) RESPONSE ACTION.—The establishment of the Midewin National Tallgrass Prairie under chapter 2 and the additional real property transfers and disposals required under chapter 3 shall not restrict or lessen in any way any response action or degree of cleanup under CERCLA or other environmental law, or any response action required under any environmental law to remediate petroleum products or their derivatives (including motor oil and aviation fuel), required to be carried out under the authority of the Secretary of the Army at the Arsenal and

surrounding areas, except to the extent otherwise allowable under such laws.

(c) ENVIRONMENTAL QUALITY OF PROPERTY.—Any contract for sale, deed, or other transfer of real property under chapter 3 shall be carried out in compliance with all applicable provisions of section 120(h) of CERCLA and other environmental laws.

## Subtitle D—Miscellaneous Provisions

### SEC. 10401. EXTENSION OF HIGHER VESSEL TONNAGE DUTIES.

(a) EXTENSION OF DUTIES.—Section 36 of the Act of August 5, 1909 (36 Stat. 111; 46 App. U.S.C. 121), is amended by striking ''for fiscal years 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998,'' each place it appears and inserting ''for fiscal years through fiscal year 2002,''.

(b) CONFORMING AMENDMENT.—The Act entitled ''An Act concerning tonnage duties on vessels entering otherwise than by sea'', approved March 8, 1910 (36 Stat. 234; 46 App. U.S.C. 132), is amended by striking ''for fiscal years 1991, 1992, 1993, 1994, 1995, 1996, 1997, and 1998,'' and inserting ''for fiscal years through fiscal year 2002,''.

**SEC. 10402. SALE OF GOVERNORS ISLAND, NEW YORK.**

(a) IN GENERAL.—Notwithstanding any other provision of law, the Administrator of General Services shall dispose of by sale at fair market value all rights, title, and interests of the United States in and to the land of, and improvements to, Governors Island, New York.

(b) RIGHT OF FIRST REFUSAL.—Before a sale is made under subsection (a) to any other parties, the State of New York and the city of New York shall be given the right of first refusal to purchase all or part of Governors Island. Such right may be exercised by either the State of New York or the city of New York or by both parties acting jointly.

(c) PROCEEDS.—Proceeds from the disposal of Governors Island under subsection (a) shall be deposited in the general fund of the Treasury and credited as miscellaneous receipts.

**SEC. 10403. SALE OF AIR RIGHTS.**

(a) IN GENERAL.—Notwithstanding any other provision of law, the Administrator of General Services shall sell, at fair market value and in a manner to be determined by the Administrator, the air rights adjacent to Washington Union Station described in subsection (b), including air rights conveyed to the Administrator under subsection (d). The Administrator shall complete the sale by such date as is necessary to ensure that the proceeds

from the sale will be deposited in accordance with subsection (c).

(b) DESCRIPTION.—The air rights referred to in subsection (a) total approximately 16.5 acres and are depicted on the plat map of the District of Columbia as follows:

(1) Part of lot 172, square 720.

(2) Part of lots 172 and 823, square 720.

(3) Part of lot 811, square 717.

(c) PROCEEDS.—Before September 30, 1996, proceeds from the sale of air rights under subsection (a) shall be deposited in the general fund of the Treasury and credited as miscellaneous receipts.

(d) CONVEYANCE OF AMTRAK AIR RIGHTS.—

(1) GENERAL RULE.—As a condition of future Federal financial assistance, Amtrak shall convey to the Administrator of General Services on or before December 31, 1995, at no charge, all of the air rights of Amtrak described in subsection (b).

(2) FAILURE TO COMPLY.—If Amtrak does not meet the condition established by paragraph (1), Amtrak shall be prohibited from obligating Federal funds after March 1, 1996.

**SEC. 10404. COLLECTION OF PARKING FEES.**

(a) IN GENERAL.—The Administrator of General Services shall issue regulations requiring each Executive

agency to collect fees for the use of all parking facilities provided for the agency at Federal expense.

(b) SPECIFIC REQUIREMENTS.—The regulations—

(1) shall include provisions under which any such user fee shall be computed based on the fair market value of the use of the parking facility involved; and

(2) shall take effect on or before the 90th day after the date of enactment of this Act.

(c) FEES TO BE DEPOSITED IN THE TREASURY.—All user fees collected under this section shall be deposited in the Treasury of the United States as miscellaneous receipts.

(d) PROHIBITION ON USE OF FEDERAL FUNDS.—No Federal funds may be used to pay any user fee collected under this section.

(e) EXECUTIVE AGENCY DEFINED.—In this section, the term ''Executive agency'' has the meaning given such term by section 105 of title 5, United States Code.

# TITLE XI—COMMITTEE ON VETERANS' AFFAIRS

**SEC. 11001. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This title may be cited as the ''Veterans Reconciliation Act of 1995''.

1 (b) TABLE OF CONTENTS.—The contents of this title
2 are as follows:

TITLE XI—COMMITTEE ON VETERANS' AFFAIRS

Sec. 11001. Short title; table of contents.

Subtitle A—Extension of Temporary Authorities

Sec. 11011. Authority to require that certain veterans agree to make copayments in exchange for receiving health-care benefits.
Sec. 11012. Medical care cost recovery authority.
Sec. 11013. Income verification authority.
Sec. 11014. Limitation on pension for certain recipients of medicaid-covered nursing home care.
Sec. 11015. Home loan fees.
Sec. 11016. Procedures applicable to liquidation sales on defaulted home loans guaranteed by the Department of Veterans Affairs.

Subtitle B—Other Matters

Sec. 11021. Revision to prescription drug copayment.
Sec. 11022. Rounding down of cost-of-living adjustments in compensation and DIC rates.
Sec. 11023. Revised standard for liability for injuries resulting from Department of Veterans Affairs treatment.
Sec. 11024. Enhanced loan asset sale authority.
Sec. 11025. Withholding of payments and benefits.

Subtitle C—Health Care Eligibility Reform

Sec. 11031. Hospital care and medical services.
Sec. 11032. Extension of authority to priority health care for Persian Gulf veterans.
Sec. 11033. Prosthetics.
Sec. 11034. Management of health care.
Sec. 11035. Improved efficiency in health care resource management.
Sec. 11036. Sharing agreements for specialized medical resources.
Sec. 11037. Personnel furnishing shared resources.

# Subtitle A—Extension of Temporary Authorities

**SEC. 11011. AUTHORITY TO REQUIRE THAT CERTAIN VETERANS AGREE TO MAKE COPAYMENTS IN EXCHANGE FOR RECEIVING HEALTH-CARE BENEFITS.**

(a) HOSPITAL AND MEDICAL CARE.—Section 8013(e) of the Omnibus Budget Reconciliation Act of 1990 (38 U.S.C. 1710 note) is amended by striking out ''September 30, 1998'' and inserting in lieu thereof ''September 30, 2002''.

(b) OUTPATIENT MEDICATIONS.—Section 1722A(c) of title 38, United States Code, is amended by striking out ''September 30, 1998'' and inserting in lieu thereof ''September 30, 2002''.

**SEC. 11012. MEDICAL CARE COST RECOVERY AUTHORITY.**

Section 1729(a)(2)(E) of title 38, United States Code, is amended by striking out ''before October 1, 1998,'' and inserting ''before October 1, 2002,''.

**SEC. 11013. INCOME VERIFICATION AUTHORITY.**

Section 5317(g) of title 38, United States Code, is amended by striking out ''September 30, 1998'' and inserting in lieu thereof ''September 30, 2002''.

**SEC. 11014. LIMITATION ON PENSION FOR CERTAIN RECIPIENTS OF MEDICAID-COVERED NURSING HOME CARE.**

Section 5503(f)(7) of title 38, United States Code, is amended by striking out ''September 30, 1998'' and inserting in lieu thereof ''September 30, 2002''.

**SEC. 11015. HOME LOAN FEES.**

Section 3729(a) of title 38, United States Code, is amended—

(1) in paragraph (4), by striking out ''October 1, 1998'' and inserting in lieu thereof ''October 1, 2002''; and

(2) in paragraph (5)(C), by striking out ''October 1, 1998'' and inserting in lieu thereof ''October 1, 2002''.

**SEC. 11016. PROCEDURES APPLICABLE TO LIQUIDATION SALES ON DEFAULTED HOME LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS.**

Section 3732(c)(11) of title 38, United States Code, is amended by striking out ''October 1, 1998'' and inserting ''October 1, 2002''.

# Subtitle B—Other Matters

**SEC. 11021. REVISION TO PRESCRIPTION DRUG COPAYMENT.**

(a) INCREASE IN AMOUNT OF COPAYMENT.—Section 1722A(a) of title 38, United States Code, is amended—

(1) in paragraph (1), by striking out ''$2'' and inserting in lieu thereof ''$3'';

(2) by striking out paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

(b) RECOVERY OF INDEBTEDNESS.—(1) Section 5302 of such title is amended by adding at the end the following new subsection:

''(f) The Secretary may not waive under this section the recovery of any payment or the collection of any indebtedness owed under section 1722A of this title.''.

(2) The amendment made by paragraph (1) shall apply with respect to amounts that become due to the United States under section 1722A of title 38, United States Code, on or after the date of the enactment of this Act.

**SEC. 11022. ROUNDING DOWN OF COST-OF-LIVING ADJUSTMENTS IN COMPENSATION AND DIC RATES.**

(a) FISCAL YEAR 1996 COLA.—(1) Effective as of December 1, 1995, the Secretary of Veterans Affairs shall

recompute any increase in an adjustment that is otherwise provided by law to be effective during fiscal year 1996 in the rates of disability compensation and dependency and indemnity compensation paid by the Secretary as such rates were in effect on November 30, 1995. The recomputation shall provide for the same percentage increase as provided under such law, but with amounts so recomputed (if not a whole dollar amount) rounded down to the next lower whole dollar amount (rather than to the nearest whole dollar amount) and with each old-law DIC rate increased by the amount by which the new-law DIC rate is increased (rather than by a uniform percentage).

(2) For purposes of paragraph (1):

(A) The term ''old-law DIC rate'' means a dollar amount in effect under section 1311(a)(3) of title 38, United States Code.

(B) The term ''new-law DIC rate'' means the dollar amount in effect under section 1311(a)(1) of title 38, United States Code.

(b) OUT-YEAR COMPENSATION COLAS.—(1) Chapter 11 of title 38, United States Code, is amended by inserting after section 1102 the following new section:

**''§ 1103. Cost-of-living adjustments**

''(a) In the computation of cost-of-living adjustments for fiscal years 1997 through 2002 in the rates of, and

dollar limitations applicable to, compensation payable under this chapter, such adjustments shall be made by a uniform percentage that is no more than the percentage equal to the social security increase for that fiscal year, with all increased monthly rates and limitations (other than increased rates or limitations equal to a whole dollar amount) rounded down to the next lower whole dollar amount.

''(b) For purposes of this section, the term 'social security increase' means the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased for any fiscal year as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1102 the following new item:

''1103. Cost-of-living adjustments.''.

(c) OUT-YEAR DIC COLAS.—(1) Chapter 13 of title 38, United States Code, is amended by inserting after section 1302 the following new section:

**"§ 1303. Cost-of-living adjustments**

''(a) In the computation of cost-of-living adjustments for fiscal years 1997 through 2002 in the rates of dependency and indemnity compensation payable under this chapter, such adjustments (except as provided in sub-

section (b)) shall be made by a uniform percentage that is no more than the percentage equal to the social security increase for that fiscal year, with all increased monthly rates (other than increased rates equal to a whole dollar amount) rounded down to the next lower whole dollar amount.

''(b)(1) Cost-of-living adjustments for each of fiscal years 1997 through 2002 in old-law DIC rates shall be in a whole dollar amount that is no greater than the amount by which the new-law DIC rate is increased for that fiscal year as determined under subsection (a).

''(2) For purposes of paragraph (1):

''(A) The term 'old-law DIC rates' means the dollar amounts in effect under section 1311(a)(3) of this title.

''(B) The term 'new-law DIC rate' means the dollar amount in effect under section 1311(a)(1) of this title.

''(c) For purposes of this section, the term 'social security increase' means the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased for any fiscal year as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1302 the following new item:

''1303. Cost-of-living adjustments.''.

**SEC. 11023. REVISED STANDARD FOR LIABILITY FOR INJURIES RESULTING FROM DEPARTMENT OF VETERANS AFFAIRS TREATMENT.**

(a) REVISED STANDARD.—Section 1151 of title 38, United States Code, is amended—

(1) by designating the second sentence as subsection (c);

(2) by striking out the first sentence and inserting in lieu thereof the following:

''(a) Compensation under this chapter and dependency and indemnity compensation under chapter 13 of this title shall be awarded for a qualifying additional disability of a veteran or the qualifying death of a veteran in the same manner as if such disability or death were service-connected.

''(b)(1) For purposes of this section, a disability or death is a qualifying additional disability or a qualifying death only if the disability or death—

''(A) was caused by Department health care and was a proximate result of—

''(i) negligence on the part of the Department in furnishing the Department health care; or

''(ii) an event not reasonably foreseeable; or

''(B) was incurred as a proximate result of the provision of training and rehabilitation services by the Secretary (including by a service-provider used by the Secretary for such purpose under section 3115 of this title) as part of an approved rehabilitation program under chapter 31 of this title.

''(2) For purposes of this section, the term 'Department health care' means hospital care, medical or surgical treatment, or an examination that is furnished under any law administered by the Secretary to a veteran by a Department employee or in a Department facility (as defined in section 1701(3)(A) of this title).

''(3) A disability or death of a veteran which is the result of the veteran's willful misconduct is not a qualifying disability or death for purposes of this section.''; and

(3) by adding at the end the following:

''(d) Effective with respect to injuries, aggravations of injuries, and deaths occurring after September 30, 2002, a disability or death is a qualifying additional disability or a qualifying death for purposes of this section

(notwithstanding the provisions of subsection (b)(1)) if the disability or death—

''(1) was the result of Department health care; or

''(2) was the result of the pursuit of a course of vocational rehabilitation under chapter 31 of this title.''.

(b) CONFORMING AMENDMENTS.—Subsection (c) of such section, as designated by subsection (a)(1), is amended—

(1) by striking out '', aggravation,'' both places it appears; and

(2) by striking out ''sentence'' and inserting in lieu thereof ''subsection''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any administrative or judicial determination of eligibility for benefits under section 1151 of title 38, United States Code, based on a claim that is received by the Secretary on or after October 1, 1995, including any such determination based on an original application or an application seeking to reopen, revise, reconsider, or otherwise readjudicate any claim for benefits under section 1151 of that title or any predecessor provision of law.

**SEC. 11024. ENHANCED LOAN ASSET SALE AUTHORITY.**

Section 3720(h)(2) of title 38, United States Code, is amended by striking out ''December 31, 1995'' and inserting in lieu thereof ''September 30, 1996''.

**SEC. 11025. WITHHOLDING OF PAYMENTS AND BENEFITS.**

(a) NOTICE REQUIRED IN LIEU OF CONSENT OR COURT ORDER.—Section 3726 of title 38, United States Code, is amended by striking out ''unless'' and all that follows and inserting in lieu thereof the following: ''unless the Secretary provides such veteran or surviving spouse with notice by certified mail with return receipt requested of the authority of the Secretary to waive the payment of indebtedness under section 5302(b) of this title. If the Secretary does not waive the entire amount of the liability, the Secretary shall then determine whether the veteran or surviving spouse should be released from liability under section 3713(b) of this title. If the Secretary determines that the veteran or surviving spouse should not be released from liability, the Secretary shall notify the veteran or surviving spouse of that determination and provide a notice of the procedure for appealing that determination, unless the Secretary has previously made such determination and notified the veteran or surviving spouse of the procedure for appealing the determination.''.

(b) CONFORMING AMENDMENT.—Section 5302(b) of such title is amended by inserting ''with return receipt requested'' after ''certified mail''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any indebtedness to the United States arising pursuant to chapter 37 of title 38, United States Code, before, on, or after the date of the enactment of this Act.

## Subtitle C—Health Care Eligibility Reform

**SEC. 11031. HOSPITAL CARE AND MEDICAL SERVICES.**

(a) ELIGIBILITY FOR CARE.—Section 1710(a) of title 38, United States Code, is amended by striking out paragraphs (1) and (2) and inserting the following:

''(a)(1) The Secretary shall, to the extent and in the amount provided in advance in appropriations Acts for these purposes, provide hospital care and medical services, and may provide nursing home care, which the Secretary determines is needed to any veteran—

''(A) with a compensable service-connected disability;

''(B) whose discharge or release from active military, naval, or air service was for a compensable disability that was incurred or aggravated in the line of duty;

''(C) who is in receipt of, or who, but for a suspension pursuant to section 1151 of this title (or both a suspension and the receipt of retired pay), would be entitled to disability compensation, but only to the extent that such veteran's continuing eligibility for such care is provided for in the judgment or settlement provided for in such section;

''(D) who is a former prisoner of war;

''(E) of the Mexican border period or of World War I;

''(F) who was exposed to a toxic substance, radiation, or environmental hazard, as provided in subsection (e); and

''(G) who is unable to defray the expenses of necessary care as determined under section 1722(a) of this title.

''(2) In the case of a veteran who is not described in paragraph (1), the Secretary may, to the extent resources and facilities are available and subject to the provisions of subsection (f), furnish hospital care, medical services, and nursing home care which the Secretary determines is needed.''.

(b) CONFORMING AMENDMENTS.—(1) Section 1710(e) of such title is amended—

(A) in paragraph (1), by striking out ''hospital care and nursing home care'' in subparagraphs (A), (B), and (C) and inserting in lieu thereof ''hospital care, medical services, and nursing home care'';

(B) in paragraph (2), by inserting ''and medical services'' after ''Hospital and nursing home care''; and

(C) by striking out ''subsection (a)(1)(G) of this section'' each place it appears and inserting in lieu thereof ''subsection (a)(1)(F)''.

(2) Chapter 17 of such title is amended—

(A) by redesignating subsection (g) of section 1710 as subsection (h); and

(B) by transferring subsection (f) of section 1712 of such title to section 1710 so as to appear after subsection (f), redesignating such subsection as subsection (g), and amending such subsection by striking out ''section 1710(a)(2) of this title'' in paragraph (1) and inserting in lieu thereof ''subsection (a)(2) of this section''.

(3) Section 1712 of such title is amended—

(A) by striking out subsections (a) and (i); and

(B) by redesignating subsections (b), (c), (d), (h) and (j), as subsections (a), (b), (c), (d), and (e), respectively.

**SEC. 11032. EXTENSION OF AUTHORITY TO PRIORITY HEALTH CARE FOR PERSIAN GULF VETERANS.**

Section 1710(e)(3) of title 38, United States Code, is amended by striking out ''December 31, 1995'' and inserting in lieu thereof ''December 31, 1998''.

**SEC. 11033. PROSTHETICS.**

(a) ELIGIBILITY FOR PROSTHETICS.—Section 1701(6)(A)(i) of title 38, United States Code, is amended—

(1) by striking out ''(in the case of a person otherwise receiving care or services under this chapter)'' and ''(except under the conditions described in section 1712(a)(5)(A) of this title),'';

(2) by inserting ''(in the case of a person otherwise receiving care or services under this chapter)'' before ''wheelchairs,''; and

(3) by inserting ''except that the Secretary may not furnish sensori-neural aids other than in accordance with guidelines which the Secretary shall prescribe,'' after ''reasonable and necessary,''.

(b) REGULATIONS.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall prescribe the guidelines required by the amendments made by subsection (a) and shall furnish a

copy of those guidelines to the Committees on Veterans' Affairs of the Senate and House of Representatives.

**SEC. 11034. MANAGEMENT OF HEALTH CARE.**

(a) IN GENERAL.—(1) Chapter 17 of title 38, United States Code, is amended by inserting after section 1704 the following new sections:

**"§ 1705. Management of health care: patient enrollment system**

''(a) In managing the provision of hospital care and medical services under section 1710(a)(1) of this title, the Secretary, in accordance with regulations the Secretary shall prescribe, shall establish and operate a system of annual patient enrollment. The Secretary shall manage the enrollment of veterans in accordance with the following priorities, in the order listed:

''(1) Veterans with service-connected disabilities rated 30 percent or greater.

''(2) Veterans who are former prisoners of war and veterans with service connected disabilities rated 10 percent or 20 percent.

''(3) Veterans who are in receipt of increased pension based on a need of regular aid and attendance or by reason of being permanently housebound and other veterans who are catastrophically disabled.

''(4) Veterans not covered by paragraphs (1) through (3) who are unable to defray the expenses of necessary care as determined under section 1722(a) of this title.

''(5) All other veterans eligible for hospital care, medical services, and nursing home care under section 1710(a)(1) of this title.

''(b) In the design of an enrollment system under subsection (a), the Secretary—

''(1) shall ensure that the system will be managed in a manner to ensure that the provision of care to enrollees is timely and acceptable in quality;

''(2) may establish additional priorities within each priority group specified in subsection (a), as the Secretary determines necessary; and

''(3) may provide for exceptions to the specified priorities where dictated by compelling medical reasons.

**"§ 1706. Management of health care: other requirements**

''(a) In managing the provision of hospital care and medical services under section 1710(a) of this title, the Secretary shall, to the extent feasible, design, establish and manage health care programs in such a manner as

to promote cost-effective delivery of health care services in the most clinically appropriate setting.

''(b) In managing the provision of hospital care and medical services under section 1710(a) of this title, the Secretary—

''(1) may contract for hospital care and medical services when Department facilities are not capable of furnishing such care and services economically, and

''(2) shall make such rules and regulations regarding acquisition procedures or policies as the Secretary considers appropriate to provide such needed care and services.

''(c) In managing the provision of hospital care and medical services under section 1710(a) of this title, the Secretary shall ensure that the Department maintains its capacity to provide for the specialized treatment and rehabilitative needs of disabled veterans described in section 1710(a) of this title (including veterans with spinal cord dysfunction, blindness, amputations, and mental illness) within distinct programs or facilities of the Department that are dedicated to the specialized needs of those veterans in a manner that (1) affords those veterans reasonable access to care and services for those specialized needs, and (2) ensures that overall capacity of the Department to pro-

vide such services is not reduced below the capacity of the Department, nationwide, to provide those services, as of the date of the enactment of this section.

''(d) In managing the provision of hospital care and medical services under section 1710(a) of this title, the Secretary shall ensure that any veteran with a service-connected disability is provided all benefits under this chapter for which that veteran was eligible before the date of the enactment of this section.''.

(2) The table of sections at the beginning of chapter 17 of such title is amended by inserting after the item relating to section 1704 the following new items:

''1705. Management of health care: patient enrollment system.
''1706. Management of health care: other requirements.''.

(b) CONFORMING AMENDMENTS TO SECTION 1703.—(1) Section 1703 of such title is amended—

(A) by striking out subsections (a) and (b); and

(B) in subsection (c) by—

(i) striking out ''(c)'', and

(ii) striking out ''this section, sections'' and inserting in lieu thereof ''sections 1710,''.

(2)(A) The heading of such section is amended to read as follows:

**"§ 1703. Annual report on furnishing of care and services by contract".**

(B) The item relating to such section in the table of sections at the beginning of chapter 17 of such title is amended to read as follows:

''1703. Annual report on furnishing of care and services by contract.''.

**SEC. 11035. IMPROVED EFFICIENCY IN HEALTH CARE RESOURCE MANAGEMENT.**

(a) REPEAL OF SUNSET PROVISION.—Section 204 of the Veterans Health Care Act of 1992 (Public Law 102–585; 106 Stat. 4950) is repealed.

(b) COST RECOVERY.—Title II of such Act is further amended by adding at the end the following new section:

**"SEC. 207. AUTHORITY TO BILL HEALTH-PLAN CONTRACTS.**

''(a) RIGHT TO RECOVER.—In the case of a primary beneficiary (as described in section 201(2)(B)) who has coverage under a health-plan contract, as defined in section 1729(i)(1)(A) of title 38, United States Code, and who is furnished care or services by a Department medical facility pursuant to this title, the United States shall have the right to recover or collect charges for such care or services from such health-plan contract to the extent that the beneficiary (or the provider of the care or services) would be eligible to receive payment for such care or services from such health-plan contract if the care or services had not been furnished by a department or agency of the

United States. Any funds received from such health-plan contract shall be credited to funds that have been allotted to the facility that furnished the care or services.

''(b) ENFORCEMENT.—The right of the United States to recover under such a beneficiary's health-plan contract shall be enforceable in the same manner as that provided by subsections (a)(3), (b), (c)(1), (d), (f), (h), and (i) of section 1729 of title 38, United States Code.''.

**SEC. 11036. SHARING AGREEMENTS FOR SPECIALIZED MEDICAL RESOURCES.**

(a) REPEAL OF SECTION 8151.—(1) Subchapter IV of chapter 81 of title 38, United States Code, is amended—

(A) by striking out section 8151; and

(B) by redesignating sections 8152, 8153, 8154, 8155, 8156, 8157, and 8158 as sections 8151, 8152, 8153, 8154, 8155, 8156, and 8157, respectively.

(2) The table of sections at the beginning of chapter 81 is amended—

(A) by striking out the item relating to section 8151; and

(B) by revising the items relating to sections 8152, 8153, 8154, 8155, 8156, 8157, and 8158 to reflect the redesignations by paragraph (1)(B).

(b) REVISED AUTHORITY FOR SHARING AGREEMENTS.—Section 8152 of such title, as redesignated by subsection (a)(1)(B), is amended—

(1) in subsection (a)(1)(A)—

(A) by striking out ''specialized medical resources'' and inserting in lieu thereof ''health-care resources''; and

(B) by striking out ''other'' and all that follows through ''medical schools'' and inserting in lieu thereof ''any medical school, health-care provider, health-care plan, insurer, or other entity or individual'';

(2) in subsection (a)(2) by striking out ''only'' and all that follows through ''are not'' and inserting in lieu thereof ''if such resources are not, or would not be,'';

(3) in subsection (b), by striking out ''reciprocal reimbursement'' in the first sentence and all that follows through the period at the end of that sentence and inserting in lieu thereof ''payment to the Department in accordance with procedures that provide appropriate flexibility to negotiate payment which is in the best interest of the Government.'';

(4) in subsection (d), by striking out ''preclude such payment, in accordance with—'' and all that

follows through ''to such facility therefor'' and inserting in lieu thereof ''preclude such payment to such facility for such care or services'';

(5) by redesignating subsection (e) as subsection (f); and

(6) by inserting after subsection (d) the following new subsection (e):

''(e) The Secretary may make an arrangement that authorizes the furnishing of services by the Secretary under this section to individuals who are not veterans only if the Secretary determines—

''(1) that such an arrangement will not result in the denial of, or a delay in providing access to, care to any veteran at that facility; and

''(2) that such an arrangement—

''(A) is necessary to maintain an acceptable level and quality of service to veterans at that facility; or

''(B) will result in the improvement of services to eligible veterans at that facility.''.

(c) CROSS-REFERENCE AMENDMENTS.—(1) Section 8110(c)(3)(A) of such title is amended by striking out ''8153'' and inserting in lieu thereof ''8152''.

(2) Subsection (b) of section 8154 of such title (as redesignated by subsection (a)(1)(B)) is amended by strik-

ing out ''section 8154'' and inserting in lieu thereof ''section 8153''.

(3) Section 8156 of such title (as redesignated by subsection (a)(1)(B)) is amended—

(A) in subsection (a), by striking out ''section 8153(a)'' and inserting in lieu thereof ''section 8152(a)''; and

(B) in subsection (b)(3), by striking out ''section 8153'' and inserting in lieu thereof ''section 8152''.

(4) Subsection (a) of section 8157 of such title (as redesignated by subsection (a)(1)(B)) is amended—

(A) in the matter preceding paragraph (1), by striking out ''section 8157'' and ''section 8153(a)'' and inserting in lieu thereof ''section 8156'' and ''section 8152(a)'', respectively; and

(B) in paragraph (1), by striking out ''section 8157(b)(4)'' and inserting in lieu thereof ''section 8156(b)(4)''.

**SEC. 11037. PERSONNEL FURNISHING SHARED RESOURCES.**

Section 712(b)(2) of title 38, United States Code, is amended—

(1) by striking out ''the sum of—'' and inserting in lieu thereof ''the sum of the following:'';

(2) by capitalizing the first letter of the first word of each of subparagraphs (A) and (B);

(3) by striking out ''; and'' at the end of subparagraph (A) and inserting in lieu thereof a period; and

(4) by adding at the end the following:

''(C) The number of such positions in the Department during that fiscal year held by persons involved in providing health-care resources under section 8111 or 8152 of this title.''.

# TITLE XII—TRADE

## Subtitle A—Technical Corrections and Miscellaneous Trade Provisions

**SEC. 12001. PAYMENT OF DUTIES AND FEES.**

(a) INTEREST ACCRUAL.—Section 505(c) of the Tariff Act of 1930 (19 U.S.C. 1505(c)) is amended in the second sentence by inserting after ''duties, fees, and interest'' the following: ''or, in a case in which a claim is made under section 520(d), from the date on which such claim is made,''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to claims made pursuant to section 520(d) of the Tariff Act of 1930 on or after April 25, 1995.

**SEC. 12002. OTHER TECHNICAL AND CONFORMING AMENDMENTS.**

(a) EXAMINATION OF BOOKS AND WITNESSES.—Section 509(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1509(a)(2)) is amended by striking ''(c)(1)(A)'' and inserting ''(d)(1)(A)''.

(b) REQUIREMENT FOR CERTIFICATE FOR IMPORTATION OF ALCOHOLIC LIQUORS IN SMALL VESSELS.—Section 7 of the Act of August 5, 1935 (19 U.S.C. 1707; 49 Stat. 520), is repealed.

(c) MANIFESTS.—Section 431(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1431(c)(1)) is amended in the matter preceding subparagraph (A) by striking ''such manifest'' and inserting ''a vessel manifest''.

(d) DOCUMENTATION FOR ENTRY OF MERCHANDISE.—Section 484(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1484(a)(1)) is amended in the matter preceding subparagraph (A) by striking ''553, and 336(j)'' and inserting ''and 553''.

(e) PENALTIES FOR CERTAIN VIOLATIONS.—Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) is amended—

(1) in subsection (a)(1), by striking ''lawful duty'' and inserting ''lawful duty, tax, or fee''; and

(2) in subsections (b)(1)(A)(vi), (c)(2)(A)(ii), (c)(3)(A)(ii), (c)(4)(A)(i), and (c)(4)(B) by striking

''lawful duties'' each place it appears and inserting ''lawful duties, taxes, and fees''.

(f) DEPRIVATION OF LAWFUL DUTIES, TAXES, OR FEES.—Section 592(d) of the Tariff Act of 1930 (19 U.S.C. 1592(d)) is amended by striking ''or fees be restored'' and inserting ''and fees be restored''.

(g) RECONCILIATION TREATED AS ENTRY FOR RECORDKEEPING.—

(1) Section 401(s) of the Tariff Act of 1930 (19 U.S.C. 1401(s)) is amended by inserting ''recordkeeping,'' after ''reliquidation,''.

(2) Section 508(c)(1) of such Act (19 U.S.C. 1508(c)(1)) is amended by inserting '', filing of a reconciliation,'' after ''entry''.

(h) EXTENSION OF LIQUIDATION.—Section 504(d) of the Tariff Act of 1930 (19 U.S.C. 1504(d)) is amended by inserting '', unless liquidation is extended under subsection (b),'' after ''shall liquidate the entry''.

(i) EXEMPTION FROM DUTY FOR PERSONAL AND HOUSEHOLD GOODS ACCOMPANYING RETURNING RESIDENTS.—Section 321(a)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)(B)) is amended by inserting '', 9804.00.65,'' after ''9804.00.30''.

(j) DEBT COLLECTION.—Section 631(a) of the Tariff Act of 1930 (19 U.S.C. 1631(a)) is amended—

(1) by inserting after ''law,'' the following: ''including section 3302 of title 31, United States Code, and subchapters I and II of chapter 37 of such title,''; and

(2) by inserting ''and the expenses associated with recovering such indebtedness,'' after ''Government,''.

(k) EXAMINATION OF BOOKS AND WITNESSES.—Section 509(b) of the Tariff Act of 1930 (19 U.S.C. 1509(b)) is amended in paragraphs (3) and (4) by striking ''appropriate regional commissioner'' and inserting ''officer designated pursuant to regulations''.

(l) REVIEW OF PROTESTS.—Section 515(d) of the Tariff Act of 1930 (19 U.S.C. 1515(d)) is amended by striking ''district director'' and inserting ''port director''.

(m) EFFECTIVE DATE.—The amendments made by this section apply as of December 8, 1993.

**SEC. 12003. CLARIFICATION REGARDING THE APPLICATION OF CUSTOMS USER FEES.**

(a) IN GENERAL.—Subparagraph (D) of section 13031(b)(8) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(8)(D)) is amended—

(1) in clause (iv)—

(A) by striking ''subparagraph 9802.00.80 of such Schedules'' and inserting ''heading 9802.00.80 of such Schedule''; and

(B) by striking ''and'' at the end of clause (iv);

(2) by striking the period at the end of clause (v) and inserting ''; and''; and

(3) by inserting after clause (v) the following new clause:

''(vi) in the case of merchandise entered from a foreign trade zone (other than merchandise to which clause (v) applies), be applied only to the value of the privileged or nonprivileged foreign status merchandise under section 3 of the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81c).''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to—

(1) any entry made from a foreign trade zone on or after the 15th day after the date of the enactment of this Act; and

(2) any entry made from a foreign trade zone after November 30, 1986, and before such 15th day if liquidation of the entry was not final before such 15th day.

(c) APPLICATION OF FEES TO CERTAIN AGRICULTURAL PRODUCTS.—The amendment made by section 111(b)(2)(D)(iv) of the Customs and Trade Act of 1990 shall apply to—

(1) any entry made from a foreign trade zone on or after the 15th day after the date of the enactment of this Act; and

(2) any entry made from a foreign trade zone after November 30, 1986, and before such 15th day if the liquidation of the entry was not final before such 15th day.

**SEC. 12004. TECHNICAL AMENDMENT TO THE CUSTOMS AND TRADE ACT OF 1990.**

Subsection (b) of section 484H of the Customs and Trade Act of 1990 (19 U.S.C. 1553 note) is amended by striking ‘‘, or withdrawn from warehouse for consumption,’’ and inserting ‘‘for transportation in bond’’.

**SEC. 12005. TECHNICAL AMENDMENTS REGARDING CERTAIN BENEFICIARY COUNTRIES.**

(a) CARIBBEAN BASIN ECONOMIC RECOVERY ACT.—Section 213(h)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(h)(1)) is amended by adding at the end thereof the following flush sentence:

''The duty reductions provided for under this paragraph shall not apply to textile and apparel articles which are subject to textile agreements.''.

(b) ANDEAN TRADE PREFERENCE ACT.—Section 204(c)(1) of the Andean Trade Preference Act (19 U.S.C. 3203(c)(1)) is amended by adding at the end thereof the following flush sentence:

''The duty reductions provided for under this paragraph shall not apply to textile and apparel articles which are subject to textile agreements.''.

(c) EFFECTIVE DATE.—The amendments made by this section apply with respect to—

(1) articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act, and

(2) articles entered after December 31, 1991, and before such 15th day, if the liquidation of the entry of such articles was not final before such 15th day.

**SEC. 12006. CLARIFICATION OF FEES FOR CERTAIN CUSTOMS SERVICES.**

(a) IN GENERAL.—Section 13031(b)(9)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)(A)) is amended—

(1) by striking ''centralized hub facility or'' in clause (i); and

(2) in clause (ii)—

(A) by striking ''facility—'' and inserting ''facility or centralized hub facility—'',

(B) by striking ''customs inspectional'' in subclause (I), and

(C) by striking ''at the facility'' in subclause (I) and inserting ''for the facility''.

(b) DEFINITIONS.—Section 13031(b)(9)(B)(i) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)(B)(i)) is amended—

(1) by striking '', as in effect on July 30, 1990'', and

(2) by adding at the end thereof the following new sentence: ''Nothing in this paragraph shall be construed as prohibiting the Secretary of the Treasury from processing merchandise that is informally entered or released at any centralized hub facility or express consignment carrier facility during the normal operating hours of the Customs Service, subject to reimbursement and payment under subparagraph (A).''.

(c) CITATION.—Section 13031(b)(9)(B)(ii) of the Consolidated Omnibus Budget Reconciliation Act of 1985

(19 U.S.C. 58c(b)(9)(B)(ii)) is amended by striking ''section 236 of the Tariff and Trade Act of 1984'' and inserting ''section 236 of the Trade and Tariff Act of 1984''.

**SEC. 12007. SPECIAL RULE FOR EXTENDING TIME FOR FILING DRAWBACK CLAIMS.**

Section 313(r) of the Tariff Act of 1930 (19 U.S.C. 1313(r)) is amended by adding at the end the following:

''(3)(A)(i) Subject to clause (ii), the Customs Service may, notwithstanding the limitation set forth in paragraph (1), extend the time for filing a drawback claim for a period not to exceed 18 months, if—

''(I) the claimant establishes to the satisfaction of the Customs Service that the claimant was unable to file the drawback claim because of an event declared by the President to be a major disaster on or after January 1, 1994; and

''(II) the claimant files a request for such extension with the Customs Service within one year from the last day of the 3-year period referred to in paragraph (1).

''(ii) In the case of a major disaster occurring on or after January 1, 1994, and before the date of the enactment of this paragraph—

"(I) the Customs Service may extend the time for filing the drawback claim for a period not to exceed 1 year; and

"(II) the request under clause (i)(II) must be filed not later than 1 year from the date of the enactment of this paragraph.

"(B) If an extension is granted with respect to a request filed under this paragraph, the periods of time for retaining records set forth in subsection (t) of this section and section 508(c)(3) shall be extended for an additional 18 months or, in a case to which subparagraph (A)(ii) applies, for a period not to exceed 1 year from the date the claim is filed.

"(C) For purposes of this paragraph, the term 'major disaster' has the meaning given that term in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).".

**SEC. 12008. TREATMENT OF CERTAIN ENTRIES.**

(a) LIQUIDATION OR RELIQUIDATION OF ENTRIES.—Notwithstanding sections 514 and 520 of the Tariff Act of 1930 (19 U.S.C. 1514 and 1520), and any other provision of law, the United States Customs Service shall liquidate or reliquidate those entry numbers made at New York, New York, which are listed in subsection (c), in ac-

cordance with the final results of the administrative review, covering the period from May 1, 1984, through March 31, 1985, undertaken by the International Trade Administration of the Department of Commerce for such entries (case number A–580–008).

(b) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid by the Customs Service within 90 days after such liquidation or reliquidation.

(c) ENTRY LIST.—The entries referred to in subsection (a) are the following:

| Entry Number | Date of Entry |
|---|---|
| 84–4426808 | August 29, 1984 |
| 84–4427823 | September 4, 1984 |
| 84–4077985 | July 25, 1984 |
| 84–4080859 | August 3, 1984 |
| 84–4080817 | August 3, 1984 |
| 84–4077723 | August 1, 1984 |
| 84–4075194 | July 10, 1984 |
| 84–4076481 | July 17, 1984 |
| 84–4080930 | August 9, 1984. |

**SEC. 12009. TEMPORARY DUTY SUSPENSION FOR PERSONAL EFFECTS OF PARTICIPANTS IN CERTAIN WORLD ATHLETIC EVENTS.**

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| “ | 9902.98.05 | Any of the following articles not intended for sale or distribution to the public: personal effects of aliens who are participants in, officials of, or accredited members of delegations to, the 1998 Goodwill Games, and of persons who are immediate family members of or servants to any of the foregoing persons; equipment and materials imported in connection with the foregoing event by or on behalf of the foregoing persons or the organizing committee of such event; articles to be used in exhibitions depicting the culture of a country participating in such event; and, if consistent with the foregoing, such other articles as the Secretary of the Treasury may allow ..... | Free | No change | Free | On or before 2/1/99 | ”. |

(b) TAXES AND FEES NOT TO APPLY.—The articles described in heading 9902.98.05 of the Harmonized Tariff Schedule of the United States (as added by subsection (a)) shall be free of taxes and fees which may be otherwise applicable.

(c) EFFECTIVE DATE.—The amendment made by this section applies to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

**SEC. 12010. MISCELLANEOUS TECHNICAL CORRECTIONS.**

(a) DRAWBACK AND REFUNDS.—Section 313(s)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1313(s)(2)(B)) is amended by striking ''successor'' the first place it appears and inserting ''predecessor''.

(b) TRADE ACT OF 1974.—Section 301(c)(4) of the Trade Act of 1974 (19 U.S.C. 2411(c)(4)) is amended by striking ''(1)(C)(iii)'' and inserting ''(1)(D)(iii)''.

**SEC. 12011. URUGUAY ROUND AGREEMENTS ACT.**

Section 405(b) of the Uruguay Round Agreements Act (19 U.S.C. 3602(b)) is amended—

(1) in paragraph (1) by striking ''1(a)'' and inserting ''1(b)''; and

(2) in paragraph (2) by striking ''1(b)'' and inserting ''1(a)''.

**SEC. 12012. FILING OF CERTIFICATIONS FOR CIVIL AIRCRAFT PARTS.**

General Note 6 of the Harmonized Tariff Schedule of the United States is amended—

(1) by inserting ''or electronic'' after ''shall file a written''; and

(2) by striking ''with the appropriate customs officer'' and inserting ''with the United States Customs Service''.

**SEC. 12013. EXEMPTION REGARDING CERTAIN VESSEL REPAIRS.**

(a) TEMPORARY EXEMPTION EXTENDED.—Section 484E(b)(2)(B) of the Customs and Trade Act of 1990 (19 U.S.C. 1466 note) is amended by striking ''December 31, 1992'' and inserting ''December 31, 1994''.

(b) EFFECTIVE DATE.—The amendment made by this section applies to any entry made after December 31, 1992, and before January 1, 1995.

**SEC. 12014. FEES FOR CERTAIN CUSTOMS SERVICES.**

(a) IN GENERAL.—Section 13031(a)(5) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(5)) is amended—

(1) in subparagraph (A), by inserting ''a place'' after ''aircraft from''; and

(2) in subparagraph (B), by striking ''subsection (b)(1)(A)'' and inserting ''subsection (b)(1)(A)(i)''.

(b) LIMITATION ON FEES.—Section 13031(b)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(1)) is amended to read as follows:

''(b) LIMITATIONS ON FEES.—(1)(A) No fee may be charged under subsection (a) of this section for customs services provided in connection with—

''(i) the arrival of any passenger whose journey—

''(I) originated in—

''(aa) Canada,

''(bb) Mexico,

''(cc) a territory or possession of the United States, or

''(dd) any adjacent island (within the meaning of section 101(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(5))), or

''(II) originated in the United States and was limited to—

''(aa) Canada,

''(bb) Mexico,

''(cc) territories and possessions of the United States, and

''(dd) such adjacent islands;

''(ii) the arrival of any railroad car the journey of which originates and terminates in the same country, but only if no passengers board or disembark from the train and no cargo is loaded or unloaded from such car while the car is within any country other than the country in which such car originates and terminates;

''(iii) the arrival of any ferry; or

''(iv) the arrival of any passenger on board a commercial vessel traveling only between ports which are within the customs territory of the United States.

''(B) The exemption provided for in subparagraph (A) shall not apply in the case of the arrival of any passenger on board a commercial vessel whose journey originates and terminates at the same place in the United States if there are no intervening stops.

''(C) The exemption provided for in subparagraph (A)(i) shall not apply to fiscal years 1994, 1995, 1996, and 1997.''.

(c) FEE ASSESSED ONLY ONCE.—Section 13031(b)(4) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(4)) is amended—

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

(2) by striking ''No fee'' and inserting ''(A) No fee''; and

(3) by adding at the end the following new subparagraph:

''(B) In the case of a commercial vessel making a single voyage involving 2 or more United States ports with respect to which the passengers would otherwise be

charged a fee pursuant to subsection (a)(5), such fee shall be charged only 1 time for each passenger.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 521 of the North American Free Trade Agreement Implementation Act.

**SEC. 12015. TECHNICAL CORRECTION TO CERTAIN CHEMICAL DESCRIPTION.**

(a) AMENDMENT TO SUBHEADING 2933.90.02.—The article description for subheading 2933.90.02 of the Harmonized Tariff Schedule of the United States is amended by striking ''(Quizalofop ethyl)''.

(b) EFFECTIVE DATE.—

(1) GENERAL RULE.—The amendment made by this section applies to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

(2) RETROACTIVE PROVISION.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request (which includes sufficient information to identify and locate the entry) filed with the Customs Service on or before the date that is 180 days after the date of the enactment of this Act, any entry, or withdrawal

from warehouse for consumption, of an article that occurred—

(A) after December 31, 1994, and before the date that is 15 days after the date of the enactment of this Act, and

(B) with respect to which there would have been no duty or a lesser duty if the amendment made by subsection (a) applied to such entry or withdrawal,

shall be liquidated or reliquidated as though such amendment applied to such entry or withdrawal.

**SEC. 12016. MARKING OF IMPORTED ARTICLES AND CONTAINERS.**

(a) IN GENERAL.—Section 304 of the Tariff Act of 1930 (19 U.S.C.1304) is amended—

(1) by redesignating subsections (f), (g), (h), and (i) as subsections (i), (j), (k), and (l), respectively, and

(2) by inserting after subsection (e) the following new subsections:

''(f) MARKING OF METAL FORGINGS.—The marking requirements of subsections (a) and (b) shall not apply to—

''(1) metal forgings that—

''(A) are imported for processing into finished hand tools in the United States, and

''(B) have not been improved in condition beyond rough burring, trimming, grinding, turning, hammering, chiseling, or filing; and

''(2) hand tools made from metal forgings described in paragraph (1).

''(g) MARKING OF CERTAIN COFFEE AND TEA PRODUCTS.—The marking requirements of subsections (a) and (b) shall not apply to articles described in subheading 0901.21, 0901.22, 0902.10, 0902.20, 0902.30, 0902.40, 2101.10, or 2101.20 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1995.

''(h) MARKING OF SPICES.—The marking requirements of subsections (a) and (b) shall not apply to articles provided for under subheadings 0904.11, 0904.12, 0904.20, 0905.00, 0906.10, 0906.20, 0907.00, 0908.10, 0908.20, 0908.30, 0909.10, 0909.20, 0909.30, 0909.40, 0909.50, 0910.10, 0910.20, 0910.30, 0910.40, 0910.50, 0910.91, 0910.99, 1106.20, 1207.40, 1207.50, 1207.91, 1404.90, and 3302.10, and items classifiable in categories 0712.90.60, 0712.90.8080, 1209.91.2000, 1211.90.2000, 1211.90.8040, 1211.90.8050, 1211.90.8090, 2006.00.3000, 2918.13.2000, 3203.00.8000, 3301.90.1010, 3301.90.1020, and 3301.90.1050 of the

Harmonized Tariff Schedule of the United States, as in effect on January 1, 1995.''.

(b) EFFECTIVE DATE.—The amendments made by this section apply to goods entered, or withdrawn from warehouse for consumption, on or after the date of the enactment of this Act.

**SEC. 12017. RELIQUIDATING ENTRY OF WARP KNITTING MACHINES.**

Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the Customs Service before the 180th day after the date of the enactment of this Act, the Secretary of the Treasury shall—

(1) liquidate or reliquidate as duty free Entry No. 100–3022436–3, made on July 12, 1989, at the port of Charleston, South Carolina; and

(2) refund any duties and interest paid with respect to such entry.

**SEC. 12018. IDENTIFICATION OF TRADE EXPANSION PRIORITIES.**

Section 310(a)(1) of the Trade Act of 1974 (19 U.S.C. 2420(a)(1)) is amended by striking ''calendar year 1995'' and inserting ''each of calendar years 1995 through 2000''.

# Subtitle B—Generalized System of Preferences

**SEC. 12101. SHORT TITLE.**

This subtitle may be cited as the ''GSP Renewal Act of 1995''.

**SEC. 12102. GENERALIZED SYSTEM OF PREFERENCES.**

(a) IN GENERAL.—Title V of the Trade Act of 1974 is amended to read as follows:

# ''TITLE V—GENERALIZED SYSTEM OF PREFERENCES

**''SEC. 501. AUTHORITY TO EXTEND PREFERENCES.**

''The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the President shall have due regard for—

''(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

''(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

''(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

''(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

**"SEC. 502. DESIGNATION OF BENEFICIARY DEVELOPING COUNTRIES.**

''(a) AUTHORITY TO DESIGNATE COUNTRIES.—

''(1) BENEFICIARY DEVELOPING COUNTRIES.—The President is authorized to designate countries as beneficiary developing countries for purposes of this title.

''(2) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.—The President is authorized to designate any beneficiary developing country as a least-developed beneficiary developing country for purposes of this title, based on the considerations in section 501 and subsection (c) of this section.

''(b) COUNTRIES INELIGIBLE FOR COUNTRY DESIGNATION.—

''(1) SPECIFIC COUNTRIES.—The following countries may not be designated as beneficiary developing countries for purposes of this title:

''(A) Australia.

''(B) Canada.

''(C) European Union member states.

''(D) Iceland.

''(E) Japan.

''(F) Monaco.

''(G) New Zealand.

''(H) Norway.

''(I) Switzerland.

''(2) OTHER BASES FOR INELIGIBILITY.—The President shall not designate any country a beneficiary developing country under this title if any of the following applies:

''(A) Such country is a Communist country, unless—

''(i) the products of such country receive nondiscriminatory treatment,

''(ii) such country is a WTO Member (as such term is defined in section 2 of the Uruguay Round Agreements Act,) and a member of the International Monetary Fund, and

''(iii) such country is not dominated or controlled by international communism.

''(B) Such country is a party to an arrangement of countries and participates in any

action pursuant to such arrangement, the effect of which is—

''(i) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and

''(ii) to cause serious disruption of the world economy.

''(C) Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.

''(D)(i) Such country—

''(I) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

''(II) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is

50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

''(III) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property,

unless clause (ii) applies.

''(ii) This clause applies if the President determines that—

''(I) prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to in clause (i),

''(II) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the

country described in clause (i) is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

''(III) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum,

and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

''(E) Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

"(F) Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism.

"(G) Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

Subparagraphs (D), (E), (F), and (G) shall not prevent the designation of any country as a beneficiary developing country under this title if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with the reasons therefor.

"(c) FACTORS AFFECTING COUNTRY DESIGNATION.—In determining whether to designate any country as a beneficiary developing country under this title, the President shall take into account—

"(1) an expression by such country of its desire to be so designated;

"(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any

other economic factors which the President deems appropriate;

''(3) the extent to which other major developed countries are extending generalized preferential tariff treatment to such country;

''(4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

''(5) whether such country is providing adequate and effective protection of intellectual property rights;

''(6) the extent to which such country has taken action to—

''(A) reduce trade distorting investment practices and policies (including export performance requirements); and

''(B) reduce or eliminate barriers to trade in services;

''(7) whether or not such country has taken or is taking steps to afford to workers in that country

(including any designated zone in that country) internationally recognized worker rights; and

''(8) the extent to which such country fails to cooperate with the United States in preventing the proliferation of nuclear weapons, nuclear weapons components, and nuclear weapons delivery systems, or in preventing illegal drug trafficking.

A country may be found to not provide adequate and effective protection of intellectual property rights under paragraph (5) and section 503(d)(2)(B), notwithstanding the fact that it may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the Uruguay Round Agreements Act.

''(d) WITHDRAWAL, SUSPENSION, OR LIMITATION OF COUNTRY DESIGNATION.—

''(1) IN GENERAL.—The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this title with respect to any country. Except in exceptional circumstances, the President, before taking any action under this subsection, shall provide a period for the submission of public comments on the matter under consideration, and in taking any action under this subsection, the President shall consider the factors set

forth in section 501 and subsection (c) of this section, and comments received from the public.

''(2) CHANGED CIRCUMSTANCES.—The President shall, after complying with the requirements of subsection (f)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under subsection (b)(2). Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order or Presidential proclamation revoking the designation of such country under this title.

''(e) MANDATORY GRADUATION OF BENEFICIARY DEVELOPING COUNTRIES.—If the President determines that a beneficiary developing country has become a 'high income' country, as defined by the official statistics of the International Bank for Reconstruction and Development, then the President shall terminate the designation of such country as a beneficiary developing country for purposes of this title, effective on January 1 of the second year following the year in which such determination is made.

''(f) CONGRESSIONAL NOTIFICATION.—

''(1) NOTIFICATION OF DESIGNATION.—

''(A) IN GENERAL.—Before the President designates any country as a beneficiary developing country under this title, the President shall notify the Congress of the President's intention to make such designation, together with the considerations entering into such decision.

''(B) DESIGNATION AS LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRY.—At least 60 days before the President designates any country as a least-developed beneficiary developing country, the President shall notify the Congress of the President's intention to make such designation.

''(2) NOTIFICATION OF TERMINATION.—If the President has designated any country as a beneficiary developing country under this title, the President shall not terminate such designation unless, at least 60 days before such termination, the President has notified the Congress and has notified such country of the President's intention to terminate such designation, together with the considerations entering into such decision.

**"SEC. 503. DESIGNATION OF ELIGIBLE ARTICLES.**

''(a) ELIGIBLE ARTICLES.—

"(1) DESIGNATION.—

"(A) IN GENERAL.—Except as provided in subsection (b), the President is authorized to designate articles as eligible articles for all beneficiary developing countries for purposes of this title by Executive order or Presidential proclamation after receiving the advice of the International Trade Commission in accordance with subsection (e).

"(B) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.—Except as provided in subsection (b), the President is authorized to designate additional articles as eligible articles only for countries designated as least-developed beneficiary developing countries under section 502(a)(2) if, after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section, the President determines that such articles are not import-sensitive in the context of imports from least-developed beneficiary developing countries.

"(C) THREE-YEAR RULE.—If, after receiving the advice of the International Trade Commission under subsection (e), an article has been formally considered for designation as an

eligible article under this title and denied such designation, such article may not be reconsidered for such designation for a period of three years after such denial.

''(2) RULE OF ORIGIN.—

''(A) GENERAL RULE.—The duty-free treatment provided under this title shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if—

''(i) that article is imported directly from a beneficiary developing country into the customs territory of the United States; and

''(ii) the sum of—

''(I) the cost or value of the materials produced in the beneficiary developing country or any two or more countries which are members of the same association of countries which is treated as one country under section 506(2), plus

''(II) the direct costs of processing operations performed in such ben-

eficiary developing country or such member countries,

is not less than 35 percent of the appraised value of such article at the time it is entered.

''(B) EXCLUSIONS.—An article shall not be treated as the growth, product, or manufacture of a beneficiary developing country by virtue of having merely undergone—

''(i) simple combining or packaging operations, or

''(ii) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

''(3) REGULATIONS.—The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out paragraph (2), including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article—

''(A) must be wholly the growth, product, or manufacture of a beneficiary developing country, or

''(B) must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country.

''(b) ARTICLES THAT MAY NOT BE DESIGNATED AS ELIGIBLE ARTICLES.—

''(1) IMPORT SENSITIVE ARTICLES.—The President may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles:

''(A) Textile and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on such date.

''(B) Import-sensitive electronic articles.

''(C) Import-sensitive steel articles.

''(D) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this title on January 1, 1995, as this title was in effect on such date.

''(E) Import-sensitive semimanufactured and manufactured glass products.

"(F) Any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

"(2) ARTICLES AGAINST WHICH OTHER ACTIONS TAKEN.—An article shall not be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act (19 U.S.C. 2253) or section 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, 1981).

"(3) AGRICULTURAL PRODUCTS.—No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this title.

"(c) WITHDRAWAL, SUSPENSION, OR LIMITATION OF DUTY-FREE TREATMENT; COMPETITIVE NEED LIMITATION.—

"(1) IN GENERAL.—The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this title with respect to any article, except that no rate of duty may be established with respect to any article pursuant to this subsection other than the rate which would apply but for this title. In taking any action under

this subsection, the President shall consider the factors set forth in sections 501 and 502(c).

''(2) COMPETITIVE NEED LIMITATION.—

''(A) BASIS FOR WITHDRAWAL OF DUTY-FREE TREATMENT.—Except as provided in this paragraph and subject to subsection (d), whenever the President determines that a beneficiary developing country has exported (directly or indirectly) to the United States during any calendar year beginning after December 31, 1995—

''(i) a quantity of an eligible article having an appraised value in excess of $75,000,000, except that, in applying this clause, the amount of $75,000,000 shall be increased by $5,000,000 on January 1 of each calendar year after calendar year 1995, or

''(ii) a quantity of an eligible article equal to or exceeding 50 percent of the appraised value of the total imports of that article into the United States during the calendar year,

then the President shall, not later than July 1 of the next calendar year, terminate the duty-

free treatment for that article from that beneficiary developing country.

''(B) COUNTRY DEFINED.—For purposes of this paragraph, the term 'country' does not include an association of countries which is treated as one country under section 506(2), but does include a country which is a member of any such association.

''(C) REDESIGNATIONS.—A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of subparagraph (A) may be redesignated a beneficiary developing country with respect to such article, subject to the considerations set forth in sections 501 and 502, if imports of such article from such country did not exceed the limitations in subparagraph (A) during the preceding calendar year.

''(D) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.—Subparagraph (A) shall not apply to any least-developed beneficiary developing country.

''(E) ARTICLES NOT PRODUCED IN THE UNITED STATES EXCLUDED.—Subparagraph (A)(ii) shall not apply with respect to any eligi-

ble article if a like or directly competitive article was not produced in the United States on January 1, 1995.

''(F) DE MINIMIS WAIVERS.—The President may disregard subparagraph (A)(ii) with respect to any eligible article from any beneficiary developing country if the appraised value of the total imports of such article into the United States during calendar year 1995 or any calendar year thereafter does not exceed $13,000,000, except that, in applying this subparagraph, the amount of $13,000,000 shall be increased by $500,000 on January 1 of each calendar year after calendar year 1995.

''(d) WAIVER OF COMPETITIVE NEED LIMITATION.—

''(1) IN GENERAL.—The President may waive the application of subsection (c)(2) with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2)(A) was made with respect to such eligible article, the President—

''(A) receives the advice of the International Trade Commission under section 332 of the Tariff Act of 1930 on whether any indus-

try in the United States is likely to be adversely affected by such waiver,

''(B) determines, based on the considerations described in sections 501 and 502(c) and the advice described in subparagraph (A), that such waiver is in the national economic interest of the United States, and

''(C) publishes the determination described in subparagraph (B) in the Federal Register.

''(2) CONSIDERATIONS BY THE PRESIDENT.—In making any determination under paragraph (1), the President shall give great weight to—

''(A) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

''(B) the extent to which such country provides adequate and effective protection of intellectual property rights.

''(3) EFFECTIVE PERIOD OF WAIVER.—Any waiver granted under this subsection shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

"(e) INTERNATIONAL TRADE COMMISSION ADVICE.—Before designating articles as eligible articles under section 503(a)(1), the President shall publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this title. The provisions of sections 131, 132, 133, and 134 shall be complied with as though action under section 501 and this section were action under section 123 to carry out a trade agreement entered into under section 123.

"(f) SPECIAL RULE CONCERNING PUERTO RICO.—No action under this title may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 on coffee imported into Puerto Rico.

**"SEC. 504. REVIEW AND REPORTS TO CONGRESS.**

"(a) REPORT ON OPERATION OF TITLE.—On or before July 31, 1997, the President shall submit to the Congress a full and complete report regarding the operation of this title.

"(b) ANNUAL REPORTS ON WORKER RIGHTS.—The President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country.

**"SEC. 505. DATE OF TERMINATION.**

''No duty-free treatment provided under this title shall remain in effect after December 31, 1997.

**"SEC. 506. DEFINITIONS.**

''For purposes of this title:

''(1) BENEFICIARY DEVELOPING COUNTRY.—The term 'beneficiary developing country' means any country with respect to which there is in effect an Executive order or Presidential proclamation by the President designating such country as a beneficiary developing country for purposes of this title.

''(2) COUNTRY.—The term 'country' means any foreign country or territory, including any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the President may by Executive order or Presidential proclamation provide that all members of such association other than members which are barred from designation under section 502(b) shall be treated as one country for purposes of this title.

"(3) ENTERED.—The term 'entered' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

"(4) INTERNATIONALLY RECOGNIZED WORKER RIGHTS.—The term 'internationally recognized worker rights' includes—

"(A) the right of association;

"(B) the right to organize and bargain collectively;

"(C) a prohibition on the use of any form of forced or compulsory labor;

"(D) a minimum age for the employment of children; and

"(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

"(5) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRY.—The term 'least-developed beneficiary developing country' means a beneficiary developing country that is designated as a least-developed beneficiary developing country under section 502(a)(2).".

(b) TABLE OF CONTENTS.—The items relating to title V in the table of contents of the Trade Act of 1974 are amended to read as follows:

"TITLE V—GENERALIZED SYSTEM OF PREFERENCES

''Sec. 501. Authority to extend preferences.
''Sec. 502. Designation of beneficiary developing countries.
''Sec. 503. Designation of eligible articles.
''Sec. 504. Review and reports to Congress.
''Sec. 505. Date of termination.
''Sec. 506. Definitions.''.

**SEC. 12103. RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.**

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law and subject to subsection (b), the entry—

(1) of any article to which duty-free treatment under title V of the Trade Act of 1974 would have applied if the entry had been made on July 31, 1995, and

(2) that was made after July 31, 1995, and before the date of the enactment of this Act,

shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry. As used in this subsection, the term ''entry'' includes a withdrawal from warehouse for consumption.

(b) REQUESTS.—Liquidation or reliquidation may be made under subsection (a) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service—

(1) to locate the entry; or

(2) to reconstruct the entry if it cannot be located.

(c) TREATMENT OF CERTAIN ENTRIES OF BUFFALO LEATHER.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, buffalo leather, provided for under subheading 4104.39.20 of the Harmonized Tariff Schedule of the United States, that is a product of Thailand and entered into the United States under entry numbers M42–1113868–8 and M42–1113939–7, shall be liquidated or reliquidated, as appropriate, as if entered on June 30, 1995.

**SEC. 12104. CONFORMING AMENDMENTS.**

(a) TRADE LAWS.—

(1) Section 1211(b) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3011(b)) is amended—

(A) in paragraph (1), by striking ''(19 U.S.C. 2463(a), 2464(c)(3))'' and inserting ''(as in effect on the day before the date of the enactment of the GSP Renewal Act of 1995)''; and

(B) in paragraph (2), by striking ''(19 U.S.C. 2464(c)(1))'' and inserting the follow-

ing: ''(as in effect on the day before the date of the enactment of the GSP Renewal Act of 1995)''.

(2) Section 203(c)(7) of the Andean Trade Preference Act (19 U.S.C. 3202(c)(7)) is amended by striking ''502(a)(4)'' and inserting ''506(4)''.

(3) Section 212(b)(7) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)(7)) is amended by striking ''502(a)(4)'' and inserting ''506(4)''.

(4) General note 3(a)(iv)(C) of the Harmonized Tariff Schedule of the United States is amended by striking ''sections 503(b) and 504(c)'' and inserting ''subsections (a), (c), and (d) of section 503''.

(b) OTHER LAWS.—

(1) Section 871(f)(2)(B) of the Internal Revenue Code of 1986 is amended by striking ''within the meaning of section 502'' and inserting ''under title V''.

(2) Section 2202(8) of the Export Enhancement Act of 1988 (15 U.S.C. 4711(8)) is amended by striking ''502(a)(4)'' and inserting ''506(4)''.

(3) Section 231A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2191a(a)) is amended—

(A) in paragraph (1) by striking ''502(a)(4) of the Trade Act of 1974 (19 U.S.C. 2462(a)(4))'' and inserting ''506(4) of the Trade Act of 1974'';

(B) in paragraph (2) by striking ''505(c) of the Trade Act of 1974 (19 U.S.C. 2465(c))'' and inserting ''504(b) of the Trade Act of 1974''; and

(C) in paragraph (4) by striking ''502(a)(4)'' and inserting ''506(4)''.

## Subtitle C—Trade Adjustment Assistance

### SEC. 12201. MODIFICATION OF TRADE ADJUSTMENT ASSISTANCE.

(a) REQUIREMENT OF TRAINING.—(1) Section 231(c) of the Trade Act of 1974 (19 U.S.C. 2291) is amended—

(A) in paragraph (1)(A) and (B) by striking ''it is not feasible or appropriate to approve a training program'' and inserting ''a training program is not available''; and

(B) in paragraph (2)(A) and (B) by striking ''it is feasible or appropriate to approve a training program'' and inserting ''a training program is available''.

(2) Section 233(b) of such Act (19 U.S.C. 2293(b)) is repealed.

(3) Paragraph (3) of section 250(d) of the Trade Act of 1974 (19 U.S.C. 2331(d)) is amended—

(A) by striking ''it is not feasible or appropriate to approve a training program'' in subparagraph (A) and inserting ''a training program is not available'', and

(B) by striking ''notwithstanding the provisions of section 233(b),'' in subparagraph (B).

(b) TERMINATION OF RELOCATION ALLOWANCES.—(1) Section 238 of the Trade Act of 1974 (19 U.S.C. 2298), and the item relating to that section in the table of contents for that Act, are repealed.

(2) Section 250(d) of the Trade Act of 1974 (19 U.S.C. 2331(d)) is amended by striking paragraph (5).

(c) TERMINATION OF PROGRAM.—Section 285(c) of the Trade Act of 1974 (19 U.S.C. 2271 preceding note) is amended—

(1) in paragraph (1), by striking ''1998'' and inserting ''2000''; and

(2) by amending paragraph (2) to read as follows:

''(2) No assistance, vouchers, allowances, or other payments may be provided under subchapter D of chapter 2 after September 30, 1998.''.

(d) EXTENSION OF AUTHORIZATION.—(1) Section 245(a) of the Trade Act of 1974 (19 U.S.C. 2317(a)) is amended by striking ''and 1998'' and inserting ''1998, 1999, and 2000''.

(2) Section 256(b) of the Trade Act of 1974 (19 U.S.C. 2346(a)) is amended by striking ''and 1998'' and inserting ''1998, 1999, and 2000''.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) shall take effect on October 1, 1996.

# TITLE XIII—COMMITTEE ON WAYS AND MEANS—REVENUE RECONCILIATION

**SEC. 13001. SHORT TITLE; AMENDMENT OF 1986 CODE.**

(a) SHORT TITLE.—This title may be cited as the ''Revenue Reconciliation Act of 1995''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this title is as follows:

TITLE XIII—COMMITTEE ON WAYS AND MEANS—REVENUE RECONCILIATION

Sec. 13001. Short title; amendment of 1986 Code.

Subtitle A—Extension of Expiring Provisions, Etc.

PART I—EXTENSIONS THROUGH DECEMBER 31, 1997

Sec. 13101. Work opportunity tax credit.
Sec. 13102. Employer-provided educational assistance programs.
Sec. 13103. Research credit.
Sec. 13104. Contributions of stock to private foundations.
Sec. 13105. Credit for clinical testing expenses.

PART II—PERMANENT EXTENSION OF FUTA EXEMPTION FOR ALIEN AGRICULTURAL WORKERS

Sec. 13106. FUTA exemption for alien agricultural workers.

PART III—COMMERCIAL AVIATION FUEL

Sec. 13111. Delay of scheduled increase in tax on fuel used in commercial aviation.

PART IV—EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXCISE TAXES

Sec. 13116. Extension of Airport and Airway Trust Fund excise taxes.

Subtitle B—Medical Savings Accounts

Sec. 13201. Medical savings accounts.

Subtitle C—Pickle-Johnson Taxpayer Bill of Rights 2

PART I—TAXPAYER ADVOCATE

Sec. 13301. Establishment of position of taxpayer advocate within Internal Revenue Service.
Sec. 13302. Expansion of authority to issue taxpayer assistance orders.

PART II—MODIFICATIONS TO INSTALLMENT AGREEMENT PROVISIONS

Sec. 13306. Notification of reasons for termination of installment agreements.
Sec. 13307. Administrative review of termination of installment agreement.

PART III—ABATEMENT OF INTEREST AND PENALTIES

Sec. 13311. Expansion of authority to abate interest.
Sec. 13312. Review of IRS failure to abate interest.
Sec. 13313. Extension of interest-free period for payment of tax after notice and demand.

PART IV—JOINT RETURNS

Sec. 13316. Studies of joint return-related issues.
Sec. 13317. Joint return may be made after separate returns without full payment of tax.
Sec. 13318. Disclosure of collection activities.

PART V—COLLECTION ACTIVITIES

Sec. 13321. Modifications to lien and levy provisions.
Sec. 13322. Offers-in-compromise.

PART VI—INFORMATION RETURNS

Sec. 13326. Civil damages for fraudulent filing of information returns.
Sec. 13327. Requirement to conduct reasonable investigations of information returns.

PART VII—AWARDING OF COSTS AND CERTAIN FEES

Sec. 13331. United States must establish that its position in proceeding was substantially justified.
Sec. 13332. Increased limit on attorney fees.
Sec. 13333. Failure to agree to extension not taken into account.
Sec. 13334. Award of litigation costs permitted in declaratory judgment proceedings.
Sec. 13335. Effective date.

PART VIII—MODIFICATION TO RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS

Sec. 13336. Increase in limit on recovery of civil damages for unauthorized collection actions.
Sec. 13337. Court discretion to reduce award for litigation costs for failure to exhaust administrative remedies.

PART IX—MODIFICATIONS TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX

Sec. 13341. Preliminary notice requirement.
Sec. 13342. Disclosure of certain information where more than 1 person liable for penalty for failure to collect and pay over tax.
Sec. 13343. Right of contribution where more than 1 person liable for penalty for failure to collect and pay over tax.
Sec. 13344. Volunteer board members of tax-exempt organizations exempt from penalty for failure to collect and pay over tax.

PART X—MODIFICATIONS OF RULES RELATING TO SUMMONSES

Sec. 13346. Enrolled agents included as third-party recordkeepers.
Sec. 13347. Safeguards relating to designated summonses.
Sec. 13348. Annual report to Congress concerning designated summonses.

PART XI—RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS

Sec. 13351. Relief from retroactive application of Treasury Department regulations.

PART XII—MISCELLANEOUS PROVISIONS

Sec. 13356. Report on pilot program for appeal of enforcement actions.
Sec. 13357. Phone number of person providing payee Statements required to be shown on such Statement.
Sec. 13358. Required notice of certain payments.
Sec. 13359. Unauthorized enticement of information disclosure.
Sec. 13360. Annual reminders to taxpayers with outstanding delinquent accounts.
Sec. 13361. 5-year extension of authority for undercover operations.
Sec. 13362. Disclosure of form 8300 information on cash transactions.
Sec. 13363. Disclosure of returns and return information to designee of taxpayer.
Sec. 13364. Study of netting of interest on overpayments and liabilities.
Sec. 13365. Credit for expenses of certain TCMP audits.
Sec. 13366. Expenses of detection of underpayments and fraud, etc.

Subtitle D—Additional Technical Corrections

Sec. 13401. Reporting of real estate transactions.
Sec. 13402. Clarification of denial of deduction for stock redemption expenses.
Sec. 13403. Clarification of depreciation class for certain energy property.
Sec. 13404. Clerical amendment to section 404.
Sec. 13405. Treatment of certain veterans' reemployment rights.

Subtitle E—Tax Information Sharing

Sec. 13501. Disclosure of return information for administration of certain veterans programs.

Subtitle F—Revenue Increases

PART I—PROVISIONS RELATING TO BUSINESSES

Sec. 13601. Tax treatment of certain extraordinary dividends.
Sec. 13602. Registration of confidential corporate tax shelters.
Sec. 13603. Denial of deduction for interest on loans with respect to company-owned insurance.
Sec. 13604. Termination of suspense accounts for family corporations required to use accrual method of accounting.
Sec. 13605. Termination of Puerto Rico and possession tax credit.
Sec. 13606. Depreciation under income forecast method.
Sec. 13607. Transfers of excess pension assets.

PART II—LEGAL REFORMS

Sec. 13611. Repeal of exclusion for punitive damages and for damages not attributable to physical injuries or sickness.
Sec. 13612. Reporting of certain payments made to attorneys.

PART III—TREATMENT OF INDIVIDUALS WHO LOSE UNITED STATES CITIZENSHIP

Sec. 13616. Revision of income, estate, and gift taxes on individuals who lose United States citizenship.
Sec. 13617. Information on individuals losing United States citizenship.
Sec. 13618. Report on tax compliance by United States citizens and residents living abroad.

PART IV—REFORMS RELATING TO ENERGY PROVISIONS

Sec. 13621. Termination of credit for electricity produced from certain renewable resources.
Sec. 13622. Exclusion for energy conservation subsidies limited to subsidies with respect to dwelling units.

PART V—REFORMS RELATING TO NONRECOGNITION PROVISIONS

Sec. 13626. Basis adjustment to property held by corporation where stock in corporation is replacement property under involuntary conversion rules.
Sec. 13627. Expansion of requirement that involuntarily converted property be replaced with property acquired from an unrelated person.
Sec. 13628. No rollover or exclusion of gain on sale of principal residence which is attributable to depreciation deductions.
Sec. 13629. Nonrecognition of gain on sale of principal residence by noncitizens limited to new residences located in the United States.

PART VI—REFORMS RELATING TO GAMING ACTIVITIES

Sec. 13631. Treatment of Indian gaming activities under unrelated business income tax.
Sec. 13632. Repeal of targeted exemption from tax on unrelated trade or business income from gambling in certain States.
Sec. 13633. Extension of withholding to certain gambling winnings.

PART VII—OTHER REFORMS

Sec. 13636. Sunset of low-income housing credit.
Sec. 13637. Repeal of credit for contributions to community development corporations.
Sec. 13638. Repeal of diesel fuel tax rebate to purchasers of diesel-powered automobiles and light trucks.
Sec. 13639. Application of failure-to-pay penalty to substitute returns.
Sec. 13640. Repeal of special rule for rental use of vacation homes, etc., for less than 15 days.
Sec. 13641. Election to cease status as qualified scholarship funding corporation.
Sec. 13642. Certain amounts derived from foreign corporations treated as unrelated business taxable income.

PART VIII—EXCISE TAX ON AMOUNTS OF PRIVATE EXCESS BENEFITS

Sec. 13646. Excise taxes for failure by certain charitable organizations to meet certain qualification requirements.
Sec. 13647. Reporting of certain excise taxes and other information.
Sec. 13648. Exempt organizations required to provide copy of return.
Sec. 13649. Certain organizations required to disclose nonexempt status.
Sec. 13650. Increase in penalties on exempt organizations for failure to file complete and timely annual returns.
Sec. 13651. Studies.

Subtitle G—Reform of the Earned Income Tax Credit

Sec. 13701. Repeal of earned income credit for individuals without qualifying children; modifications to credit phaseout.
Sec. 13702. Modification of adjusted gross income used for phaseout.
Sec. 13703. Earned income tax credit denied to individuals not authorized to be employed in the United States.

Subtitle H—Increase in Public Debt Limit

Sec. 13801. Increase in public debt limit.

Subtitle I—Coal Industry Retiree Health Equity

Sec. 13901. Repeal of reachback provisions of coal industry health benefit system.

# Subtitle A—Extension of Expiring Provisions, Etc.

## PART I—EXTENSIONS THROUGH DECEMBER 31, 1997

### SEC. 13101. WORK OPPORTUNITY TAX CREDIT.

(a) AMOUNT OF CREDIT.—Subsection (a) of section 51 is amended by striking ''40 percent'' and inserting ''35 percent''.

(b) MEMBERS OF TARGETED GROUPS.—Subsection (d) of section 51 is amended to read as follows:

''(d) MEMBERS OF TARGETED GROUPS.—For purposes of this subpart—

''(1) IN GENERAL.—An individual is a member of a targeted group if such individual is—

''(A) a qualified AFDC recipient,

''(B) a qualified ex-felon,

''(C) a high-risk youth,

''(D) a vocational rehabilitation referral, or

''(E) a qualified summer youth employee.

''(2) QUALIFIED AFDC RECIPIENT.—

''(A) IN GENERAL.—The term 'qualified AFDC recipient' means any individual who is certified by the designated local agency as being a member of a family receiving assistance under an AFDC program for at least a 9-month period ending during the 9-month period ending on the hiring date.

''(B) AFDC PROGRAM.—For purposes of this paragraph, the term 'AFDC program' means any program providing aid under a State plan approved under part A of title IV of the Social Security Act (relating to aid to families with dependent children) and any successor of such program.

''(C) SPECIAL RULES FOR VETERANS.—In the case of a veteran, subparagraph (A) shall be applied by substituting '12-month' for '9-month' the second place it appears.

"(D) VETERAN.—For purposes of subparagraph (C), the term 'veteran' means any individual who is certified by the designated local agency as—

"(i)(I) having served on active duty (other than active duty for training) in the Armed Forces of the United States for a period of more than 180 days, or

"(II) having been discharged or released from active duty in the Armed Forces of the United States for a service-connected disability, and

"(ii) not having any day during the 60-day period ending on the hiring date which was a day of extended active duty in the Armed Forces of the United States.

For purposes of clause (ii), the term 'extended active duty' means a period of more than 90 days during which the individual was on active duty (other than active duty for training).

"(3) QUALIFIED EX-FELON.—The term 'qualified ex-felon' means any individual who is certified by the designated local agency—

''(A) as having been convicted of a felony under any statute of the United States or any State,

''(B) as having a hiring date which is not more than 1 year after the last date on which such individual was so convicted or was released from prison, and

''(C) as being a member of a family which had an income during the 6 months immediately preceding the earlier of the month in which such income determination occurs or the month in which the hiring date occurs, which, on an annual basis, would be 70 percent or less of the Bureau of Labor Statistics lower living standard.

Any determination under subparagraph (C) shall be valid for the 45-day period beginning on the date such determination is made.

''(4) HIGH-RISK YOUTH.—

''(A) IN GENERAL.—The term 'high-risk youth' means any individual who is certified by the designated local agency—

''(i) as having attained age 18 but not age 25 on the hiring date, and

"(ii) as having his principal place of abode within an empowerment zone or enterprise community.

"(B) YOUTH MUST CONTINUE TO RESIDE IN ZONE.—In the case of a high-risk youth, the term 'qualified wages' shall not include wages paid or incurred for services performed while such youth's principal place of abode is outside an empowerment zone or enterprise community.

"(5) VOCATIONAL REHABILITATION REFERRAL.—The term 'vocational rehabilitation referral' means any individual who is certified by the designated local agency as—

"(A) having a physical or mental disability which, for such individual, constitutes or results in a substantial handicap to employment, and

"(B) having been referred to the employer upon completion of (or while receiving) rehabilitative services pursuant to—

"(i) an individualized written rehabilitation plan under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973, or

''(ii) a program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code.

''(6) QUALIFIED SUMMER YOUTH EMPLOYEE.—

''(A) IN GENERAL.—The term 'qualified summer youth employee' means any individual—

''(i) who performs services for the employer between May 1 and September 15,

''(ii) who is certified by the designated local agency as having attained age 16 but not 18 on the hiring date (or if later, on May 1 of the calendar year involved),

''(iii) who has not been an employee of the employer during any period prior to the 90-day period described in subparagraph (B)(i), and

''(iv) who is certified by the designated local agency as having his principal place of abode within an empowerment zone or enterprise community.

''(B) SPECIAL RULES FOR DETERMINING AMOUNT OF CREDIT.—For purposes of applying this subpart to wages paid or incurred to any qualified summer youth employee—

"(i) subsection (b)(2) shall be applied by substituting 'any 90-day period between May 1 and September 15' for 'the 1-year period beginning with the day the individual begins work for the employer', and

"(ii) subsection (b)(3) shall be applied by substituting '$3,000' for '$6,000'.

The preceding sentence shall not apply to an individual who, with respect to the same employer, is certified as a member of another targeted group after such individual has been a qualified summer youth employee.

"(C) YOUTH MUST CONTINUE TO RESIDE IN ZONE.—Paragraph (4)(B) shall apply for purposes of this paragraph.

"(7) HIRING DATE.—The term 'hiring date' means the day the individual is hired by the employer.

"(8) DESIGNATED LOCAL AGENCY.—The term 'designated local agency' means a State employment security agency established in accordance with the Act of June 6, 1933, as amended (29 U.S.C. 49-49n).

"(9) SPECIAL RULES FOR CERTIFICATIONS.—

''(A) IN GENERAL.—An individual shall not be treated as a member of a targeted group unless—

''(i) on or before the day on which such individual begins work for the employer, the employer has received a certification from a designated local agency that such individual is a member of a targeted group, or

''(ii)(I) on or before the day the individual is offered employment with the employer, a pre-screening notice is completed with respect to such individual, and

''(II) not later than the 14th day after the individual begins work for the employer, the employer submits such notice to the designated local agency as part of a written request for such a certification from such agency.

For purposes of this paragraph, the term 'pre-screening notice' means a document (in such form as the Secretary shall prescribe) which is signed by the employer and the individual under penalties of perjury and which contains information provided by the individual on the basis

of which the employer believes that the individual is a member of a targeted group.

''(B) INCORRECT CERTIFICATIONS.—If—

''(i) an individual has been certified by a designated local agency as a member of a targeted group, and

''(ii) such certification is incorrect because it was based on false information provided by such individual,

the certification shall be revoked and wages paid by the employer after the date on which notice of revocation is received by the employer shall not be treated as qualified wages.

''(C) EXPLANATION OF DENIAL OF REQUEST.—If a designated local agency denies a request for certification of membership in a targeted group, such agency shall provide to the person making such request a written explanation of the reasons for such denial.''

(c) MINIMUM EMPLOYMENT PERIOD.—Paragraph (3) of section 51(i) is amended to read as follows:

''(3) INDIVIDUALS NOT MEETING MINIMUM EMPLOYMENT PERIOD.—No wages shall be taken into account under subsection (a) with respect to any individual unless such individual either—

''(A) is employed by the employer at least 180 days (20 days in the case of a qualified summer youth employee), or

''(B) has completed at least 500 hours (120 hours in the case of a qualified summer youth employee) of services performed for the employer.''

(d) DEFINITION OF WAGES.—Subsection (c) of section 51 is amended by striking paragraph (3).

(e) TERMINATION.—Paragraph (4) of section 51(c) is amended to read as follows:

''(3) TERMINATION.—The term 'wages' shall not include any amount paid or incurred to an individual who begins work for the employer—

''(A) after December 31, 1994, and before January 1, 1996, or

''(B) after December 31, 1997.''

(f) REDESIGNATION OF CREDIT.—

(1) Sections 38(b)(2) and 51(a) are each amended by striking ''targeted jobs credit'' and inserting ''work opportunity credit''.

(2) The subpart heading for subpart F of part IV of subchapter A of chapter 1 is amended by striking ''**Targeted Jobs Credit**'' and inserting ''**Work Opportunity Credit**''.

(3) The table of subparts for such part IV is amended by striking ''targeted jobs credit'' and inserting ''work opportunity credit''.

(g) BUSINESS AWARENESS PROGRAM.—The Secretary of Labor shall implement a program to encourage small businesses to use the services of local agencies to identify individuals who qualify to be certified as members of targeted groups (as defined in section 51 of the Internal Revenue Code of 1986, as amended by this section). Such Secretary, and the heads of other Federal agencies, shall make every effort to encourage small businesses to benefit from the credit allowable under such section by simplifying procedures to the extent possible.

(h) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 51(c) is amended by striking '', subsection (d)(8)(D),''.

(2) Paragraph (3) of section 51(i) is amended by striking ''(d)(12)'' each place it appears and inserting ''(d)(6)''.

(i) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after December 31, 1995.

**SEC. 13102. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE PROGRAMS.**

(a) EXTENSION.—Subsection (d) of section 127 (relating to educational assistance programs) is amended by striking ''December 31, 1994'' and inserting ''December 31, 1997''.

(b) LIMITATION TO EDUCATION BELOW GRADUATE LEVEL.—The last sentence of section 127(c)(1) is amended by inserting before the period ''or at the graduate level''.

(c) EFFECTIVE DATES.—

(1) EXTENSION.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1994.

(2) LIMITATION.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1995.

**SEC. 13103. RESEARCH CREDIT.**

(a) IN GENERAL.—Subsection (h) of section 41 (relating to credit for research activities) is amended—

(1) by striking ''June 30, 1995'' each place it appears and inserting ''December 31, 1997'', and

(2) by striking ''July 1, 1995'' each place it appears and inserting ''January 1, 1998''.

(b) BASE AMOUNT FOR START-UP COMPANIES.—Clause (i) of section 41(c)(3)(B) (relating to start-up companies) is amended to read as follows:

"(i) TAXPAYERS TO WHICH SUBPARAGRAPH APPLIES.—The fixed-base percentage shall be determined under this subparagraph if—

"(I) the first taxable year in which a taxpayer had both gross receipts and qualified research expenses begins after December 31, 1983, or

"(II) there are fewer than 3 taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses."

(c) ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—Subsection (c) of section 41 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—

"(A) IN GENERAL.—At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to the sum of—

"(i) 1.65 percent of so much of the qualified research expenses for the taxable year as exceeds 1 percent of the average described in subsection (c)(1)(B) but does not exceed 1.5 percent of such average,

"(ii) 2.2 percent of so much of such expenses as exceeds 1.5 percent of such average but does not exceed 2 percent of such average, and

"(iii) 2.75 percent of so much of such expenses as exceeds 2 percent of such average.

"(B) ELECTION.—An election under this paragraph may be made only for the first taxable year of the taxpayer beginning after June 30, 1995. Such an election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary."

(d) INCREASED CREDIT FOR CONTRACT RESEARCH EXPENSES WITH RESPECT TO CERTAIN RESEARCH CON-

SORTIA.—Paragraph (3) of section 41(b) is amended by adding at the end the following new subparagraph:

"(C) AMOUNTS PAID TO CERTAIN RESEARCH CONSORTIA.—

"(i) IN GENERAL.—Subparagraph (A) shall be applied by substituting '75 percent' for '65 percent' with respect to amounts paid or incurred by the taxpayer to a qualified research consortium for qualified research.

"(ii) QUALIFIED RESEARCH CONSORTIUM.—The term 'qualified research consortium' means any organization described in subsection (e)(6)(B) if—

"(I) at least 15 unrelated taxpayers paid (during the calendar year in which the taxable year of the taxpayer begins) amounts to such organization for qualified research,

"(II) no 3 persons paid during such calendar year more than 50 percent of the total amounts paid during such calendar year for qualified research, and

''(III) no person contributed more than 20 percent of such total amounts.

For purposes of subclause (I), all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related taxpayers.''

(e) CONFORMING AMENDMENT.—Subparagraph (D) of section 28(b)(1) is amended by striking ''June 30, 1995'' and inserting ''December 31, 1997''.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending after June 30, 1995.

(2) SUBSECTIONS (c) AND (d).—The amendments made by subsections (c) and (d) shall apply to taxable years beginning after June 30, 1995.

**SEC. 13104. CONTRIBUTIONS OF STOCK TO PRIVATE FOUNDATIONS.**

(a) IN GENERAL.—Subparagraph (D) of section 170(e)(5) is amended by striking ''December 31, 1994'' and inserting ''December 31, 1997''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 1994.

**SEC. 13105. CREDIT FOR CLINICAL TESTING EXPENSES.**

(a) IN GENERAL.—Subsection (e) of section 28 is amended by striking ''December 31, 1994'' and inserting ''December 31, 1997''.

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

## PART II—PERMANENT EXTENSION OF FUTA EXEMPTION FOR ALIEN AGRICULTURAL WORKERS

**SEC. 13106. FUTA EXEMPTION FOR ALIEN AGRICULTURAL WORKERS.**

(a) IN GENERAL.—Subparagraph (B) of section 3306(c)(1) (defining employment) is amended by striking ''before January 1, 1995,''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services performed after December 31, 1994.

## PART III—COMMERCIAL AVIATION FUEL

### SEC. 13111. DELAY OF SCHEDULED INCREASE IN TAX ON FUEL USED IN COMMERCIAL AVIATION.

(a) 2-YEAR DELAY.—Sections 4092(b)(2), 6421(f)(2)(B), and 6427(l)(4)(B) are each amended by striking ''September 30, 1995'' and inserting ''September 30, 1997''.

(b) CONFORMING AMENDMENT.—Section 13245 of the Omnibus Budget Reconciliation Act of 1993 is hereby repealed.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on September 30, 1995.

(2) CROSS REFERENCE.—

**For refund of tax paid on commercial aviation fuel before the date of the enactment of this Act, see section 6427(l) of the Internal Revenue Code of 1986.**

(d) FLOOR STOCKS TAX.—

(1) IMPOSITION OF TAX.—In the case of commercial aviation fuel which is held by any person on October 1, 1997, there is hereby imposed a floor stocks tax equal to 4.3 cents per gallon.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding aviation fuel on October 1, 1997, to which

the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before April 30, 1998.

(3) DEFINITIONS.—For purposes of this subsection—

(A) HELD BY A PERSON.—Aviation fuel shall be considered as ''held by a person'' if title thereto has passed to such person (whether or not delivery to the person has been made).

(B) COMMERCIAL AVIATION FUEL.—The term ''commercial aviation fuel'' means aviation fuel (as defined in section 4093 of such Code) which is held on October 1, 1997, for sale or use in commercial aviation (as defined in section 4092(b) of such Code).

(C) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury or his delegate.

(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to aviation

fuel held by any person exclusively for any use for which a credit or refund of the entire tax imposed by section 4091 of such Code (other than the rate imposed by section 4091(b)(2) of such Code) is allowable for aviation fuel so used.

(5) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on aviation fuel held on October 1, 1997, by any person if the aggregate amount of commercial aviation fuel held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4).

(C) CONTROLLED GROUPS.—For purposes of this paragraph—

(i) CORPORATIONS.—

(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

(II) CONTROLLED GROUP.—The term ''controlled group'' has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in such subsection.

(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4091 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to

the same extent as if such taxes were imposed by such section 4091.

(f) STUDY.—The Secretary of the Treasury or his delegate shall, in consultation with the Secretary of Transportation, conduct a study of the Federal excise tax burdens on each of the various modes of transportation and the benefits provided to each such mode from revenues derived from such excise taxes. The results of such study shall be submitted not later than June 30, 1996, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

## PART IV—EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXCISE TAXES

### SEC. 13116. EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXCISE TAXES.

(a) FUEL TAX.—

(1) Subparagraph (A) of section 4091(b)(3) is amended by striking ''January 1, 1996'' and inserting ''October 1, 1996''.

(2) Paragraph (2) of section 4081(d), as amended by section 14721 of this Act, is amended by striking ''January 1, 1996'' and inserting ''October 1, 1996''.

(b) TICKET TAXES.—Sections 4261(g) and 4271(d) are each amended by striking ''January 1, 1996'' and inserting ''October 1, 1996''.

(c) TRANSFER TO AIRPORT AND AIRWAY TRUST FUND.—

(1) Subsection (b) of section 9502 is amended by striking ''January 1, 1996'' each place it appears and inserting ''October 1, 1996''.

(2) Paragraph (3) of section 9502(f) is amended by striking ''December 31, 1995'' and inserting ''September 30, 1996''.

## Subtitle B—Medical Savings Accounts

**SEC. 13201. MEDICAL SAVINGS ACCOUNTS.**

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

**''SEC. 220. MEDICAL SAVINGS ACCOUNTS.**

''(a) DEDUCTION ALLOWED.—In the case of an individual who is an eligible individual for any month during the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount

paid in cash during such taxable year by such individual to a medical savings account of such individual.

''(b) LIMITATIONS.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the lesser of—

''(A) $2,500, or

''(B) the deductible under the catastrophic health plan covering such individual.

If the catastrophic health plan covering such individual provides coverage for any other eligible individual who is the spouse or any dependent (as defined in section 152) of the taxpayer, subparagraph (A) shall be applied by substituting '$5,000' for '$2,500'. The preceding sentence shall not apply if the spouse or any dependent (as so defined) of such individual is covered under any other catastrophic health plan.

''(2) SPECIAL RULE FOR MARRIED INDIVIDUALS.—

''(A) IN GENERAL.—This subsection shall be applied separately for each married individual.

"(B) SPECIAL RULE.—If individuals who are married to each other are covered under the same catastrophic health plan, then the amounts applicable under subparagraphs (A) and (B) of paragraph (1) shall be divided equally between them unless they agree on a different division.

"(3) COORDINATION WITH EXCLUSION FOR EMPLOYER CONTRIBUTIONS.—No deduction shall be allowed under this section for any amount paid for any taxable year to a medical savings account of an individual if—

"(A) any amount is paid to any medical savings account of such individual which is excludable from gross income under section 106(b) for such year, or

"(B) in a case described in paragraph (2), any amount is paid to any medical savings account of either spouse which is so excludable for such year.

"(4) PRORATION OF LIMITATION.—

"(A) IN GENERAL.—The limitation under paragraph (1) shall be the sum of the monthly limitations for months during the taxable year that the individual is an eligible individual if—

"(i) such individual is not an eligible individual for all months of the taxable year,

"(ii) the deductible under the catastrophic health plan covering such individual is not the same throughout such taxable year, or

"(iii) such limitation is determined using the next to the last sentence of paragraph (1) for some but not all months during such taxable year.

"(B) MONTHLY LIMITATION.—The monthly limitation for any month shall be an amount equal to 1/12 of the limitation which would (but for this paragraph and paragraph (3)) be determined under paragraph (1) if the facts and circumstances as of the first day of such month that such individual is covered under a catastrophic health plan were true for the entire taxable year.

"(5) DENIAL OF DEDUCTION TO DEPENDENTS.—No deduction shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the cal-

endar year in which such individual's taxable year begins.

''(c) DEFINITIONS.—For purposes of this section—

''(1) ELIGIBLE INDIVIDUAL.—

''(A) IN GENERAL.—The term 'eligible individual' means, with respect to any month, any individual—

''(i) who is covered under a catastrophic health plan at any time during such month, and

''(ii) who is not, while covered under a catastrophic health plan, covered under any health plan—

''(I) which is not a catastrophic health plan, and

''(II) which provides coverage for any benefit which is covered under the catastrophic health plan.

''(B) CERTAIN COVERAGE DISREGARDED.—Subparagraph (A)(ii) shall be applied without regard to—

''(i) coverage for any benefit provided by permitted insurance, and

''(ii) coverage (whether through insurance or otherwise) for accidents, dental care, vision care, or long-term care.

''(2) CATASTROPHIC HEALTH PLAN.—The term 'catastrophic health plan' means any health plan which provides no compensation for an individual's expenses covered by the plan for any calendar year to the extent such expenses for such calendar year do not exceed $1,500 ($3,000 if the catastrophic health plan covering the taxpayer provides coverage for more than 1 individual) or such higher amounts as may be specified by the plan.

''(3) PERMITTED INSURANCE.—The term 'permitted insurance' means—

''(A) Medicare supplemental insurance,

''(B) insurance if substantially all of the coverage provided under such insurance relates to—

''(i) liabilities incurred under workers' compensation laws,

''(ii) tort liabilities,

''(iii) liabilities relating to ownership or use of property,

''(iv) credit insurance, or

"(v) such other similar liabilities as the Secretary may specify by regulations,

"(C) insurance for a specified disease or illness, and

"(D) insurance paying a fixed amount per day (or other period) of hospitalization.

"(d) MEDICAL SAVINGS ACCOUNT.—For purposes of this section—

"(1) MEDICAL SAVINGS ACCOUNT.—The term 'medical savings account' means a trust created or organized in the United States exclusively for the purpose of paying the qualified medical expenses of the account holder, but only if the written governing instrument creating the trust meets the following requirements:

"(A) Except in the case of a rollover contribution described in subsection (f)(4), no contribution will be accepted unless it is in cash.

"(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

''(C) No part of the trust assets will be invested in life insurance contracts.

''(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

''(E) The interest of an individual in the balance in his account is nonforfeitable.

''(2) QUALIFIED MEDICAL EXPENSES.—

''(A) IN GENERAL.—The term 'qualified medical expenses' means, with respect to an account holder, amounts paid by such holder—

''(i) for medical care (as defined in section 213(d)) for such individual, the spouse of such individual, and any dependent (as defined in section 152) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise, or

''(ii) for long-term care insurance for such individual, spouse, or dependent.

''(B) HEALTH INSURANCE MAY NOT BE PURCHASED FROM ACCOUNT.—Subparagraph (A)(i) shall not apply to any payment for insurance.

''(3) ACCOUNT HOLDER.—The term 'account holder' means the individual on whose behalf the medical savings account was established.

''(4) CERTAIN RULES TO APPLY.—Rules similar to the following rules shall apply for purposes of this section:

''(A) Section 219(d)(2) (relating to no deduction for rollovers).

''(B) Section 219(f)(3) (relating to time when contributions deemed made).

''(C) Except as provided in section 106(b), section 219(f)(5) (relating to employer payments).

''(D) Section 408(g) (relating to community property laws).

''(E) Section 408(h) (relating to custodial accounts).

''(e) TAX TREATMENT OF ACCOUNTS.—

''(1) ACCOUNT TAXED AS GRANTOR TRUST.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the account holder of a medical savings account shall be treated for purposes of this title as the owner of such account and shall be subject to tax thereon in accordance with subpart E of part I of subchapter J

of this chapter (relating to grantors and others treated as substantial owners).

''(B) TREATMENT OF CAPITAL LOSSES.—With respect to assets held in a medical savings account, any capital loss for a taxable year from the sale or exchange of such an asset shall be allowed only to the extent of capital gains from such assets for such taxable year. Any capital loss which is disallowed under the preceding sentence shall be treated as a capital loss from the sale or exchange of such an asset in the next taxable year. For purposes of this subparagraph, all medical savings accounts of the account holder shall be treated as 1 account.

''(2) ACCOUNT ASSETS TREATED AS DISTRIBUTED IN THE CASE OF PROHIBITED TRANSACTIONS OR ACCOUNT PLEDGED AS SECURITY FOR LOAN.—Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to medical savings accounts, and any amount treated as distributed under such rules shall be treated as not used to pay qualified medical expenses.

''(3) TREATMENT OF ACCOUNT AFTER DEATH OF ACCOUNT HOLDER.—

"(A) IN GENERAL.—A trust shall not constitute a medical savings account unless the written governing instrument provides that, if the account holder dies while there is a balance in the account, the entire balance of the account holder will be distributed within 5 years after the death of the account holder.

"(B) EXCEPTION WHERE SPOUSE BECOMES ACCOUNT HOLDER.—Subparagraph (A) shall not apply if the account is payable to (or for the benefit of) the surviving spouse of the decedent.

"(f) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) INCLUSION OF AMOUNTS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—No amount shall be included in the gross income of the account holder by reason of a payment or distribution from a medical savings account which is used exclusively to pay the qualified medical expenses of the account holder. Any amount paid or distributed from a medical savings account which is not so used shall be included in the gross income of such holder to the extent such amount does not exceed the excess of—

"(i) the aggregate contributions to such account which were allowed as a deduction under this section or which were excluded under section 106(b), over

"(ii) the aggregate prior payments or distributions from such account which were includible in gross income under this paragraph.

"(B) SPECIAL RULES.—For purposes of subparagraph (A)—

"(i) all medical savings accounts of the account holder shall be treated as 1 account,

"(ii) all payments and distributions during any taxable year shall be treated as 1 distribution, and

"(iii) any distribution of property shall be taken into account at its fair market value on the date of the distribution.

"(2) PENALTY FOR DISTRIBUTIONS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—The tax imposed by this chapter for any taxable year in which there is a payment or distribution from a medical savings account which is not used exclusively to

pay the qualified medical expenses of the account holder shall be increased by 10 percent of the amount of such payment or distribution which is includible in gross income under paragraph (1).

''(B) EXCEPTIONS.—Subparagraph (A) shall not apply if the payment or distribution is made on or after the date the account holder—

''(i) attains age 59½,

''(ii) becomes disabled within the meaning of section 72(m)(7), or

''(iii) dies.

''(3) WITHDRAWAL OF EXCESS CONTRIBUTIONS.—Paragraph (1) shall not apply to the distribution of any contribution paid during a taxable year to a medical savings account if—

''(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,

''(B) no deduction is allowed under this section with respect to such contribution, and

''(C) such distribution is accompanied by the amount of net income attributable to such contribution.

In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such contribution is made.

''(4) ROLLOVERS.—Paragraph (1) shall not apply to any amount paid or distributed out of a medical savings account to the account holder if the entire amount received (including money and any other property) is paid into another medical savings account for the benefit of such holder not later than the 60th day after the day on which he received the payment or distribution.

''(5) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—For purposes of section 213, any payment or distribution out of a medical savings account for qualified medical expenses shall not be treated as an expense paid for medical care to the extent of the amount of such payment or distribution which is excludable from gross income solely by reason of paragraph (1)(A).

''(g) COST-OF-LIVING ADJUSTMENT.—

''(1) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1996, each

dollar amount in subsection (b)(1) or in subsection (c)(2) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the medical care cost adjustment for such calendar year.

If any increase under the preceding sentence is not a multiple of $50, such increase shall be rounded to the nearest multiple of $50.

''(2) MEDICAL CARE COST ADJUSTMENT.—For purposes of paragraph (1), the medical care cost adjustment for any calendar year is the percentage (if any) by which—

''(A) the medical care component of the Consumer Price Index (as defined in section 1(f)(5)) for August of the preceding calendar year, exceeds

''(B) such component for August of 1995.

''(h) REPORTS.—The trustee of a medical savings account shall make such reports regarding such account to the Secretary and to the account holder with respect to contributions, distributions, and such other matters as the Secretary may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such

time and in such manner as may be required by those regulations.''

(b) DEDUCTION ALLOWED WHETHER OR NOT INDIVIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 is amended by inserting after paragraph (15) the following new paragraph:

''(16) MEDICAL SAVINGS ACCOUNTS.—The deduction allowed by section 220.''

(c) EXCLUSIONS FOR EMPLOYER CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.—

(1) EXCLUSION FROM INCOME TAX.—The text of section 106 (relating to contributions by employer to accident and health plans) is amended to read as follows:

''(a) GENERAL RULE.—Gross income of an employee does not include employer-provided coverage under an accident or health plan.

''(b) CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.—

''(1) IN GENERAL.—In the case of an employee who is an eligible individual, gross income does not include amounts contributed by such employee's employer to any medical savings account of such employee.

"(2) COORDINATION WITH DEDUCTION LIMITATION.—The amount excluded from the gross income of an employee under this subsection for any taxable year shall not exceed the limitation under section 220(b)(1) (determined without regard to this subsection) which is applicable to such employee for such taxable year."

"(3) NO CONSTRUCTIVE RECEIPT.—No amount shall be included in the gross income of any employee solely because the employee may choose between the contributions referred to in paragraph (1) and employer contributions to another health plan of the employer.

"(4) SPECIAL RULE FOR DEDUCTION OF EMPLOYER CONTRIBUTIONS.—Any employer contribution to a medical savings account, if otherwise allowable as a deduction under this chapter, shall be allowed only for the taxable year in which paid.

"(5) DEFINITIONS.—For purposes of this subsection, the terms 'eligible individual' and 'medical savings account' have the respective meanings given to such terms by section 220."

(2) EXCLUSION FROM EMPLOYMENT TAXES.—

(A) SOCIAL SECURITY TAXES.—

(i) Subsection (a) of section 3121 is amended by striking ''or'' at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting ''; or'', and by inserting after paragraph (21) the following new paragraph:

''(22) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b).''

(ii) Subsection (a) of section 209 of the Social Security Act is amended by striking ''or'' at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting ''; or'', and by inserting after paragraph (18) the following new paragraph:

''(19) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b) of the Internal Revenue Code of 1986.''

(B) RAILROAD RETIREMENT TAX.—Subsection (e) of section 3231 is amended by adding at the end the following new paragraph:

''(10) MEDICAL SAVINGS ACCOUNT CONTRIBUTIONS.—The term 'compensation' shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b).''

(C) UNEMPLOYMENT TAX.—Subsection (b) of section 3306 is amended by striking ''or'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting ''; or'', and by inserting after paragraph (16) the following new paragraph:

''(17) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b).''

(D) WITHHOLDING TAX.—Subsection (a) of section 3401 is amended by striking ''or'' at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting

"; or", and by inserting after paragraph (20) the following new paragraph:

"(21) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b)."

(d) MEDICAL SAVINGS ACCOUNT CONTRIBUTIONS NOT AVAILABLE UNDER CAFETERIA PLANS.—Subsection (f) of section 125 is amended by inserting "106(b)," before "117".

(e) TAX ON PROHIBITED TRANSACTIONS.—Section 4975 (relating to tax on prohibited transactions) is amended—

(1) by adding at the end of subsection (c) the following new paragraph:

"(4) SPECIAL RULE FOR MEDICAL SAVINGS ACCOUNTS.—An individual for whose benefit a medical savings account (within the meaning of section 220(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a medi-

cal savings account by reason of the application of section 220(e)(2) to such account.'', and

(2) by inserting ''or a medical savings account described in section 220(d)'' in subsection (e)(1) after ''described in section 408(a)''.

(f) FAILURE TO PROVIDE REPORTS ON MEDICAL SAVINGS ACCOUNTS.—Section 6693 (relating to failure to provide reports on individual retirement accounts or annuities) is amended—

(1) by inserting ''**OR ON MEDICAL SAVINGS ACCOUNTS**'' after ''**ANNUITIES**'' in the heading of such section, and

(2) by adding at the end of subsection (a) the following: ''The person required by section 220(h) to file a report regarding a medical savings account at the time and in the manner required by such section shall pay a penalty of $50 for each failure to so file unless it is shown that such failure is due to reasonable cause.''

(g) CLERICAL AMENDMENTS.—

(1) The table of sections for part VII of subchapter B of chapter 1 is amended by striking the last item and inserting the following:

''Sec. 220. Medical savings accounts.
''Sec. 221. Cross reference.''

(2) The table of sections for subchapter B of chapter 68 is amended by inserting ''or on medical savings accounts'' after ''annuities'' in the item relating to section 6693.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

# Subtitle C—Pickle-Johnson Taxpayer Bill of Rights 2

## PART I—TAXPAYER ADVOCATE

### SEC. 13301. ESTABLISHMENT OF POSITION OF TAXPAYER ADVOCATE WITHIN INTERNAL REVENUE SERVICE.

(a) GENERAL RULE.—Section 7802 (relating to Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)) is amended by adding at the end the following new subsection:

''(d) OFFICE OF TAXPAYER ADVOCATE.—

''(1) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the 'Office of the Taxpayer Advocate'. Such office shall be under the supervision and direction of an official to be known as the 'Taxpayer Advocate' who shall be appointed by and report directly to the

Commissioner of Internal Revenue. The Taxpayer Advocate shall be entitled to compensation at the same rate as the highest level official reporting directly to the Deputy Commissioner of the Internal Revenue Service.

''(2) FUNCTIONS OF OFFICE.—

''(A) IN GENERAL.—It shall be the function of the Office of Taxpayer Advocate to—

''(i) assist taxpayers in resolving problems with the Internal Revenue Service,

''(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service,

''(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii), and

''(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

''(B) ANNUAL REPORTS.—

''(i) OBJECTIVES.—Not later than June 30 of each calendar year after 1995, the Taxpayer Advocate shall report to the Committee on Ways and Means of the

House of Representatives and the Committee on Finance of the Senate on the objectives of the Taxpayer Advocate for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

''(ii) ACTIVITIES.—Not later than December 31 of each calendar year after 1995, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

''(I) identify the initiatives the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness,

''(II) contain recommendations received from individuals with the au-

thority to issue Taxpayer Assistance Orders under section 7811,

''(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems,

''(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action,

''(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory,

''(VI) contain an inventory of the items described in subclauses (II) and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service offi-

cial who is responsible for such inaction,

''(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b),

''(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers,

''(IX) describe the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers, and

''(X) include such other information as the Taxpayer Advocate may deem advisable.

''(iii) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subparagraph shall be provided directly to the Committees referred to in clauses (i) and (ii) without any prior review or com-

ment from the Commissioner, the Secretary of the Treasury, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

''(3) RESPONSIBILITIES OF COMMISSIONER.—The Commissioner of Internal Revenue shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the Taxpayer Advocate within 3 months after submission to the Commissioner.''

(b) CONFORMING AMENDMENTS.—

(1) Section 7811 (relating to Taxpayer Assistance Orders) is amended—

(A) by striking ''the Office of Ombudsman'' in subsection (a) and inserting ''the Office of the Taxpayer Advocate'', and

(B) by striking ''Ombudsman'' each place it appears (including in the headings of subsections (e) and (f)) and inserting ''Taxpayer Advocate''.

(2) The heading for section 7802 is amended to read as follows:

**"SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONERS; TAXPAYER ADVOCATE."**

(3) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7802 and inserting the following new item:

''Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioners; Taxpayer Advocate.''

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

**SEC. 13302. EXPANSION OF AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS.**

(a) TERMS OF ORDERS.—Subsection (b) of section 7811 (relating to terms of Taxpayer Assistance Orders) is amended—

(1) by inserting ''within a specified time period'' after ''the Secretary'', and

(2) by inserting ''take any action as permitted by law,'' after ''cease any action,''.

(b) LIMITATION ON AUTHORITY TO MODIFY OR RESCIND.—Section 7811(c) (relating to authority to modify or rescind) is amended to read as follows:

"(c) AUTHORITY TO MODIFY OR RESCIND.—Any Taxpayer Assistance Order issued by the Taxpayer Advocate under this section may be modified or rescinded—

"(1) only by the Taxpayer Advocate, the Commissioner of Internal Revenue, the Deputy Commissioner of Internal Revenue, or a regional problem resolution officer, and

"(2) only if a written explanation of the reasons for the modification or rescission is provided to the Taxpayer Advocate."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

## PART II—MODIFICATIONS TO INSTALLMENT AGREEMENT PROVISIONS

### SEC. 13306. NOTIFICATION OF REASONS FOR TERMINATION OF INSTALLMENT AGREEMENTS.

(a) TERMINATIONS.—Subsection (b) of section 6159 (relating to extent to which agreements remain in effect) is amended by adding at the end the following new paragraph:

"(5) NOTICE REQUIREMENTS.—The Secretary may not take any action under paragraph (2), (3), or (4) unless—

''(A) a notice of such action is provided to the taxpayer not later than the day 30 days before the date of such action, and

''(B) such notice includes an explanation why the Secretary intends to take such action.

The preceding sentence shall not apply in any case in which the Secretary believes that collection of any tax to which an agreement under this section relates is in jeopardy.''

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 6159(b) is amended to read as follows:

''(3) SUBSEQUENT CHANGE IN FINANCIAL CONDITIONS.—If the Secretary makes a determination that the financial condition of a taxpayer with whom the Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement.''

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date 6 months after the date of the enactment of this Act.

**SEC. 13307. ADMINISTRATIVE REVIEW OF TERMINATION OF INSTALLMENT AGREEMENT.**

(a) GENERAL RULE.—Section 6159 (relating to agreements for payment of tax liability in installments)

is amended by adding at the end the following new subsection:

''(c) ADMINISTRATIVE REVIEW.—The Secretary shall establish procedures for an independent administrative review of terminations of installment agreements under this section for taxpayers who request such a review.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1996.

## PART III—ABATEMENT OF INTEREST AND PENALTIES

### SEC. 13311. EXPANSION OF AUTHORITY TO ABATE INTEREST.

(a) GENERAL RULE.—Paragraph (1) of section 6404(e) (relating to abatement of interest in certain cases) is amended—

(1) by inserting ''unreasonable'' before ''error'' each place it appears in subparagraphs (A) and (B), and

(2) by striking ''in performing a ministerial act'' each place it appears and inserting ''in performing a ministerial or managerial act''.

(b) CLERICAL AMENDMENT.—The subsection heading for subsection (e) of section 6404 is amended—

(1) by striking ''ASSESSMENTS'' and inserting ''ABATEMENT'', and

(2) by inserting ''UNREASONABLE'' before ''ERRORS''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of the enactment of this Act.

**SEC. 13312. REVIEW OF IRS FAILURE TO ABATE INTEREST.**

(a) IN GENERAL.—Section 6404 is amended by adding at the end the following new subsection:

''(g) REVIEW OF DENIAL OF REQUEST FOR ABATEMENT OF INTEREST.—The Tax Court shall have jurisdiction over any action brought by a taxpayer who meets the requirements referred to in section 7430(c)(4)(A)(iii) to determine whether the Secretary's failure to abate interest under this section was an abuse of discretion if such action is brought within 6 months after the date of the Secretary's final determination not to abate such interest.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests for abatement after the date of the enactment of this Act.

**SEC. 13313. EXTENSION OF INTEREST-FREE PERIOD FOR PAYMENT OF TAX AFTER NOTICE AND DEMAND.**

(a) GENERAL RULE.—Paragraph (3) of section 6601(e) (relating to payments made within 10 days after notice and demand) is amended to read as follows:

''(3) PAYMENTS MADE WITHIN SPECIFIED PERIOD AFTER NOTICE AND DEMAND.—If notice and demand is made for payment of any amount and if such amount is paid within 21 calendar days (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000) after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.''

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 6601(e)(2) is amended by striking ''10 days from the date of notice and demand therefor'' and inserting ''21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000)''.

(2) Paragraph (3) of section 6651(a) is amended by striking ''10 days of the date of the notice and

demand therefor'' and inserting ''21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of any notice and demand given after June 30, 1996.

## PART IV—JOINT RETURNS

### SEC. 13316. STUDIES OF JOINT RETURN-RELATED ISSUES.

The Secretary of the Treasury or his delegate and the Comptroller General of the United States shall each conduct separate studies of—

(1) the effects of changing the liability for tax on a joint return from being joint and several to being proportionate to the tax attributable to each spouse,

(2) the effects of providing that, if a divorce decree allocates liability for tax on a joint return filed before the divorce, the Secretary may collect such liability only in accordance with the decree,

(3) whether those provisions of the Internal Revenue Code of 1986 intended to provide relief to innocent spouses provide meaningful relief in all cases where such relief is appropriate, and

(4) the effect of providing that community income (as defined in section 66(d) of such Code) which, in accordance with the rules contained in section 879(a) of such Code, would be treated as the income of one spouse is exempt from a levy for failure to pay any tax imposed by subtitle A by the other spouse for a taxable year ending before their marriage.

The reports of such studies shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate within 6 months after the date of the enactment of this Act.

**SEC. 13317. JOINT RETURN MAY BE MADE AFTER SEPARATE RETURNS WITHOUT FULL PAYMENT OF TAX.**

(a) GENERAL RULE.—Paragraph (2) of section 6013(b) (relating to limitations on filing of joint return after filing separate returns) is amended by striking subparagraph (A) and redesignating the following subparagraphs accordingly.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 13318. DISCLOSURE OF COLLECTION ACTIVITIES.**

Subsection (e) of section 6103 (relating to disclosure to persons having material interest) is amended by adding at the end the following new paragraph:

''(8) DISCLOSURE OF COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN.—If any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing by either of such individuals, the Secretary shall disclose in writing to the individual making the request whether the Secretary has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected.''

## PART V—COLLECTION ACTIVITIES

**SEC. 13321. MODIFICATIONS TO LIEN AND LEVY PROVISIONS.**

(a) WITHDRAWAL OF CERTAIN NOTICES.—Section 6323 (relating to validity and priority against certain persons) is amended by adding at the end the following new subsection:

''(j) WITHDRAWAL OF NOTICE IN CERTAIN CIRCUMSTANCES.—

''(1) IN GENERAL.—The Secretary may withdraw a notice of a lien filed under this section and

this chapter shall be applied as if the withdrawn notice had not been filed, if the Secretary determines that—

''(A) the filing of such notice was premature or otherwise not in accordance with administrative procedures of the Secretary,

''(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise,

''(C) the withdrawal of such notice will facilitate the collection of the tax liability, or

''(D) with the consent of the taxpayer or the Taxpayer Advocate, the withdrawal of such notice would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States.

Any such withdrawal shall be made by filing notice at the same office as the withdrawn notice. A copy of such notice of withdrawal shall be provided to the taxpayer.

''(2) NOTICE TO CREDIT AGENCIES, ETC.—Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn under

paragraph (1), the Secretary shall promptly make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in such request, of the withdrawal of such notice. Any such request shall be in such form as the Secretary may prescribe.''

(b) RETURN OF LEVIED PROPERTY IN CERTAIN CASES.—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

''(d) RETURN OF PROPERTY IN CERTAIN CASES.—If—

''(1) any property has been levied upon, and

''(2) the Secretary determines that—

''(A) the levy on such property was premature or otherwise not in accordance with administrative procedures of the Secretary,

''(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the levy was imposed by means of installment payments, unless such agreement provides otherwise,

''(C) the return of such property will facilitate the collection of the tax liability, or

"(D) with the consent of the taxpayer or the Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States,

the provisions of subsection (b) shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed under subsection (c)."

(c) MODIFICATIONS IN CERTAIN LEVY EXEMPTION AMOUNTS.—

(1) FUEL, ETC.—Paragraph (2) of section 6334(a) (relating to fuel, provisions, furniture, and personal effects exempt from levy) is amended—

(A) by striking "If the taxpayer is the head of a family, so" and inserting "So",

(B) by striking "his household" and inserting "the taxpayer's household", and

(C) by striking "$1,650 ($1,550 in the case of levies issued during 1989)" and inserting "$2,500".

(2) INFLATION ADJUSTMENT.—Section 6334 (relating to property exempt from levy) is amended by adding at the end the following new subsection:

"(f) INFLATION ADJUSTMENT.—

''(1) IN GENERAL.—In the case of any calendar year beginning after 1996, each dollar amount referred to in paragraphs (2) and (3) of subsection (a) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof.

''(2) ROUNDING.—If any dollar amount after being increased under paragraph (1) is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10.''

(3) TECHNICAL AMENDMENT.—Paragraph (3) of section 6334(a) is amended by striking ''($1,050 in the case of levies issued during 1989)''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) EXEMPT AMOUNTS.—The amendments made by subsection (c) shall take effect with respect to levies issued after December 31, 1995.

**SEC. 13322. OFFERS-IN-COMPROMISE.**

(a) REVIEW REQUIREMENTS.—Subsection (b) of section 7122 (relating to records) is amended by striking ''$500.'' and inserting ''$100,000. However, such compromise shall be subject to continuing quality review by the Secretary.''

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

## PART VI—INFORMATION RETURNS

**SEC. 13326. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.**

(a) GENERAL RULE.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7434 as section 7435 and by inserting after section 7433 the following new section:

**''SEC. 7434. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.**

''(a) IN GENERAL.—If any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return.

''(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the

defendant, the defendant shall be liable to the plaintiff in an amount equal to the greater of $5,000 or the sum of—

''(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing),

''(2) the costs of the action, and

''(3) in the court's discretion, reasonable attorneys fees.

''(c) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce the liability created under this section may be brought without regard to the amount in controversy and may be brought only within the later of—

''(1) 6 years after the date of the filing of the fraudulent information return, or

''(2) 1 year after the date such fraudulent information return would have been discovered by exercise of reasonable care.

''(d) COPY OF COMPLAINT FILED WITH IRS.—Any person bringing an action under subsection (a) shall provide a copy of the complaint to the Internal Revenue Service upon the filing of such complaint with the court.

"(e) FINDING OF COURT TO INCLUDE CORRECT AMOUNT OF PAYMENT.—The decision of the court awarding damages in an action brought under subsection (a) shall include a finding of the correct amount which should have been reported in the information return.

"(f) INFORMATION RETURN.—For purposes of this section, the term 'information return' means any statement described in section 6724(d)(1)(A)."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by striking the item relating to section 7434 and inserting the following:

"Sec. 7434. Civil damages for fraudulent filing of information returns.
"Sec. 7435. Cross references."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fraudulent information returns filed after the date of the enactment of this Act.

**SEC. 13327. REQUIREMENT TO CONDUCT REASONABLE INVESTIGATIONS OF INFORMATION RETURNS.**

(a) GENERAL RULE.—Section 6201 (relating to assessment authority) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) REQUIRED REASONABLE VERIFICATION OF INFORMATION RETURNS.—In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any

item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

## PART VII—AWARDING OF COSTS AND CERTAIN FEES

### SEC. 13331. UNITED STATES MUST ESTABLISH THAT ITS POSITION IN PROCEEDING WAS SUBSTANTIALLY JUSTIFIED.

(a) GENERAL RULE.—Subparagraph (A) of section 7430(c)(4) (defining prevailing party) is amended by striking clause (i) and by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(b) BURDEN OF PROOF ON UNITED STATES.—Paragraph (4) of section 7430(c) is amended by redesignating

subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) EXCEPTION IF UNITED STATES ESTABLISHES THAT ITS POSITION WAS SUBSTANTIALLY JUSTIFIED.—

"(i) GENERAL RULE.—A party shall not be treated as the prevailing party in a proceeding to which subsection (a) applies if the United States establishes that the position of the United States in the proceeding was substantially justified.

"(ii) PRESUMPTION OF NO JUSTIFICATION IF INTERNAL REVENUE SERVICE DIDN'T FOLLOW CERTAIN PUBLISHED GUIDANCE.—For purposes of clause (i), the position of the United States shall be presumed not to be substantially justified if the Internal Revenue Service did not follow its applicable published guidance in the administrative proceeding. Such presumption may be rebutted.

"(iii) APPLICABLE PUBLISHED GUIDANCE.—For purposes of clause (ii), the term 'applicable published guidance' means—

''(I) regulations, revenue rulings, revenue procedures, information releases, notices, and announcements, and

''(II) any of the following which are issued to the taxpayer: private letter rulings, technical advice memoranda, and determination letters.''

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 7430(c)(2) is amended by striking ''paragraph (4)(B)'' and inserting ''paragraph (4)(C)''.

(2) Subparagraph (C) of section 7430(c)(4), as redesignated by subsection (b), is amended by striking ''subparagraph (A)'' and inserting ''this paragraph''.

(3) Sections 6404(g) and 6656(c)(1), as amended by this title, are each amended by striking ''section 7430(c)(4)(A)(iii)'' and inserting ''section 7430(c)(4)(A)(ii)''.

**SEC. 13332. INCREASED LIMIT ON ATTORNEY FEES.**

Paragraph (1) of section 7430(c) (defining reasonable litigation costs) is amended—

(1) by striking ''$75'' in clause (iii) of subparagraph (B) and inserting ''$110'',

(2) by striking ''an increase in the cost of living or'' in clause (iii) of subparagraph (B), and

(3) by adding after clause (iii) the following: ''In the case of any calendar year beginning after 1996, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10.''

**SEC. 13333. FAILURE TO AGREE TO EXTENSION NOT TAKEN INTO ACCOUNT.**

Paragraph (1) of section 7430(b) (relating to requirement that administrative remedies be exhausted) is amended by adding at the end the following new sentence: ''Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence.''

**SEC. 13334. AWARD OF LITIGATION COSTS PERMITTED IN DECLARATORY JUDGMENT PROCEEDINGS.**

Subsection (b) of section 7430 is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

**SEC. 13335. EFFECTIVE DATE.**

The amendments made by this part shall apply in the case of proceedings commenced after the date of the enactment of this Act.

## PART VIII—MODIFICATION TO RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS

**SEC. 13336. INCREASE IN LIMIT ON RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS.**

(a) GENERAL RULE.—Subsection (b) of section 7433 (relating to damages) is amended by striking ''$100,000'' and inserting ''$1,000,000''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

**SEC. 13337. COURT DISCRETION TO REDUCE AWARD FOR LITIGATION COSTS FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.**

(a) GENERAL RULE.—Paragraph (1) of section 7433(d) (relating to civil damages for certain unauthorized collection actions) is amended to read as follows:

''(1) AWARD FOR DAMAGES MAY BE REDUCED IF ADMINISTRATIVE REMEDIES NOT EXHAUSTED.—The amount of damages awarded under subsection (b) may be reduced if the court determines that the plaintiff has not exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply in the case of proceedings commenced after the date of the enactment of this Act.

## PART IX—MODIFICATIONS TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX

**SEC. 13341. PRELIMINARY NOTICE REQUIREMENT.**

(a) IN GENERAL.—Section 6672 (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

''(b) PRELIMINARY NOTICE REQUIREMENT.—

"(1) IN GENERAL.—No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) that the taxpayer shall be subject to an assessment of such penalty.

"(2) TIMING OF NOTICE.—The mailing of the notice described in paragraph (1) shall precede any notice and demand of any penalty under subsection (a) by at least 60 days.

"(3) STATUTE OF LIMITATIONS.—If a notice described in paragraph (1) with respect to any penalty is mailed before the expiration of the period provided by section 6501 for the assessment of such penalty (determined without regard to this paragraph), the period provided by such section for the assessment of such penalty shall not expire before the later of—

"(A) the date 90 days after the date on which such notice was mailed, or

"(B) if there is a timely protest of the proposed assessment, the date 30 days after the Secretary makes a final administrative determination with respect to such protest.

"(4) EXCEPTION FOR JEOPARDY.—This subsection shall not apply if the Secretary finds that the collection of the penalty is in jeopardy."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to proposed assessments made after June 30, 1996.

**SEC. 13342. DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON LIABLE FOR PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX.**

(a) IN GENERAL.—Subsection (e) of section 6103 (relating to disclosure to persons having material interest), as amended by section 13318, is amended by adding at the end the following new paragraph:

"(9) DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON SUBJECT TO PENALTY UNDER SECTION 6672.—If the Secretary determines that a person is liable for a penalty under section 6672(a) with respect to any failure, upon request in writing of such person, the Secretary shall disclose in writing to such person—

"(A) the name of any other person whom the Secretary has determined to be liable for such penalty with respect to such failure, and

"(B) whether the Secretary has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

**SEC. 13343. RIGHT OF CONTRIBUTION WHERE MORE THAN 1 PERSON LIABLE FOR PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX.**

(a) IN GENERAL.—Section 6672 (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by adding at the end the following new subsection:

"(d) RIGHT OF CONTRIBUTION WHERE MORE THAN 1 PERSON LIABLE FOR PENALTY.—If more than 1 person is liable for the penalty under subsection (a) with respect to any tax, each person who paid such penalty shall be entitled to recover from other persons who are liable for such penalty an amount equal to the excess of the amount paid by such person over such person's proportionate share of the penalty. Any claim for such a recovery may be made only in a proceeding which is separate from, and is not joined with—

''(1) an action for collection of such penalty brought by the United States, or

''(2) a proceeding in which the United States files a counterclaim or third-party complaint for the collection of such penalty.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to penalties assessed after the date of the enactment of this Act.

**SEC. 13344. VOLUNTEER BOARD MEMBERS OF TAX-EXEMPT ORGANIZATIONS EXEMPT FROM PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX.**

(a) IN GENERAL.—Section 6672 is amended by adding at the end the following new subsection:

''(e) EXCEPTION FOR VOLUNTARY BOARD MEMBERS OF TAX-EXEMPT ORGANIZATIONS.—No penalty shall be imposed by subsection (a) on any unpaid, volunteer member of any board of trustees or directors of an organization exempt from tax under subtitle A if such member—

''(1) is solely serving in an honorary capacity,

''(2) does not participate in the day-to-day or financial operations of the organization, and

''(3) does not have actual knowledge of the failure on which such penalty is imposed.

The preceding sentence shall not apply if it results in no person being liable for the penalty imposed by subsection (a).''

(b) PUBLIC INFORMATION REQUIREMENTS.—

(1) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate (hereafter in this subsection referred to as the ''Secretary'') shall take such actions as may be appropriate to ensure that employees are aware of their responsibilities under the Federal tax depository system, the circumstances under which employees may be liable for the penalty imposed by section 6672 of the Internal Revenue Code of 1986, and the responsibility to promptly report to the Internal Revenue Service any failure referred to in subsection (a) of such section 6672. Such actions shall include—

(A) printing of a warning on deposit coupon booklets and the appropriate tax returns that certain employees may be liable for the penalty imposed by such section 6672, and

(B) the development of a special information packet.

(2) DEVELOPMENT OF EXPLANATORY MATERIALS.—The Secretary shall develop materials explaining the circumstances under which board mem-

bers of tax-exempt organizations (including voluntary and honorary members) may be subject to penalty under section 6672 of such Code. Such materials shall be made available to tax-exempt organizations.

(3) IRS INSTRUCTIONS.—The Secretary shall clarify the instructions to Internal Revenue Service employees on the application of the penalty under section 6672 of such Code with regard to voluntary members of boards of trustees or directors of tax-exempt organizations.

## PART X—MODIFICATIONS OF RULES RELATING TO SUMMONSES

### SEC. 13346. ENROLLED AGENTS INCLUDED AS THIRD-PARTY RECORDKEEPERS.

(a) IN GENERAL.—Paragraph (3) of section 7609(a) (relating to third-party recordkeeper defined) is amended by striking ''and'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting ''; and'', and by adding at the end the following the subparagraph:

''(I) any enrolled agent.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to summonses issued after the date of the enactment of this Act.

**SEC. 13347. SAFEGUARDS RELATING TO DESIGNATED SUMMONSES.**

(a) STANDARD OF REVIEW.—Subparagraph (A) of section 6503(j)(2) (defining designated summons) is amended by redesignating clauses (i) and (ii) as clauses (ii) and (iii), respectively, and by inserting before clause (ii) (as so redesignated) the following new clause:

> ''(i) the issuance of such summons is preceded by a review of such issuance by the regional counsel of the Office of Chief Counsel for the region in which the examination of the corporation is being conducted,''.

(b) LIMITATION ON PERSONS TO WHOM DESIGNATED SUMMONS MAY BE ISSUED.—Paragraph (1) of section 6503(j) is amended by striking ''with respect to any return of tax by a corporation'' and inserting ''to a corporation (or to any other person to whom the corporation has transferred records) with respect to any return of tax by such corporation for a taxable year (or other period) for which such corporation is being examined under the coordinated examination program (or any successor program) of the Internal Revenue Service''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to summonses issued after the date of the enactment of this Act.

**SEC. 13348. ANNUAL REPORT TO CONGRESS CONCERNING DESIGNATED SUMMONSES.**

Not later than December 31 of each calendar year after 1995, the Secretary of the Treasury or his delegate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the number of designated summonses (as defined in section 6503(j) of the Internal Revenue Code of 1986) which were issued during the preceding 12 months.

## PART XI—RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS

**SEC. 13351. RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS.**

(a) IN GENERAL.—Subsection (b) of section 7805 (relating to rules and regulations) is amended to read as follows:

''(b) RETROACTIVITY OF REGULATIONS.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates:

''(A) The date on which such regulation is filed with the Federal Register.

"(B) In the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register.

"(C) The date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.

"(2) EXCEPTION FOR PROMPTLY ISSUED REGULATIONS.—Paragraph (1) shall not apply to regulations filed or issued within 12 months of the date of the enactment of the statutory provision to which the regulation relates.

"(3) PREVENTION OF ABUSE.—The Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse.

"(4) CORRECTION OF PROCEDURAL DEFECTS.—The Secretary may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

"(5) INTERNAL REGULATIONS.—The limitation of paragraph (1) shall not apply to any regulation relating to internal Treasury Department policies, practices, or procedures.

"(6) CONGRESSIONAL AUTHORIZATION.—The limitation of paragraph (1) may be superseded by a legislative grant from Congress authorizing the Secretary to prescribe the effective date with respect to any regulation.

"(7) ELECTION TO APPLY RETROACTIVELY.—Paragraph (1) shall not apply to any regulation which the taxpayer elects to apply before the dates specified in paragraph (1) but only if such election applies to all regulations which were issued with such regulation under the statutory provision to which such regulation relates.

"(8) APPLICATION TO RULINGS.—The Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to regulations which relate to statutory provisions enacted on or after the date of the enactment of this Act.

## PART XII—MISCELLANEOUS PROVISIONS

### SEC. 13356. REPORT ON PILOT PROGRAM FOR APPEAL OF ENFORCEMENT ACTIONS.

Not later than March 1, 1996, the Secretary of the Treasury or his delegate shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the pilot program for appeals of enforcement actions (including lien, levy, and seizure actions) to the Appeals Division of the Internal Revenue Service, together with such recommendations as he may deem advisable.

### SEC. 13357. PHONE NUMBER OF PERSON PROVIDING PAYEE STATEMENTS REQUIRED TO BE SHOWN ON SUCH STATEMENT.

(a) GENERAL RULE.—The following provisions are each amended by striking ''name and address'' and inserting ''name, address, and phone number of the information contact'':

(1) Section 6041(d)(1).

(2) Section 6041A(e)(1).

(3) Section 6042(c)(1).

(4) Section 6044(e)(1).

(5) Section 6045(b)(1).

(6) Section 6049(c)(1)(A).

(7) Section 6050B(b)(1).

(8) Section 6050H(d)(1).

(9) Section 6050I(e)(1).

(10) Section 6050J(e).

(11) Section 6050K(b)(1).

(12) Section 6050N(b)(1).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to statements required to be furnished after December 31, 1996 (determined without regard to any extension).

**SEC. 13358. REQUIRED NOTICE OF CERTAIN PAYMENTS.**

If any payment is received by the Secretary of the Treasury or his delegate from any taxpayer and the Secretary cannot associate such payment with such taxpayer, the Secretary shall make reasonable efforts to notify the taxpayer of such inability within 60 days after the receipt of such payment.

**SEC. 13359. UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.**

(a) IN GENERAL.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties), as amended by section 13316(a), is amended by redesignating section 7435 as section 7436 and by inserting after section 7434 the following new section:

**"SEC. 7435. CIVIL DAMAGES FOR UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.**

''(a) IN GENERAL.—If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or enrolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant, or enrolled agent for purposes of obtaining advice concerning the taxpayer's tax liability, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

''(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of $500,000 or the sum of—

''(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the information disclosure, and

''(2) the costs of the action.

Damages shall not include the taxpayer's liability for any civil or criminal penalties, or other losses attributable to incarceration or the imposition of other criminal sanctions.

"(c) PAYMENT AUTHORITY.—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

"(d) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the actions creating such liability would have been discovered by exercise of reasonable care.

"(e) MANDATORY STAY.—Upon a certification by the Commissioner or the Commissioner's delegate that there is an ongoing investigation or prosecution of the taxpayer, the district court before which an action under this section is pending, shall stay all proceedings with respect to such action pending the conclusion of the investigation or prosecution.

"(f) CRIME-FRAUD EXCEPTION.—Subsection (a) shall not apply to information conveyed to an attorney, certified public accountant, or enrolled agent for the purpose of perpetrating a fraud or crime."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76, as amended by section 13316(b), is amended by striking the item relating to sec-

tion 7435 and by adding at the end the following new items:

"Sec. 7435. Civil damages for unauthorized enticement of information disclosure.
"Sec. 7436. Cross references."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions after the date of the enactment of this Act.

**SEC. 13360. ANNUAL REMINDERS TO TAXPAYERS WITH OUTSTANDING DELINQUENT ACCOUNTS.**

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

**"SEC. 7524. ANNUAL NOTICE OF TAX DELINQUENCY.**

"Not less often than annually, the Secretary shall send a written notice to each taxpayer who has a tax delinquent account of the amount of the tax delinquency as of the date of the notice."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

"Sec. 7524. Annual notice of tax delinquency."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years after 1995.

**SEC. 13361. 5-YEAR EXTENSION OF AUTHORITY FOR UNDERCOVER OPERATIONS.**

(a) IN GENERAL.—Paragraph (3) of section 7601(c) of the Anti-Drug Abuse Act of 1988 is amended by striking all that follows ''this Act'' and inserting a period.

(b) RESTORATION OF AUTHORITY FOR 5 YEARS.—Subsection (c) of section 7608 is amended by adding at the end the following new paragraph:

''(6) APPLICATION OF SECTION.—The provisions of this subsection—

''(A) shall apply after November 17, 1988, and before January 1, 1990, and

''(B) shall apply after the date of the enactment of this paragraph and before January 1, 2001.

All amounts expended pursuant to this subsection during the period described in subparagraph (B) shall be recovered to the extent possible, and deposited in the Treasury of the United States as miscellaneous receipts, before January 1, 2001.''

(c) ENHANCED OVERSIGHT.—

(1) ADDITIONAL INFORMATION REQUIRED IN REPORTS TO CONGRESS.—Subparagraph (B) of section 7608(c)(4) is amended—

(A) by striking ''preceding the period'' in clause (ii),

(B) by striking ''and'' at the end of clause (ii), and

(C) by striking clause (iii) and inserting the following:

''(iii) the number, by programs, of undercover investigative operations closed in the 1-year period for which such report is submitted, and

''(iv) the following information with respect to each undercover investigative operation pending as of the end of the 1-year period for which such report is submitted or closed during such 1-year period—

''(I) the date the operation began and the date of the certification referred to in the last sentence of paragraph (1),

''(II) the total expenditures under the operation and the amount and use of the proceeds from the operation,

''(III) a detailed description of the operation including the potential violation being investigated and

whether the operation is being conducted under grand jury auspices, and

''(IV) the results of the operation including the results of criminal proceedings.''

(2) AUDITS REQUIRED WITHOUT REGARD TO AMOUNTS INVOLVED.—Subparagraph (C) of section 7608(c)(5) is amended to read as follows:

''(C) UNDERCOVER INVESTIGATIVE OPERATION.—The term 'undercover investigative operation' means any undercover investigative operation of the Service; except that, for purposes of subparagraphs (A) and (C) of paragraph (4), such term only includes an operation which is exempt from section 3302 or 9102 of title 31, United States Code.''

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

**SEC. 13362. DISCLOSURE OF FORM 8300 INFORMATION ON CASH TRANSACTIONS.**

(a) IN GENERAL.—Subsection (l) of section 6103 (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

''(15) DISCLOSURE OF RETURNS FILED UNDER SECTION 6050I.—The Secretary may, upon written request, disclose to officers and employees of—

''(A) any Federal agency,

''(B) any agency of a State or local government, or

''(C) any agency of the government of a foreign country,

information contained on returns filed under section 6050I. Any such disclosure shall be made on the same basis, and subject to the same conditions, as apply to disclosures of information on reports filed under section 5313 of title 31, United States Code; except that no disclosure under this paragraph shall be made for purposes of the administration of any tax law.''

(b) CONFORMING AMENDMENTS.—

(1) Subsection (i) of section 6103 is amended by striking paragraph (8).

(2) Subparagraph (A) of section 6103(p)(3) is amended—

(A) by striking ''(7)(A)(ii), or (8)'' and inserting ''or (7)(A)(ii)'', and

(B) by striking ''or (14)'' and inserting ''(14), or (15)''.

(3) The material preceding subparagraph (A) of section 6103(p)(4) is amended—

(A) by striking ''(5), or (8)'' and inserting ''or (5)'',

(B) by striking ''(i)(3)(B)(i), or (8)'' and inserting ''(i)(3)(B)(i),'', and

(C) by striking ''or (12)'' and inserting ''(12), or (15)''.

(4) Clause (ii) of section 6103(p)(4)(F) is amended—

(A) by striking ''(5), or (8)'' and inserting ''or (5)'', and

(B) by striking ''or (14)'' and inserting ''(14), or (15)''.

(5) Paragraph (2) of section 7213(a) is amended by striking ''or (12)'' and inserting ''(12), or (15)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

**SEC. 13363. DISCLOSURE OF RETURNS AND RETURN INFORMATION TO DESIGNEE OF TAXPAYER.**

Subsection (c) of section 6103 (relating to disclosure of returns and return information to designee of taxpayer) is amended by striking ''written request for or consent to

such disclosure'' and inserting ''request for or consent to such disclosure''.

**SEC. 13364. STUDY OF NETTING OF INTEREST ON OVERPAYMENTS AND LIABILITIES.**

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall—

(1) conduct a study of the manner in which the Internal Revenue Service has implemented the netting of interest on overpayments and underpayments and of the policy and administrative implications of global netting, and

(2) before submitting the report of such study, hold a public hearing to receive comments on the matters included in such study.

(b) REPORT.—The report of such study shall be submitted not later than 6 months after the date of the enactment of this Act to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

**SEC. 13365. CREDIT FOR EXPENSES OF CERTAIN TCMP AUDITS.**

(a) IN GENERAL.—Subchapter B of chapter 65 is amended by adding at the end the following new section:

**"SEC. 6428. CREDIT FOR EXPENSES OF 1994 TCMP AUDITS.**

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by subtitle A an amount equal to the qualified TCMP expenses paid or incurred by the taxpayer during the taxable year.

''(b) LIMITATION.—The amount of the credit allowed by subsection (a) shall not exceed $3,000 with respect to an audit.

''(c) QUALIFIED TCMP EXPENSES.—For purposes of this section, the term 'qualified TCMP expenses' means amounts which would (but for subsection (d)) be allowed as a deduction under section 162 or 212(3) in connection with an audit under the Taxpayer Compliance Measurement Program of the taxpayer's return of tax imposed by chapter 1 for any taxable year beginning during 1994. Such term shall not include any expense in connection with an audit of an estate, trust, partnership, or S corporation.

''(d) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under chapter 1 for any amount for which a credit is allowed under this section.

''(e) CREDIT TREATED AS SUBPART C CREDIT.—For purposes of this title, the credit allowed under subsection (a) shall be treated as a credit allowed under subpart C of part IV of subchapter A of chapter 1.''

(b) TECHNICAL AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period ‘‘, or from section 6428 of such Code’’.

(2) The table of sections for such subchapter B is amended by adding at the end the following new item:

‘‘Sec. 6428. Credit for expenses of 1994 TCMP audits.’’

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

**SEC. 13366. EXPENSES OF DETECTION OF UNDERPAYMENTS AND FRAUD, ETC.**

(a) IN GENERAL.—Section 7623 (relating to expenses of deduction and punishment of frauds) is amended to read as follows:

**‘‘SEC. 7623. EXPENSES OF DETECTION OF UNDERPAYMENTS AND FRAUD, ETC.**

‘‘The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums as he deem necessary for—

‘‘(1) detecting underpayments of tax, and

"(2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same,

in cases where such expenses are not otherwise provided for by law. Any amount payable under the preceding sentence shall be paid from the proceeds of amounts (other than interest) collected by reason of the information provided, and any amount so collected shall be available for such payments.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 78 is amended by striking the item relating to section 7623 and inserting the following new item:

"Sec. 7623. Expenses of detection of underpayments and fraud, etc.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date which is 6 months after the enactment of this Act.

(d) REPORT.—The Secretary of the Treasury or his delegate shall submit an annual report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the payments under section 7623 of the Internal Revenue Code of 1986 during the year and on the amounts collected for which such payments were made.

# Subtitle D—Additional Technical Corrections

**SEC. 13401. REPORTING OF REAL ESTATE TRANSACTIONS.**

(a) IN GENERAL.—Paragraph (3) of section 6045(e) (relating to prohibition of separate charge for filing return) is amended by adding at the end the following new sentence: ''Nothing in this paragraph shall be construed to prohibit the real estate reporting person from taking into account its cost of complying with such requirement in establishing its charge (other than a separate charge for complying with such requirement) to any customer for performing services in the case of a real estate transaction.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in section 1015(e)(2)(A) of the Technical and Miscellaneous Revenue Act of 1988.

**SEC. 13402. CLARIFICATION OF DENIAL OF DEDUCTION FOR STOCK REDEMPTION EXPENSES.**

(a) IN GENERAL.—Paragraph (1) of section 162(k) is amended by striking ''the redemption of its stock'' and inserting ''the reacquisition of its stock or of the stock of any related person (as defined in section 465(b)(3)(C))''.

(b) CERTAIN DEDUCTIONS PERMITTED.—Subparagraph (A) of section 162(k)(2) is amended by striking ''or'' at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

''(ii) deduction for amounts which are properly allocable to indebtedness and amortized over the term of such indebtedness, or''.

(c) CLERICAL AMENDMENT.—The subsection heading for subsection (k) of section 162 is amended by striking ''REDEMPTION'' and inserting ''REACQUISITION''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts paid or incurred after September 13, 1995, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall take effect as if included in the amendment made by section 613 of the Tax Reform Act of 1986.

**SEC. 13403. CLARIFICATION OF DEPRECIATION CLASS FOR CERTAIN ENERGY PROPERTY.**

(a) IN GENERAL.—Subparagraph (B) of section 168(e)(3) (relating to 5-year property) is amended by adding at the end the following flush sentence:

> ''Nothing in any provision of law shall be construed to treat property as not being described in clause (vi)(I) (or the corresponding provisions of prior law) by reason of being public utility property (within the meaning of section 48(a)(3)).''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 11813 of the Revenue Reconciliation Act of 1990.

**SEC. 13404. CLERICAL AMENDMENT TO SECTION 404.**

(a) IN GENERAL.—Paragraph (1) of section 404(j) is amended by striking ''(10)'' and inserting ''(9)''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 713(d)(4)(A) of the Deficit Reduction Act of 1984.

**SEC. 13405. TREATMENT OF CERTAIN VETERANS' REEMPLOYMENT RIGHTS.**

(a) IN GENERAL.—Section 414 is amended by adding at the end the following new subsection:

"(u) SPECIAL RULES RELATING TO VETERANS' REEMPLOYMENT RIGHTS.—

"(1) TREATMENT OF CERTAIN CONTRIBUTIONS MADE PURSUANT TO VETERANS' REEMPLOYMENT RIGHTS.—If any contribution is made by an employer or an employee under an individual account plan with respect to an employee, or by an employee to a defined benefit pension plan that provides for employee contributions, and such contribution is required by reason of such employee's rights under chapter 43 of title 38, United States Code, resulting from qualified military service, then—

"(A) such contribution shall not be subject to any otherwise applicable limitation contained in section 402(g), 402(h), 403(b), 404(a), 404(h), 408, 415, or 457, and shall not be taken into account in applying such limitations to other contributions or benefits under such plan or any other plan, with respect to the year in which the contribution is made,

"(B) such contribution shall be subject to the limitations referred to in subparagraph (A) with respect to the year to which the contribution relates (in accordance with rules prescribed by the Secretary), and

"(C) such plan shall not be treated as failing to meet the requirements of section 401(a)(4), 401(a)(26), 401(k)(3), 401(m), 403(b)(12), 408(k)(3), 408(k)(6), 410(b), or 416 by reason of the making of such contribution.

For purposes of the preceding sentence, any elective deferral or employee contribution made under paragraph (2) shall be treated as required by reason of the employee's rights under such chapter.

"(2) REEMPLOYMENT RIGHTS WITH RESPECT TO ELECTIVE DEFERRALS.—

"(A) IN GENERAL.—For purposes of this subchapter and subchapter E, if an employee is entitled to the benefits of chapter 43 of title 38, United States Code, with respect to any plan which provides for elective deferrals, the employer sponsoring the plan shall be treated as meeting the requirements of such chapter 43 with respect to such elective deferrals only if such employer—

"(i) permits such employee to make additional elective deferrals under such plan (in the amount determined under subparagraph (B) or such lesser amount as is

elected by the employee) during the period which begins on the date of the reemployment of such employee with such employer and has the same length as the lesser of—

''(I) the product of 3 and the period of qualified military service which resulted in such rights, and

''(II) 5 years, and

''(ii) makes a matching contribution with respect to any additional elective deferral made pursuant to clause (i) which would have been required had such deferral actually been made during the period of such qualified military service.

''(B) AMOUNT OF MAKEUP REQUIRED.—The amount determined under this subparagraph with respect to any plan is the maximum amount of the elective deferrals that the individual would have been permitted to make under the plan in accordance with the limitations referred to in paragraph (1)(A) during his period of qualified military service if he had continued to be employed by the employer during such period and received compensation as determined under paragraph (7). Proper adjust-

ment shall be made to the amount determined under the preceding sentence for any elective deferrals actually made during the period of such qualified military service.

''(C) ELECTIVE DEFERRAL.—For purposes of this paragraph, the term 'elective deferral' has the meaning given such term by section 402(g)(3); except that such term shall include any deferral of compensation under an eligible deferred compensation plan (as defined in section 457(b)).

''(D) AFTER-TAX EMPLOYEE CONTRIBUTIONS.—References in subparagraphs (A) and (B) to elective deferrals shall be treated as including references to other employee contributions.

''(3) CERTAIN RETROACTIVE ADJUSTMENTS NOT REQUIRED.—For purposes of this subchapter and subchapter E, no provision of chapter 43 of title 38, United States Code, shall be construed as requiring—

''(A) any crediting of earnings to an employee with respect to any contribution before such contribution is actually made, or

''(B) any allocation of any forfeiture with respect to the period of qualified military service.

''(4) LOAN REPAYMENT SUSPENSIONS PERMITTED.—If any plan suspends the obligation to repay any loan made to an employee from such plan for any part of any period during which such employee is performing qualified military service, such suspension shall not be taken into account for purposes of section 72(p), 401(a), or 4975(d)(1).

''(5) QUALIFIED MILITARY SERVICE.—For purposes of this subsection, the term 'qualified military service' means any service in the uniformed services (as defined in chapter 43 of title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

''(6) INDIVIDUAL ACCOUNT PLAN.—For purposes of this subsection, the term 'individual account plan' means any defined contribution plan, any tax-sheltered annuity plan under section 403(b), and any eligible deferred compensation plan (as defined in section 457(b)).

''(7) COMPENSATION.—For purposes of section 415(c)(3), an employee who is in qualified military

service shall be treated as receiving compensation from the employer during such period of qualified military service equal to—

''(A) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for absence during the period of qualified military service, or

''(B) if the compensation of the employee was not based on a fixed rate, the employee's average compensation from the employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

''(8) REQUIREMENTS FOR QUALIFIED RETIREMENT PLAN.—For purposes of this subchapter and subchapter E, an employer sponsoring a plan shall be treated as meeting the requirements of chapter 43 of title 38, United States Code, only if each of the following requirements is met:

''(A) An individual reemployed under such chapter is treated with respect to such plan as

not having incurred a break in service with the employer maintaining the plan by reason of such individual's period of qualified military service.

''(B) Each period of qualified military service served by an individual is, upon reemployment under such chapter, deemed with respect to such plan to constitute service with the employer maintaining the plan for the purpose of determining the nonforfeitability of the individual's accrued benefits under such plan and for the purpose of determining the accrual of benefits under such plan.

''(C) An individual reemployed under such chapter is entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals only to the extent the individual makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the individual would have been permitted or required to contribute had the individual remained continuously employed by the employer throughout the period of qualified military service. Any payment to such plan shall

be made during the period beginning with the date of reemployment and whose duration is 3 times the period of the qualified military service (but not greater than 5 years).

''(9) REFERENCES.—For purposes of this section, any reference to chapter 43 of title 38, United States Code, shall be treated as a reference to such chapter as in effect on December 12, 1994 (without regard to any subsequent amendment).''

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective as of December 12, 1994.

## Subtitle E—Tax Information Sharing

### SEC. 13501. DISCLOSURE OF RETURN INFORMATION FOR ADMINISTRATION OF CERTAIN VETERANS PROGRAMS.

(a) GENERAL RULE.—Subparagraph (D) of section 6103(l)(7) (relating to disclosure of return information to Federal, State, and local agencies administering certain programs) is amended by striking ''Clause (viii) shall not apply after September 30, 1998.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

# Subtitle F—Revenue Increases

## PART I—PROVISIONS RELATING TO BUSINESSES

### SEC. 13601. TAX TREATMENT OF CERTAIN EXTRAORDINARY DIVIDENDS.

(a) TREATMENT OF EXTRAORDINARY DIVIDENDS IN EXCESS OF BASIS.—Paragraph (2) of section 1059(a) (relating to corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends) is amended to read as follows:

"(2) AMOUNTS IN EXCESS OF BASIS.—If the nontaxed portion of such dividends exceeds such basis, such excess shall be treated as gain from the sale or exchange of such stock for the taxable year in which the extraordinary dividend is received."

(b) TREATMENT OF REDEMPTIONS WHERE OPTIONS INVOLVED.—Paragraph (1) of section 1059(e) (relating to treatment of partial liquidations and non-pro rata redemptions) is amended to read as follows:

"(1) TREATMENT OF PARTIAL LIQUIDATIONS AND CERTAIN REDEMPTIONS.—Except as otherwise provided in regulations—

"(A) REDEMPTIONS.—In the case of any redemption of stock—

"(i) which is part of a partial liquidation (within the meaning of section 302(e)) of the redeeming corporation,

"(ii) which is not pro rata as to all shareholders, or

"(iii) which would not have been treated (in whole or in part) as a dividend if any options had not been taken into account under section 318(a)(4),

any amount treated as a dividend with respect to such redemption shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock. In the case of a redemption described in clause (iii), only the basis in the stock redeemed shall be taken into account under subsection (a).

"(B) REORGANIZATIONS, ETC.—An exchange described in section 356(a)(1) which is treated as a dividend under section 356(a)(2) shall be treated as a redemption of stock for purposes of applying subparagraph (A)."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to distributions after May 3, 1995.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution made pursuant to the terms of—

(A) a written binding contract in effect on May 3, 1995, and at all times thereafter before such distribution, or

(B) a tender offer outstanding on May 3, 1995.

(3) CERTAIN DIVIDENDS NOT PURSUANT TO CERTAIN REDEMPTIONS.—In determining whether the amendment made by subsection (a) applies to any extraordinary dividend other than a dividend treated as an extraordinary dividend under section 1059(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act), paragraphs (1) and (2) shall be applied by substituting ''September 13, 1995'' for ''May 3, 1995''.

**SEC. 13602. REGISTRATION OF CONFIDENTIAL CORPORATE TAX SHELTERS.**

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively,

and by inserting after subsection (c) the following new subsection:

''(d) CERTAIN CONFIDENTIAL ARRANGEMENTS TREATED AS TAX SHELTERS.—

''(1) IN GENERAL.—For purposes of this section, the term 'tax shelter' includes any entity, plan, arrangement, or transaction—

''(A) a significant purpose of which is the avoidance or evasion of Federal income tax for a participant which is a corporation,

''(B) which is offered to any potential participant under conditions of confidentiality, and

''(C) for which the tax shelter organizers may receive fees in excess of $100,000 in the aggregate.

''(2) CONDITIONS OF CONFIDENTIALITY.—For purposes of paragraph (1)(C), an offer is under conditions of confidentiality if—

''(A) the potential participant to whom the offer is made (or any other person acting on behalf of such participant) has an understanding or agreement with or for the benefit of any promoter of the tax shelter that such participant (or other person) will limit disclosure of the tax

shelter or any significant tax features of the tax shelter, or

''(B) any promoter of the tax shelter—

''(i) claims, knows, or has reason to know,

''(ii) knows or has reason to know that any other person (other than the potential participant) claims, or

''(iii) causes another person to claim, that the tax shelter (or any aspect thereof) is proprietary to any person other than the potential participant or is otherwise protected from disclosure to or use by others.

For purposes of this subsection, the term 'promoter' means any person who participates in the organization, management, or sale of the tax shelter.

''(3) PERSONS OTHER THAN ORGANIZER REQUIRED TO REGISTER IN CERTAIN CASES.—

''(A) IN GENERAL.—If—

''(i) the requirements of subsection (a) are not met with respect to any tax shelter (as defined in paragraph (1)) by any tax shelter organizer, and

''(ii) no tax shelter organizer is a United States person,

then each United States person who discussed participation in such shelter shall register such shelter under subsection (a).

''(B) EXCEPTION.—Subparagraph (A) shall not apply to a United States person who discussed participation in a tax shelter if—

''(i) such person notified the promoter in writing (not later than the close of the day on which such discussions began) that such person would not participate in such shelter, and

''(ii) such person does not participate in such shelter.

''(4) OFFER TO PARTICIPATE TREATED AS OFFER FOR SALE.—For purposes of subsections (a) and (b), an offer to participate in a tax shelter (as defined in paragraph (1)) shall be treated as an offer for sale.''

(b) PENALTY.—Subsection (a) of section 6707 (relating to failure to furnish information regarding tax shelters) is amended by adding at the end the following new paragraph:

''(3) CONFIDENTIAL ARRANGEMENTS.—

''(A) IN GENERAL.—In the case of a tax shelter (as defined in section 6111(d)), the pen-

alty imposed under paragraph (1) shall be an amount equal to the greater of—

''(i) 50 percent of the fees paid to any promoter of the tax shelter with respect to offerings made before the date such shelter is registered under section 6111, or

''(ii) $10,000.

Clause (i) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in paragraph (1).

''(B) SPECIAL RULE FOR PARTICIPANTS REQUIRED TO REGISTER SHELTER.—In the case of a person required to register such a tax shelter by reason of section 6111(d)(3)—

''(i) such person shall be required to pay the penalty under paragraph (1) only if such person actually participated in such shelter,

''(ii) the amount of such penalty shall be determined by taking into account under subparagraph (A)(i) only the fees paid by such person, and

''(iii) such penalty shall be in addition to the penalty imposed on any other person for failing to register such shelter.''

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 6707(a) is amended by striking ''The penalty'' and inserting ''Except as provided in paragraph (3), the penalty''.

(2) Subparagraph (A) of section 6707(a)(1) is amended by striking ''paragraph (2)'' and inserting ''paragraph (2) or (3), as the case may be''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to any tax shelter (as defined in section 6111(d) of the Internal Revenue Code of 1986, as amended by this section) interests in which are offered to potential participants after the date of the enactment of this Act.

(2) DUE DATE FOR REGISTRATION.—The due date for registering any tax shelter required to be registered by reason of the amendments made by this section shall be not earlier than the close of a reasonable period after the Secretary of the Treasury prescribes guidance with respect to meeting such requirements.

**SEC. 13603. DENIAL OF DEDUCTION FOR INTEREST ON LOANS WITH RESPECT TO COMPANY-OWNED INSURANCE.**

(a) IN GENERAL.—Paragraph (4) of section 264(a) is amended—

(1) by inserting ''or endowment or annuity contract'' after ''life insurance policies'', and

(2) by striking all that follows ''carried on by the taxpayer'' and inserting a period.

(b) PHASE-IN OF DISALLOWANCE.—Section 264 is amended by adding at the end the following new subsection:

''(d) PHASE-IN OF DISALLOWANCE UNDER SUBSECTION (a)(4).—In the case of calendar years after 1995 and before 2000—

''(1) IN GENERAL.—The amount of interest paid or accrued during any period in any such calendar year with respect to qualified indebtedness which is disallowed by reason of the amendment made by section 13603(a) of the Revenue Reconciliation Act of 1995 (determined without regard to this subsection) shall not exceed the applicable percentage of such interest which is so disallowed.

''(2) QUALIFIED INDEBTEDNESS.—For purposes of paragraph (1), the term 'qualified indebtedness' means indebtedness incurred before September

18, 1995, with respect to a life insurance policy covering only the life of the individual who was insured under such policy on such date. Any increase on or after such date in the amount of such indebtedness shall be treated as indebtedness incurred after such date.

''(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage shall be determined in accordance with the following table:

| **"In the case of periods in calendar year:** | **The applicable percentage is:** |
|---|---|
| 1996 | 20 percent |
| 1997 | 40 percent |
| 1998 | 60 percent |
| 1999 | 80 percent.'' |

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to interest paid or accrued after December 31, 1995.

(2) EXCEPTION.—The amendments made by this section shall not apply to contracts purchased on or before June 20, 1986.

(d) 4-YEAR SPREAD OF INCOME INCLUSION ON SURRENDER, ETC. OF CONTRACTS.—

(1) IN GENERAL.—In the case of indebtedness with respect to any life insurance policy described in paragraph (4) of section 264(a) of the Internal Revenue Code of 1986, if—

(A) the interest paid or accrued after December 31, 1995, on such indebtedness is not allowed as a deduction under chapter 1 of such Code by reason of such paragraph (4) (as amended by this section), and

(B) the entire amount of interest paid or accrued on or before such date on such indebtedness was allowed as a deduction under such chapter 1,

then (in lieu of any other inclusion in gross income) the qualified amount with respect to such policy shall be includible in gross income ratably over the 4 taxable years beginning with the taxable year such amount would (but for this paragraph) be includible.

(2) QUALIFIED AMOUNT.—For purposes of paragraph (1), the term ''qualified amount'' means, with respect to any policy, the amount received under such policy—

(A) on the complete surrender, redemption, or maturity of such policy during 1996, or

(B) in full discharge during 1996 of the obligation under the policy which is in the nature of a refund of the consideration paid for the policy,

but only to the extent such amount is includible in gross income for the taxable year in which the event described in subparagraph (A) or (B) occurs.

(3) SPECIAL RULE.—A contract shall not be treated as failing to meet the requirement of section 264(c)(1) of the Internal Revenue Code of 1986 solely by reason of an occurrence described in subparagraph (A) or (B) of paragraph (2) of this subsection.

**SEC. 13604. TERMINATION OF SUSPENSE ACCOUNTS FOR FAMILY CORPORATIONS REQUIRED TO USE ACCRUAL METHOD OF ACCOUNTING.**

(a) IN GENERAL.—Subsection (i) of section 447 (relating to method of accounting for corporations engaged in farming) is amended by adding at the end the following new paragraph:

''(7) TERMINATION.—

''(A) IN GENERAL.—No suspense account may be established under this subsection by any corporation required by this section to change its method of accounting for any taxable year ending after September 13, 1995.

''(B) 20-YEAR PHASEOUT OF EXISTING SUSPENSE ACCOUNTS.—Each suspense account under this subsection shall be reduced (but not

below zero) for each of the first 20 taxable years beginning after September 13, 1995, by an amount equal to the applicable portion of such account. Any reduction in a suspense account under this paragraph shall be included in gross income for the taxable year of the reduction. The amount of the reduction required under this paragraph for any taxable year shall be reduced (but not below zero) by the amount of any reduction required for such taxable year under any other provision of this subsection.

''(C) APPLICABLE PORTION.—For purposes of subparagraph (B), the term 'applicable portion' means, for any taxable year, the amount which would ratably reduce the amount in the account (after taking into account prior reductions) to zero over the period consisting of such taxable year and the remaining taxable years in such first 20 taxable years.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after September 13, 1995.

**SEC. 13605. TERMINATION OF PUERTO RICO AND POSSESSION TAX CREDIT.**

(a) IN GENERAL.—Section 936 is amended by adding at the end the following new subsection:

''(j) TERMINATION.—

''(1) IN GENERAL.—This section shall not apply to any taxable year beginning after December 31, 1995.

''(2) EXCEPTION FOR EXISTING CLAIMANTS.—

''(A) IN GENERAL.—Paragraph (1) shall be applied by substituting '2005' for '1995' in the case of an existing credit claimant.

''(B) EXCEPTION TERMINATES IF NEW LINE OF BUSINESS ADDED.—If, after September 13, 1995, a corporation which would (but for this subparagraph) be an existing credit claimant adds a substantial new line of business, such corporation shall cease to be treated as an existing credit claimant as of the close of the taxable year ending before the date of such addition.

''(C) EXISTING CREDIT CLAIMANT.—For purposes of this subsection, the term 'existing credit claimant' means any corporation which satisfied the conditions of both subparagraph (A) and subparagraph (B) of subsection (a)(2)

for at least 1 base period year for which such corporation elected the application of this section.

''(3) LIMIT ON CREDIT OF EXISTING CLAIMANTS.—

''(A) IN GENERAL.—In the case of an existing credit claimant, the aggregate amount of income taken into account under subsection (a)(1) for any taxable year beginning after December 31, 1995 (hereinafter in this subsection referred to as the 'current year'), shall not exceed the adjusted base period income of such claimant.

''(B) COORDINATION WITH SUBSECTION (a)(4).—The amount of income described in subsection (a)(1)(A) which is taken into account in applying subsection (a)(4) shall be such income as reduced under this paragraph. In determining such reduction, any reduction under subparagraph (A) in the amount which would otherwise be taken into account under subsection (a)(1) shall be allocated between the income described in subparagraph (A) thereof and the income described in subparagraph (B) thereof in

proportion to the respective amounts of such incomes.

''(4) ADJUSTED BASE PERIOD INCOME.—For purposes of paragraph (3)—

''(A) IN GENERAL.—The term 'adjusted base period income' means the average of the inflation-adjusted possession incomes of the corporation for each base period year.

''(B) INFLATION-ADJUSTED POSSESSION INCOME.—For purposes of subparagraph (A), the inflation-adjusted possession income of any corporation for any base period year shall be an amount equal to the possession income of such corporation for such base period year multiplied by the inflation adjustment percentage for such base period year.

''(C) INFLATION ADJUSTMENT PERCENTAGE.—For purposes of subparagraph (B), the inflation adjustment percentage for any base period year means, with respect to the current year, the percentage (if any) by which—

''(i) the CPI for last calendar year ending before the beginning of the current year, exceeds

"(ii) the CPI for last calendar year ending before the beginning of the base period year.

For purposes of the preceding sentence, the CPI for any calendar year is the CPI (as defined in section 1(f)(5)) for such year under section 1(f)(4).

"(D) INCREASE IN INFLATION ADJUSTMENT PERCENTAGE FOR GROWTH DURING BASE YEARS.—The inflation adjustment percentage (determined under subparagraph (C) without regard to this subparagraph) for each of the 5 taxable years referred to in paragraph (5)(A) shall be increased by—

"(i) 5 percentage points in the case of a taxable year ending during the 1-year period ending on September 12, 1995;

"(ii) 10.25 percentage points in the case of a taxable year ending during the 1-year period ending on September 12, 1994;

"(iii) 15.76 percentage points in the case of a taxable year ending during the 1-year period ending on September 12, 1993;

"(iv) 21.55 percentage points in the case of a taxable year ending during the 1-

year period ending on September 12, 1992; and

''(v) 27.63 percentage points in the case of a taxable year ending during the 1-year period ending on September 12, 1991.

''(5) BASE PERIOD YEAR.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'base period year' means each of 3 taxable years which are among the 5 most recent taxable years of the corporation ending before September 13, 1995, determined by disregarding—

''(i) one taxable year for which the corporation had the largest inflation-adjusted possession income, and

''(ii) one taxable year for which the corporation had the smallest inflation-adjusted possession income.

''(B) CORPORATIONS NOT HAVING SIGNIFICANT POSSESSION INCOME THROUGHOUT 5-YEAR PERIOD.—

''(i) IN GENERAL.—If a corporation does not have significant possession income for each of the most recent 5 taxable years ending before September 13, 1995, then,

in lieu of applying subparagraph (A), the term 'base period year' means only those taxable years (of such 5 taxable years) for which the corporation has significant possession income; except that, if such corporation has significant possession income for 4 of such 5 taxable years, the rule of subparagraph (A)(ii) shall apply.

''(ii) SPECIAL RULE.—If there is no year (of such 5 taxable years) for which a corporation has significant possession income—

''(I) the term 'base period year' means the first taxable year ending on or after September 13, 1995, but

''(II) the amount of possession income for such year which is taken into account under paragraph (4) shall be the amount which would be determined if such year were a short taxable year ending on August 31, 1995.

''(iii) SIGNIFICANT POSSESSION INCOME.—For purposes of this subparagraph, the term 'significant possession in-

come' means possession income which exceeds 2 percent of the possession income of the taxpayer for the taxable year (of the period of 6 taxable years ending with the first taxable year ending on or after September 13, 1995) having the greatest possession income.

''(C) ELECTION TO USE ONE BASE PERIOD YEAR.—

''(i) IN GENERAL.—At the election of the taxpayer, the term 'base period year' means only the last taxable year of the corporation ending in calendar year 1992.

''(ii) ELECTION.—An election under this subparagraph by any possession corporation may be made only for the corporation's first taxable year beginning after December 31, 1995, for which it is a possession corporation. The rules of subclauses (II) and (III) of subsection (a)(4)(B)(iii) shall apply to the election under this subparagraph.

''(D) ACQUISITIONS AND DISPOSITIONS.—Rules similar to the rules of subparagraphs (A)

and (B) of section 41(f)(3) shall apply for purposes of this subsection.

''(6) POSSESSION INCOME.—For purposes of this subsection, the term 'possession income' means the sum of the income referred to in subsection (a)(1)(A) and the income referred to in subsection (a)(1)(B). In no event shall possession income be treated as being less than zero.

''(7) SHORT YEARS.—If the current year or a base period year is a short taxable year, the application of this subsection shall be made with such annualizations as the Secretary shall prescribe.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1995.

**SEC. 13606. DEPRECIATION UNDER INCOME FORECAST METHOD.**

(a) GENERAL RULE.—Section 167 (relating to depreciation) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

''(g) DEPRECIATION UNDER INCOME FORECAST METHOD.—

''(1) IN GENERAL.—If the depreciation deduction allowable under this section to any taxpayer

with respect to any property is determined under the income forecast method or any similar method—

''(A) in determining the amount of the depreciation deduction under such method, the estimated income from the property shall include all estimated income from use of the property,

''(B) the adjusted basis of the property shall only include amounts with respect to which the requirements of section 461(h) are satisfied,

''(C) the depreciation deduction under such method for the 10th taxable year beginning after the taxable year in which the property was placed in service shall be equal to the adjusted basis of such property as of the beginning of such 10th taxable year, and

''(D) such taxpayer shall pay (or be entitled to receive) interest computed under the look-back method of paragraph (2) for any recomputation year.

''(2) LOOK-BACK METHOD.—The interest computed under the look-back method of this paragraph for any recomputation year shall be determined by—

''(A) first determining the depreciation deductions under this section with respect to such

property which would have been allowable for prior taxable years if the determination of the amounts so allowable had been made on the basis of the sum of the following (instead of the estimated income with respect to such property)—

''(i) the actual income from such property for periods before the close of the recomputation year, and

''(ii) an estimate of the future income with respect to such property for periods after the recomputation year,

''(B) second, determining (solely for purposes of computing such interest) the overpayment or underpayment of tax for each such prior taxable year which would result solely from the application of subparagraph (A), and

''(C) then using the adjusted overpayment rate (as defined in section 460(b)(7)), compounded daily, on the overpayment or underpayment determined under subparagraph (B).

For purposes of the preceding sentence, any cost incurred after the property is placed in service (which is not treated as a separate property under para-

graph (5)) shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such cost is incurred) such cost to its value as of the date the property is placed in service. The taxpayer may elect with respect to any property to have the preceding sentence not apply to such property.

''(3) EXCEPTION FROM LOOK-BACK METHOD.—Paragraph (1)(D) shall not apply with respect to any property which, when placed in service by the taxpayer, had a basis of $100,000 or less.

''(4) RECOMPUTATION YEAR.—For purposes of this subsection, except as provided in regulations, the term 'recomputation year' means, with respect to any property, the third and the 10th taxable years beginning after the taxable year in which the property was placed in service, unless the actual income from the property for such third or 10th taxable year (as the case may be) and each prior taxable year is within 10 percent of the estimated income from the property for each such year which was taken into account under paragraph (1)(A).

''(5) SPECIAL RULES.—

''(A) CERTAIN COSTS TREATED AS SEPARATE PROPERTY.—For purposes of this section,

the following costs shall be treated as separate properties:

''(i) Any costs incurred with respect to any property after the 10th taxable year beginning after the taxable year in which the property was placed in service.

''(ii) Any costs incurred after the property is placed in service and before the close of such 10th taxable year if such costs are significant and give rise to a significant increase in the income from the property which was not included in the estimated income from the property.

''(B) SYNDICATION INCOME FROM TELEVISION SERIES.—In the case of property which is an episode in a television series, estimated income from syndicating such series shall not be required to be taken into account under this subsection before the earlier of—

''(i) the 4th taxable year beginning after the date the first episode in such series is placed in service, or

''(ii) the earliest taxable year in which the taxpayer had a reasonable expectation

that there would be a future syndication of such series.

''(C) COLLECTION OF INTEREST.—For purposes of subtitle F (other than sections 6654 and 6655), any interest required to be paid by the taxpayer under paragraph (1) for any recomputation year shall be treated as an increase in the tax imposed by this chapter for such year.

''(D) DETERMINATIONS.—For purposes of this subsection, determinations of the amount of income from any property shall be determined in the same manner as for purposes of applying the income forecast method; except that any income from the disposition of such property shall be taken into account.

''(E) TREATMENT OF PASS-THRU ENTITIES.—Rules similar to the rules of section 460(b)(4) shall apply for purposes of this subsection.''

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to property placed in service after September 13, 1995.

(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any property produced or acquired by the taxpayer pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such production or acquisition.

**SEC. 13607. TRANSFERS OF EXCESS PENSION ASSETS.**

(a) IN GENERAL.—Section 420 (relating to transfers of excess pension assets to retiree health accounts) is amended by adding at the end the following new subsection:

''(f) SIMILAR RULES TO APPLY TO OTHER TRANSFERS OF EXCESS PLAN ASSETS.—

''(1) IN GENERAL.—If there is a qualified unrestricted transfer of any excess pension assets of a defined benefit plan (other than a multiemployer plan) to an employer—

''(A) a trust which is part of such plan shall not be treated as failing to meet the requirements of section 401(a) solely by reason of such transfer (or any other action authorized under this section), and

''(B) such transfer shall not be treated as a prohibited transaction for purposes of section 4975.

The gross income of the employer shall include the amount of any qualified transfer made during the taxable year.

''(2) QUALIFIED UNRESTRICTED TRANSFER.—For purposes of this section—

''(A) IN GENERAL.—The term 'qualified unrestricted transfer' means a transfer—

''(i) of excess pension assets of a defined benefit plan to the employer, and

''(ii) with respect to which the requirements of subsection (c)(2)(A) are met (determined by treating such transfer as a qualified transfer).

''(B) COORDINATION WITH TRANSFERS TO RETIREE HEALTH ACCOUNTS.—Such term shall not include any qualified transfer (as defined in subsection (b)).

''(C) EXPIRATION.—No transfer in any taxable year beginning after December 31, 2000, shall be treated as a qualified unrestricted transfer.

''(3) DEFINITION AND SPECIAL RULE.—For purposes of this subsection—

''(A) EXCESS PENSION ASSETS.—The term 'excess pension assets' has the meaning given

such term by subsection (e)(2); except that the amount thereof shall be the lesser of—

''(i) the amount determined as of the most recent valuation date of the plan preceding the transfer, or

''(ii) the amount determined as of January 1, 1995 (or, if January 1, 1995, is not a valuation date, the most recent prior valuation date).

''(B) COORDINATION WITH SECTION 412.—In the case of a qualified unrestricted transfer—

''(i) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of section 412, be treated as assets in the plan as of the valuation date for such year, and

''(ii) the plan shall be treated as having a net experience loss under section 412(b)(2)(B)(iv) in an amount equal to the amount of such transfer and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such section

shall be applied to such amount by substituting '10 plan years' for '5 plan years'.

''(C) TREATMENT OF TRANSFERS.—Except for purposes of this section, a qualified unrestricted transfer shall be treated as a qualified transfer to a health benefits account.''

(b) REVERSION TAX.—Section 4980 (relating to tax on reversion of qualified plan assets to employers) is amended by adding at the end the following new subsection:

''(e) SPECIAL RULES FOR QUALIFIED UNRESTRICTED TRANSFERS UNDER SECTION 420.—In the case of a qualified unrestricted transfer to which section 420(f) applies—

''(1) no tax shall be imposed by subsection (a) if such transfer occurs before July 1, 1996,

''(2) subsection (a) shall be applied by substituting '6.5 percent' for '20 percent' if such transfer occurs after June 30, 1996, and

''(3) subsection (d) shall not apply.''

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1995.

## PART II—LEGAL REFORMS

### SEC. 13611. REPEAL OF EXCLUSION FOR PUNITIVE DAMAGES AND FOR DAMAGES NOT ATTRIBUTABLE TO PHYSICAL INJURIES OR SICKNESS.

(a) IN GENERAL.—Paragraph (2) of section 104(a) (relating to compensation for injuries or sickness) is amended to read as follows:

> ''(2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;''.

(b) EMOTIONAL DISTRESS AS SUCH TREATED AS NOT PHYSICAL INJURY OR PHYSICAL SICKNESS.—Section 104(a) is amended by striking the last sentence and inserting the following new sentence: ''For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1)) attributable to emotional distress.''

(c) EFFECTIVE DATE.—

> (1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section

shall apply to amounts received after December 31, 1995, in taxable years ending after such date.

(2) EXCEPTION.—The amendments made by this section shall not apply to any amount received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995.

**SEC. 13612. REPORTING OF CERTAIN PAYMENTS MADE TO ATTORNEYS.**

(a) IN GENERAL.—Section 6045 (relating to returns of brokers) is amended by adding at the end the following new subsection:

''(f) RETURN REQUIRED IN THE CASE OF PAYMENTS TO ATTORNEYS.—

''(1) IN GENERAL.—Any person engaged in a trade or business and making a payment (in the course of such trade or business) to which this subsection applies shall file a return under subsection (a) and a statement under subsection (b) with respect to such payment.

''(2) APPLICATION OF SUBSECTION.—

''(A) IN GENERAL.—This subsection shall apply to any payment to an attorney in connection with legal services (whether or not such services are performed for the payor).

"(B) EXCEPTION.—This subsection shall not apply to the portion of any payment which is required to be reported under section 6041(a) (or would be so required but for the dollar limitation contained therein) or section 6051."

(b) REPORTING OF ATTORNEYS FEES PAYABLE TO CORPORATIONS.—The regulations providing an exception under section 6041 of the Internal Revenue Code of 1986 for payments made to corporations shall not apply to payments of attorneys fees.

(c) EFFECTIVE DATE.—The amendment made by subsection (a), and subsection (b), shall apply to payments made after December 31, 1995.

## PART III—TREATMENT OF INDIVIDUALS WHO LOSE UNITED STATES CITIZENSHIP

### SEC. 13616. REVISION OF INCOME, ESTATE, AND GIFT TAXES ON INDIVIDUALS WHO LOSE UNITED STATES CITIZENSHIP.

(a) IN GENERAL.—Subsection (a) of section 877 is amended to read as follows:

"(a) TREATMENT OF EXPATRIATES.—

"(1) IN GENERAL.—Every nonresident alien individual who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship, unless such loss did not have for

1 of its principal purposes the avoidance of taxes under this subtitle or subtitle B, shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

''(2) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—For purposes of paragraph (1), an individual shall be treated as having a principal purpose to avoid such taxes if—

''(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $100,000, or

''(B) the net worth of the individual as of such date is $500,000 or more.

In the case of the loss of United States citizenship in any calendar year after 1996, such $100,000 and $500,000 amounts shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting '1994' for '1992' in subparagraph (B) thereof. Any in-

crease under the preceding sentence shall be rounded to the nearest multiple of $1,000.''

(b) EXCEPTIONS.—

(1) IN GENERAL.—Section 877 is amended by striking subsection (d), by redesignating subsection (c) as subsection (d), and by inserting after subsection (b) the following new subsection:

''(c) TAX AVOIDANCE NOT PRESUMED IN CERTAIN CASES.—

''(1) IN GENERAL.—Subsection (a)(2) shall not apply to an individual if—

''(A) such individual is described in a subparagraph of paragraph (2) of this subsection, and

''(B) within the 1-year period beginning on the date of the loss of United States citizenship, such individual submits a ruling request for the Secretary's determination as to whether such loss has for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle B.

''(2) INDIVIDUALS DESCRIBED.—

''(A) DUAL CITIZENSHIP, ETC.—An individual is described in this subparagraph if—

"(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, or

"(ii) the individual becomes (not later than the close of a reasonable period after loss of United States citizenship) a citizen of the country in which—

"(I) such individual was born,

"(II) if such individual is married, such individual's spouse was born, or

"(III) either of such individual's parents were born.

"(B) LONG-TERM FOREIGN RESIDENTS.—An individual is described in this subparagraph if, for each year in the 10-year period ending on the date of loss of United States citizenship, the individual was present in the United States for 30 days or less. The rule of section 7701(b)(3)(D)(ii) shall apply for purposes of this subparagraph.

"(C) RENUNCIATION UPON REACHING AGE OF MAJORITY.—An individual is described in this subparagraph if the individual's loss of

United States citizenship occurs before such individual attains age 18½.

''(D) INDIVIDUALS SPECIFIED IN REGULATIONS.—An individual is described in this subparagraph if the individual is described in a category of individuals prescribed by regulation by the Secretary.''

(2) TECHNICAL AMENDMENT.—Paragraph (1) of section 877(b) of such Code is amended by striking ''subsection (c)'' and inserting ''subsection (d)''.

(c) TREATMENT OF PROPERTY DISPOSED OF IN NONRECOGNITION TRANSACTIONS; TREATMENT OF DISTRIBUTIONS FROM CERTAIN CONTROLLED FOREIGN CORPORATIONS.—Subsection (d) of section 877, as redesignated by subsection (b), is amended to read as follows:

''(d) SPECIAL RULES FOR SOURCE, ETC.—For purposes of subsection (b)—

''(1) SOURCE RULES.—The following items of gross income shall be treated as income from sources within the United States:

''(A) SALE OF PROPERTY.—Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

"(B) STOCK OR DEBT OBLIGATIONS.—Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

"(C) INCOME OR GAIN DERIVED FROM CONTROLLED FOREIGN CORPORATION.—Any income or gain derived from stock in a foreign corporation but only—

"(i) if the individual losing United States citizenship owned (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), at any time during the 2-year period ending on the date of the loss of United States citizenship, more than 50 percent of—

"(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

"(II) the total value of the stock of such corporation, and

"(ii) to the extent such income or gain does not exceed the earnings and profits

attributable to such stock which were earned or accumulated before the loss of citizenship and during periods that the ownership requirements of clause (i) are met.

''(2) GAIN RECOGNITION ON CERTAIN EXCHANGES.—

''(A) IN GENERAL.—In the case of any exchange of property to which this paragraph applies, notwithstanding any other provision of this title, such property shall be treated as sold for its fair market value on the date of such exchange, and any gain shall be recognized for the taxable year which includes such date.

''(B) EXCHANGES TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any exchange during the 10-year period described in subsection (a) if—

''(i) gain would not (but for this paragraph) be recognized on such exchange in whole or in part for purposes of this subtitle,

''(ii) income derived from such property was from sources within the United

States (or, if no income was so derived, would have been from such sources), and

''(iii) income derived from the property acquired in the exchange would be from sources outside the United States.

''(C) EXCEPTION.—Subparagraph (A) shall not apply if the individual enters into an agreement with the Secretary which specifies that any income or gain derived from the property acquired in the exchange (or any other property which has a basis determined in whole or part by reference to such property) during such 10-year period shall be treated as from sources within the United States. If the property transferred in the exchange is disposed of by the person acquiring such property, such agreement shall terminate and any gain which was not recognized by reason of such agreement shall be recognized as of the date of such disposition.

''(D) SECRETARY MAY EXTEND PERIOD.—To the extent provided in regulations prescribed by the Secretary, subparagraph (B) shall be applied by substituting the 15-year period beginning 5 years before the loss of United States

citizenship for the 10-year period referred to therein.

''(E) SECRETARY MAY REQUIRE RECOGNITION OF GAIN IN CERTAIN CASES.—To the extent provided in regulations prescribed by the Secretary—

''(i) the removal of appreciated tangible personal property from the United States, and

''(ii) any other occurrence which (without recognition of gain) results in a change in the source of the income or gain from property from sources within the United States to sources outside the United States,

shall be treated as an exchange to which this paragraph applies.

''(3) SUBSTANTIAL DIMINISHING OF RISKS OF OWNERSHIP.—For purposes of determining whether this section applies to any gain on the sale or exchange of any property, the running of the 10-year period described in subsection (a) shall be suspended for any period during which the individual's risk of loss with respect to the property is substantially diminished by—

''(A) the holding of a put with respect to such property (or similar property),

''(B) the holding by another person of a right to acquire the property, or

''(C) a short sale or any other transaction.''

(d) CREDIT FOR FOREIGN TAXES IMPOSED ON UNITED STATES SOURCE INCOME.—

(1) Subsection (b) of section 877 is amended by adding at the end the following new sentence: ''The tax imposed solely by reason of this section shall be reduced (but not below zero) by the amount of any income, war profits, and excess profits taxes (within the meaning of section 903) paid to any foreign country or possession of the United States on any income of the taxpayer on which tax is imposed solely by reason of this section.''

(2) Subsection (a) of section 877, as amended by subsection (a), is amended by inserting ''(after any reduction in such tax under the last sentence of such subsection)'' after ''such subsection''.

(e) COMPARABLE ESTATE AND GIFT TAX TREATMENT.—

(1) ESTATE TAX.—

(A) IN GENERAL.—Subsection (a) of section 2107 is amended to read as follows:

''(a) TREATMENT OF EXPATRIATES.—

''(1) RATE OF TAX.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if, within the 10-year period ending with the date of death, such decedent lost United States citizenship, unless such loss did not have for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle A.

''(2) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—

''(A) IN GENERAL.—For purposes of paragraph (1), an individual shall be treated as having a principal purpose to avoid such taxes if such individual is so treated under section 877(a)(2).

''(B) EXCEPTION.—Subparagraph (A) shall not apply to a decedent meeting the requirements of section 877(c)(1).''

(B) CREDIT FOR FOREIGN DEATH TAXES.—Subsection (c) of section 2107 is

amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

''(2) CREDIT FOR FOREIGN DEATH TAXES.—

''(A) IN GENERAL.—The tax imposed by subsection (a) shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country in respect of any property which is included in the gross estate solely by reason of subsection (b).

''(B) LIMITATION ON CREDIT.—The credit allowed by subparagraph (A) for such taxes paid to a foreign country shall not exceed the lesser of—

''(i) the amount which bears the same ratio to the amount of such taxes actually paid to such foreign country in respect of property included in the gross estate as the value of the property included in the gross estate solely by reason of subsection (b) bears to the value of all property subjected to such taxes by such foreign country, or

''(ii) such property's proportionate share of the excess of—

''(I) the tax imposed by subsection (a), over

''(II) the tax which would be imposed by section 2101 but for this section.

''(C) PROPORTIONATE SHARE.—For purposes of subparagraph (B), a property's proportionate share is the percentage which the value of the property which is included in the gross estate solely by reason of subsection (b) bears to the total value of the gross estate.''

(C) EXPANSION OF INCLUSION IN GROSS ESTATE OF STOCK OF FOREIGN CORPORATIONS.—Paragraph (2) of section 2107(b) is amended by striking ''more than 50 percent of'' and all that follows and inserting ''more than 50 percent of—

''(A) the total combined voting power of all classes of stock entitled to vote of such corporation, or

''(B) the total value of the stock of such corporation,''.

(2) GIFT TAX.—

(A) IN GENERAL.—Paragraph (3) of section 2501(a) is amended to read as follows:

"(3) EXCEPTION.—

"(A) CERTAIN INDIVIDUALS.—Paragraph (2) shall not apply in the case of a donor who, within the 10-year period ending with the date of transfer, lost United States citizenship, unless such loss did not have for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle A.

"(B) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—For purposes of subparagraph (A), an individual shall be treated as having a principal purpose to avoid such taxes if such individual is so treated under section 877(a)(2).

"(C) EXCEPTION FOR CERTAIN INDIVIDUALS.—Subparagraph (B) shall not apply to a decedent meeting the requirements of section 877(c)(1).

"(D) CREDIT FOR FOREIGN GIFT TAXES.—The tax imposed by this section solely by reason of this paragraph shall be credited with the amount of any gift tax actually paid to any foreign country in respect of any gift which is taxable under this section solely by reason of this paragraph."

(f) COMPARABLE TREATMENT OF LAWFUL PERMANENT RESIDENTS WHO CEASE TO BE TAXED AS RESIDENTS.—

(1) IN GENERAL.—Section 877 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e) COMPARABLE TREATMENT OF LAWFUL PERMANENT RESIDENTS WHO CEASE TO BE TAXED AS RESIDENTS.—

''(1) IN GENERAL.—Any long-term resident of the United States who—

''(A) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

''(B) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country,

shall be treated for purposes of this section and sections 2107, 2501, and 6039F in the same manner as if such resident were a citizen of the United

States who lost United States citizenship on the date of such cessation or commencement.

''(2) LONG-TERM RESIDENT.—For purposes of this subsection, the term 'long-term resident' means any individual (other than a citizen of the United States) who is a lawful permanent resident of the United States in at least 8 taxable years during the period of 15 taxable years ending with the taxable year during which the event described in subparagraph (A) or (B) of paragraph (1) occurs. For purposes of the preceding sentence, an individual shall not be treated as a lawful permanent resident for any taxable year if such individual is treated as a resident of a foreign country for the taxable year under the provisions of a tax treaty between the United States and the foreign country and does not waive the benefits of such treaty applicable to residents of the foreign country.

''(3) SPECIAL RULES.—

''(A) EXCEPTIONS NOT TO APPLY.—Subsection (c) shall not apply to an individual who is treated as provided in paragraph (1).

''(B) STEP-UP IN BASIS.—Solely for purposes of determining any tax imposed by reason of this subsection, property which was held by

the long-term resident on the date the individual first became a resident of the United States shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

''(4) AUTHORITY TO EXEMPT INDIVIDUALS.—This subsection shall not apply to an individual who is described in a category of individuals prescribed by regulation by the Secretary.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations providing for the application of this subsection in cases where an alien individual becomes a resident of the United States during the 10-year period after being treated as provided in paragraph (1).''

(2) CONFORMING AMENDMENTS.—

(A) Section 2107 is amended by striking subsection (d), by redesignating subsection (e) as subsection (d), and by inserting after subsection (d) (as so redesignated) the following new subsection:

''(e) CROSS REFERENCE.—

**"For comparable treatment of long-term lawful permanent residents who ceased to be taxed as residents, see section 877(e)."**

(B) Paragraph (3) of section 2501(a) (as amended by subsection (e)) is amended by adding at the end the following new subparagraph:

''(E) CROSS REFERENCE.—

**"For comparable treatment of long-term lawful permanent residents who ceased to be taxed as residents, see section 877(e)."**

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to—

(A) individuals losing United States citizenship (within the meaning of section 877 of the Internal Revenue Code of 1986) on or after February 6, 1995, and

(B) long-term residents of the United States with respect to whom an event described in subparagraph (A) or (B) of section 877(e)(1) of such Code occurs on or after June 13, 1995.

(2) SPECIAL RULE.—

(A) IN GENERAL.—In the case of an individual who performed an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)) before Feb-

ruary 6, 1995, but who did not, on or before such date, furnish to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of such act, the amendments made by this section shall apply to such individual except that—

(i) the 10-year period described in section 877(a) of such Code shall not expire before the end of the 10-year period beginning on the date such statement is so furnished, and

(ii) the 1-year period referred to in section 877(c) of such Code, as amended by this section, shall not expire before the date which is 1 year after the date of the enactment of this Act.

(B) EXCEPTION.—Subparagraph (A) shall not apply if the individual establishes to the satisfaction of the Secretary of the Treasury that such loss of United States citizenship occurred before February 6, 1994.

**SEC. 13617. INFORMATION ON INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.**

(a) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 is amended by inserting after section 6039E the following new section:

**"SEC. 6039F. INFORMATION ON INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.**

''(a) IN GENERAL.—Notwithstanding any other provision of law, any individual who loses United States citizenship (within the meaning of section 877(a)) shall provide a statement which includes the information described in subsection (b). Such statement shall be—

''(1) provided not later than the earliest date of any act referred to in subsection (c), and

''(2) provided to the person or court referred to in subsection (c) with respect to such act.

''(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

''(1) the taxpayer's TIN,

''(2) the mailing address of such individual's principal foreign residence,

''(3) the foreign country in which such individual is residing,

''(4) the foreign country of which such individual is a citizen,

''(5) in the case of an individual having a net worth of at least the dollar amount applicable under section 877(a)(2)(B), information detailing the assets and liabilities of such individual, and

''(6) such other information as the Secretary may prescribe.

''(c) ACTS DESCRIBED.—For purposes of this section, the acts referred to in this subsection are—

''(1) the individual's renunciation of his United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

''(2) the individual's furnishing to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

''(3) the issuance by the United States Department of State of a certificate of loss of nationality to the individual, or

''(4) the cancellation by a court of the United States of a naturalized citizen's certificate of naturalization.

''(d) PENALTY.—Any individual failing to provide a statement required under subsection (a) shall be subject to a penalty for each year (of the 10-year period beginning on the date of loss of United States citizenship) during any portion of which such failure continues in an amount equal to the greater of—

''(1) 5 percent of the tax required to be paid under section 877 for the taxable year ending during such year, or

''(2) $1,000,

unless it is shown that such failure is due to reasonable cause and not to willful neglect.

''(e) INFORMATION TO BE PROVIDED TO SECRETARY.—Notwithstanding any other provision of law—

''(1) any Federal agency or court which collects (or is required to collect) the statement under subsection (a) shall provide to the Secretary—

''(A) a copy of any such statement, and

''(B) the name (and any other identifying information) of any individual refusing to comply with the provisions of subsection (a),

"(2) the Secretary of State shall provide to the Secretary a copy of each certificate as to the loss of American nationality under section 358 of the Immigration and Nationality Act which is approved by the Secretary of State, and

"(3) the Federal agency primarily responsible for administering the immigration laws shall provide to the Secretary the name of each lawful permanent resident of the United States (within the meaning of section 7701(b)(6)) whose status as such has been revoked or has been administratively or judicially determined to have been abandoned.

Notwithstanding any other provision of law, not later than 30 days after the close of each calendar quarter, the Secretary shall publish in the Federal Register the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary receives information under the preceding sentence during such quarter.

"(f) REPORTING BY LONG-TERM LAWFUL PERMANENT RESIDENTS WHO CEASE TO BE TAXED AS RESIDENTS.—In lieu of applying the last sentence of subsection (a), any individual who is required to provide a statement under this section by reason of section 877(e)(1) shall provide such statement with the return of

tax imposed by chapter 1 for the taxable year during which the event described in such section occurs.

''(g) EXEMPTION.—The Secretary may by regulations exempt any class of individuals from the requirements of this section if he determines that applying this section to such individuals is not necessary to carry out the purposes of this section.''

(b) CLERICAL AMENDMENT.—The table of sections for such subpart A is amended by inserting after the item relating to section 6039E the following new item:

''Sec. 6039F. Information on individuals losing United States citizenship.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) individuals losing United States citizenship (within the meaning of section 877 of the Internal Revenue Code of 1986) after the date of the enactment of this Act, and

(2) long-term residents of the United States with respect to whom an event described in subparagraph (A) or (B) of section 877(e)(1) of such Code occurs after such date.

**SEC. 13618. REPORT ON TAX COMPLIANCE BY UNITED STATES CITIZENS AND RESIDENTS LIVING ABROAD.**

Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report—

(1) describing the compliance with subtitle A of the Internal Revenue Code of 1986 by citizens and lawful permanent residents of the United States (within the meaning of section 7701(b)(6) of such Code) residing outside the United States, and

(2) recommending measures to improve such compliance (including improved coordination between executive branch agencies).

## PART IV—REFORMS RELATING TO ENERGY PROVISIONS

**SEC. 13621. TERMINATION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.**

(a) FACILITIES MUST BE PLACED IN SERVICE BEFORE SEPTEMBER 14, 1995.—Paragraph (3) of section 45(c) (defining qualified facility) is amended by striking ''July 1, 1999'' and inserting ''September 14, 1995''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to taxable years ending after September 13, 1995.

(2) BINDING CONTRACTS.—The amendment made by this section shall not apply to any facility—

(A) which is constructed or acquired by the taxpayer pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such construction or acquisition, and

(B) which is placed in service before September 14, 1996.

**SEC. 13622. EXCLUSION FOR ENERGY CONSERVATION SUBSIDIES LIMITED TO SUBSIDIES WITH RESPECT TO DWELLING UNITS.**

(a) IN GENERAL.—Paragraph (1) of section 136(c) (defining energy conservation measure) is amended by striking ''energy demand—'' and all that follows and inserting ''energy demand with respect to a dwelling unit.''

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 136 is amended to read as follows:

''(a) EXCLUSION.—Gross income shall not include the value of any subsidy provided (directly or indirectly)

by a public utility to a customer for the purchase or installation of any energy conservation measure.''

(2) Paragraph (2) of section 136(c) is amended—

(A) by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively, and

(B) by striking ''AND SPECIAL RULES'' in the paragraph heading.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received after September 13, 1995, unless received pursuant to a written binding contract in effect on September 13, 1995, and at all times thereafter.

## PART V—REFORMS RELATING TO NONRECOGNITION PROVISIONS

### SEC. 13626. BASIS ADJUSTMENT TO PROPERTY HELD BY CORPORATION WHERE STOCK IN CORPORATION IS REPLACEMENT PROPERTY UNDER INVOLUNTARY CONVERSION RULES.

(a) IN GENERAL.—Subsection (b) of section 1033 is amended to read as follows:

''(b) BASIS OF PROPERTY ACQUIRED THROUGH INVOLUNTARY CONVERSION.—

''(1) CONVERSIONS DESCRIBED IN SUBSECTION (a)(1).—If the property was acquired as the result of a compulsory or involuntary conversion described in subsection (a)(1), the basis shall be the same as in the case of the property so converted—

''(A) decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and

''(B) increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made.

''(2) CONVERSIONS DESCRIBED IN SUBSECTION (a)(2).—In the case of property purchased by the taxpayer in a transaction described in subsection (a)(2) which resulted in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property pur-

chased consists of more than 1 piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

''(3) PROPERTY HELD BY CORPORATION THE STOCK OF WHICH IS REPLACEMENT PROPERTY.—

''(A) IN GENERAL.—If the basis of stock in a corporation is decreased under paragraph (2), an amount equal to such decrease shall also be applied to reduce the basis of property held by the corporation at the time the taxpayer acquired control (as defined in subsection (a)(2)(E)) of such corporation.

''(B) LIMITATION.—Subparagraph (A) shall not apply to the extent that it would (but for this subparagraph) require a reduction in the aggregate adjusted bases of the property of the corporation below the taxpayer's adjusted basis of the stock in the corporation (determined immediately after such basis is decreased under paragraph (2)).

''(C) ALLOCATION OF BASIS REDUCTION.—The decrease required under subparagraph (A) shall be allocated—

''(i) first to property which is similar or related in service or use to the converted property,

''(ii) second to depreciable property (as defined in section 1017(b)(3)(B)) not described in clause (i), and

''(iii) then to other property.

''(D) SPECIAL RULES.—

''(i) REDUCTION NOT TO EXCEED ADJUSTED BASIS OF PROPERTY.—No reduction in the basis of any property under this paragraph shall exceed the adjusted basis of such property (determined without regard to such reduction).

''(ii) ALLOCATION OF REDUCTION AMONG PROPERTIES.—If more than 1 property is described in a clause of subparagraph (C), the reduction under this paragraph shall be allocated among such property in proportion to the adjusted bases of such property (determined without regard to such reduction).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to involuntary conversions occurring after September 13, 1995.

**SEC. 13627. EXPANSION OF REQUIREMENT THAT INVOLUNTARILY CONVERTED PROPERTY BE REPLACED WITH PROPERTY ACQUIRED FROM AN UNRELATED PERSON.**

(a) IN GENERAL.—Subsection (i) of section 1033 is amended to read as follows:

''(i) REPLACEMENT PROPERTY MUST BE ACQUIRED FROM UNRELATED PERSON IN CERTAIN CASES.—

''(1) IN GENERAL.—If the property which is involuntarily converted is held by a taxpayer to which this subsection applies, subsection (a) shall not apply if the replacement property or stock is acquired from a related person. The preceding sentence shall not apply to the extent that the related person acquired the replacement property or stock from an unrelated person during the period applicable under subsection (a)(2)(B).

''(2) TAXPAYERS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to—

''(A) a C corporation,

''(B) a partnership in which 1 or more C corporations own, directly or indirectly (determined in accordance with section 707(b)(3)), more than 50 percent of the capital interest, or profits interest, in such partnership at the time of the involuntary conversion, and

''(C) any other taxpayer if, with respect to property which is involuntarily converted during the taxable year, the aggregate of the amount of realized gain on such property on which there is realized gain exceeds $100,000.

In the case of a partnership, subparagraph (C) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

''(3) RELATED PERSON.—For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to involuntary conversions occurring after September 13, 1995.

**SEC. 13628. NO ROLLOVER OR EXCLUSION OF GAIN ON SALE OF PRINCIPAL RESIDENCE WHICH IS ATTRIBUTABLE TO DEPRECIATION DEDUCTIONS.**

(a) IN GENERAL.—Subsection (d) of section 1034 (relating to limitations) is amended by adding at the end the following new paragraph:

''(3) RECOGNITION OF GAIN ATTRIBUTABLE TO DEPRECIATION.—Subsection (a) shall not apply to

so much of the gain from the sale of any residence as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after December 31, 1995, in respect of such residence.''

(b) COMPARABLE TREATMENT UNDER 1-TIME EXCLUSION OF GAIN ON SALE OF PRINCIPAL RESIDENCE.—Subsection (d) of section 121 is amended by adding at the end the following new paragraph:

''(10) RECOGNITION OF GAIN ATTRIBUTABLE TO DEPRECIATION.—

''(A) IN GENERAL.—Subsection (a) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after December 31, 1995, in respect of such property.

''(B) COORDINATION WITH PARAGRAPH (5).—If this section does not apply to gain attributable to a portion of a residence by reason of paragraph (5), subparagraph (A) shall not apply to depreciation adjustments attributable to such portion.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1995.

**SEC. 13629. NONRECOGNITION OF GAIN ON SALE OF PRINCIPAL RESIDENCE BY NONCITIZENS LIMITED TO NEW RESIDENCES LOCATED IN THE UNITED STATES.**

(a) IN GENERAL.—Subsection (d) of section 1034 (relating to limitations) (as amended by section 13628) is amended by adding at the end the following new paragraph:

''(4) NEW RESIDENCE MUST BE LOCATED IN UNITED STATES IN CERTAIN CASES.—

''(A) IN GENERAL.—In the case of a sale of an old residence by a taxpayer—

''(i) who is not a citizen of the United States at the time of sale, and

''(ii) who is not a citizen or resident of the United States on the date which is 2 years after the date of the sale of such old residence,

subsection (a) shall apply only if the new residence is located in the United States or a possession of the United States.

"(B) PROPERTY HELD JOINTLY BY HUSBAND AND WIFE.—Subparagraph (A) shall not apply if—

"(i) the old residence is held by a husband and wife as joint tenants, tenants by the entirety, or community property,

"(ii) such husband and wife make a joint return for the taxable year of the sale or exchange, and

"(iii) one spouse is a citizen of the United States at the time of sale."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to sales of old residences after December 31, 1995.

(2) TREATMENT OF PURCHASES OF NEW RESIDENCES.—The amendment made by this section shall not apply to new residences—

(A) purchased before September 13, 1995, or

(B) purchased on or after such date pursuant to a binding contract in effect on such date and at all times thereafter before such purchase.

(3) CERTAIN RULES TO APPLY.—For purposes of this subsection, the rules of paragraphs (1), (2), and (3) of section 1034(c) of the Internal Revenue Code of 1986 shall apply.

## PART VI—REFORMS RELATING TO GAMING ACTIVITIES

### SEC. 13631. TREATMENT OF INDIAN GAMING ACTIVITIES UNDER UNRELATED BUSINESS INCOME TAX.

(a) IN GENERAL.—Paragraph (2) of section 511(a) (relating to imposition of tax on unrelated business income of charitable, etc., organizations) is amended by adding at the end the following new subparagraph:

''(C) GAMING ACTIVITIES OF INDIAN TRIBES.—

''(i) IN GENERAL.—The tax imposed by paragraph (1) shall apply to any Indian tribal organization; except that, notwithstanding any other provision of this part, in the case of such an organization, the term 'unrelated trade or business' means only a trade or business of conducting any class II or class III gaming activity (as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), as in effect on the date of the enactment

of this subparagraph), including a gaming activity described in section 513(a)(1).

''(ii) INDIAN TRIBAL ORGANIZATION.—For purposes of clause (i), the term 'Indian tribal organization' means any Indian tribe and any organization which is immune or exempt from tax under this subtitle solely by reason of being owned or controlled by an Indian tribe.''

(b) TREATMENT OF AMOUNTS PAID FOR CHARITABLE PURPOSES, ETC., BY REASON OF STATE OR FEDERAL LAW.—Subsection (b) of section 512 is amended by adding at the end the following new paragraph:

''(17) In the case of an Indian tribal organization (as defined in section 511(a)(3)), if, by reason of State or Federal law or of a contract with the United States or with any State or political subdivision thereof, such organization is required to use any portion of the net proceeds of any gaming activity for specified purposes, the deduction for so using such proceeds shall be treated as allowed under section 170 for purposes of applying paragraph (10). The preceding sentence shall not apply to such proceeds which are paid as general revenues to the

United States or to any State or political subdivision thereof.''

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996.

(d) STUDY OF GAMBLING CONDUCTED BY TAX-EXEMPT ORGANIZATIONS.—The Secretary of the Treasury or his delegate shall conduct a study on the nature and extent of gaming activities conducted by organizations exempt from tax under section 501(a) of the Internal Revenue Code of 1986, including an examination of—

(1) the types of gaming activities (including bingo, pull tabs, and casino nights) engaged in by charities and other nonprofit organizations and the frequency of such activities;

(2) the dollar volume of such gaming activities;

(3) the nature and extent of the involvement of for-profit entities and private parties in the management or operation of gaming activities of such organizations;

(4) competition between taxable gaming activities and gaming activities that are exempt from Federal income tax; and

(5) an analysis of the present law tax treatment of gaming activities of tax-exempt organizations.

The study may include any recommendations for change, including examination of the South End decision and the special exception for bingo games. The Secretary shall submit the results of the study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1996.

**SEC. 13632. REPEAL OF TARGETED EXEMPTION FROM TAX ON UNRELATED TRADE OR BUSINESS INCOME FROM GAMBLING IN CERTAIN STATES.**

(a) IN GENERAL.—Section 311 of the Tax Reform Act of 1984 is hereby repealed.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to games of chance conducted after December 31, 1995, in taxable years ending after such date.

**SEC. 13633. EXTENSION OF WITHHOLDING TO CERTAIN GAMBLING WINNINGS.**

(a) REPEAL OF EXEMPTION FOR BINGO AND KENO.—Paragraph (5) of section 3402(q) is amended to read as follows:

> ''(5) EXEMPTION FOR SLOT MACHINES.—The tax imposed under paragraph (1) shall not apply to winnings from a slot machine.''

(b) THRESHOLD AMOUNT.—Paragraph (3) of section 3402(q) is amended—

(1) by striking ''(B) and (C)'' in subparagraph (A) and inserting ''(B), (C), and (D)'', and

(2) by adding at the end the following new subparagraph:

''(D) BINGO AND KENO.—Proceeds of more than $5,000 from a wager placed in a bingo or keno game.''

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996.

## PART VII—OTHER REFORMS

### SEC. 13636. SUNSET OF LOW-INCOME HOUSING CREDIT.

(a) REPEAL OF REALLOCATION OF UNUSED CREDITS AMONG STATES.—Subparagraph (D) of section 42(h)(3) is amended by adding at the end the following new clause:

''(v) TERMINATION.—No amount may be allocated under this paragraph for any calendar year after 1995.''

(b) TERMINATION.—Section 42 is amended by adding at the end the following new subsection:

''(o) TERMINATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2)—

"(A) clause (i) of subsection (h)(3)(C) shall not apply to any amount allocated after December 31, 1997, and

"(B) subsection (h)(4) shall not apply to any building placed in service after such date.

"(2) EXCEPTION FOR BOND-FINANCED BUILDINGS IN PROGRESS.—For purposes of paragraph (1)(B), a building shall be treated as placed in service before January 1, 1998, if—

"(A) the bonds with respect to such building are issued before such date,

"(B) the taxpayer's basis in the project (of which the building is a part) as of December 31, 1997, is more than 10 percent of the taxpayer's reasonably expected basis in such project as of December 31, 1999, and

"(C) such building is placed in service before January 1, 2000."

**SEC. 13637. REPEAL OF CREDIT FOR CONTRIBUTIONS TO COMMUNITY DEVELOPMENT CORPORATIONS.**

(a) IN GENERAL.—Section 13311 of the Revenue Reconciliation Act of 1993 (relating to credit for contributions to certain community development corporations) is hereby repealed.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contributions made after the date of the enactment of this Act (other than contributions made pursuant to a legally enforceable agreement which is effect on the date of the enactment of this Act).

**SEC. 13638. REPEAL OF DIESEL FUEL TAX REBATE TO PURCHASERS OF DIESEL-POWERED AUTOMOBILES AND LIGHT TRUCKS.**

(a) IN GENERAL.—Section 6427 is amended by striking subsection (g).

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 34(a) is amended to read as follows:

''(3) under section 6427 with respect to fuels used for nontaxable purposes or resold during the taxable year (determined without regard to section 6427(k)).''

(2) Paragraphs (1) and (2)(A) of section 6427(i) are each amended—

(A) by striking ''(g),'', and

(B) by striking ''(or a qualified diesel powered highway vehicle purchased)'' each place it appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to vehicles purchased after December 31, 1995.

**SEC. 13639. APPLICATION OF FAILURE-TO-PAY PENALTY TO SUBSTITUTE RETURNS.**

(a) GENERAL RULE.—Section 6651 (relating to failure to file tax return or to pay tax) is amended by adding at the end the following new subsection:

''(g) TREATMENT OF RETURNS PREPARED BY SECRETARY UNDER SECTION 6020(b).—In the case of any return made by the Secretary under section 6020(b)—

''(1) such return shall be disregarded for purposes of determining the amount of the addition under paragraph (1) of subsection (a), but

''(2) such return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition under paragraphs (2) and (3) of subsection (a).''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply in the case of any return the due date for which (determined without regard to extensions) is after the date of the enactment of this Act.

**SEC. 13640. REPEAL OF SPECIAL RULE FOR RENTAL USE OF VACATION HOMES, ETC., FOR LESS THAN 15 DAYS.**

(a) IN GENERAL.—Section 280A (relating to disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.) is amended by striking subsection (g).

(b) NO BASIS REDUCTION UNLESS DEPRECIATION CLAIMED.—Section 1016 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e) SPECIAL RULE WHERE RENTAL USE OF VACATION HOME, ETC., FOR LESS THAN 15 DAYS.—If a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year, the reduction under subsection (a)(2) by reason of such rental use in any taxable year beginning after December 31, 1995, shall not exceed the depreciation deduction allowed for such rental use.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

**SEC. 13641. ELECTION TO CEASE STATUS AS QUALIFIED SCHOLARSHIP FUNDING CORPORATION.**

(a) IN GENERAL.—Subsection (d) of section 150 (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraph:

''(3) ELECTION TO CEASE STATUS AS QUALIFIED SCHOLARSHIP FUNDING CORPORATION.—

''(A) IN GENERAL.—Any qualified scholarship funding bond, and qualified student loan bond, outstanding on the date of the issuer's election under this paragraph (and any bond (or series of bonds) issued to refund such a bond) shall not fail to be a tax-exempt bond solely because the issuer ceases to be described in subparagraphs (A) and (B) of paragraph (2) if the issuer meets the requirements of subparagraphs (B) and (C) of this paragraph.

''(B) ASSETS AND LIABILITIES OF ISSUER TRANSFERRED TO TAXABLE SUBSIDIARY.—The requirements of this subparagraph are met by an issuer if—

''(i) all of the student loan notes of the issuer and other assets pledged to secure the repayment of qualified scholarship funding bond indebtedness of the issuer are transferred to another corporation

within a reasonable period after the election is made under this paragraph;

''(ii) such transferee corporation assumes or otherwise provides for the payment of all of the qualified scholarship funding bond indebtedness of the issuer within a reasonable period after the election is made under this paragraph;

''(iii) to the extent permitted by law, such transferee corporation assumes all of the responsibilities, and succeeds to all of the rights, of the issuer under the issuer's agreements with the Secretary of Education in respect of student loans;

''(iv) immediately after such transfer, the issuer, together with any other issuer which has made an election under this paragraph in respect of such transferee, hold all of the senior stock in such transferee corporation; and

''(v) such transferee corporation is not exempt from tax under this chapter.

''(C) ISSUER TO OPERATE AS INDEPENDENT ORGANIZATION DESCRIBED IN SECTION 501(c)(3).—The requirements of this subpara-

graph are met by an issuer if, within a reasonable period after the transfer referred to in subparagraph (B)—

''(i) the issuer is described in section 501(c)(3) and exempt from tax under section 501(a);

''(ii) the issuer no longer is described in subparagraphs (A) and (B) of paragraph (2); and

''(iii) at least 80 percent of the members of the board of directors of the issuer are independent members.

''(D) SENIOR STOCK.—For purposes of this paragraph, the term 'senior stock' means stock—

''(i) which participates pro rata and fully in the equity value of the corporation with all other common stock of the corporation but which has the right to payment of liquidation proceeds prior to payment of liquidation proceeds in respect of other common stock of the corporation;

''(ii) which has a fixed right upon liquidation and upon redemption to an amount equal to the greater of—

''(I) the fair market value of such stock on the date of liquidation or redemption (whichever is applicable); or

''(II) the fair market value of all assets transferred in exchange for such stock and reduced by the amount of all liabilities of the corporation which has made an election under this paragraph assumed by the transferee corporation in such transfer;

''(iii) the holder of which has the right to require the transferee corporation to redeem on a date that is not later than 10 years after the date on which an election under this paragraph was made and pursuant to such election such stock was issued; and

''(iv) in respect of which, during the time such stock is outstanding, there is not outstanding any equity interest in the corporation having any liquidation, redemption or dividend rights in the corporation which are superior to those of such stock.

''(E) INDEPENDENT MEMBER.—The term 'independent member' means a member of the

board of directors of the issuer who (except for services as a member of such board) receives no compensation directly or indirectly—

''(i) for services performed in connection with such transferee corporation, or

''(ii) for services as a member of the board of directors or as an officer of such transferee corporation.

For purposes of clause (ii), the term 'officer' includes any individual having powers or responsibilities similar to those of officers.

''(F) COORDINATION WITH CERTAIN PRIVATE FOUNDATION TAXES.—For purposes of sections 4942 (relating to the excise tax on a failure to distribute income) and 4943 (relating to the excise tax on excess business holdings), the transferee corporation referred to in subparagraph (B) shall be treated as a functionally related business (within the meaning of section 4942(j)(4)) with respect to the issuer during the period commencing with the date on which an election is made under this paragraph and ending on the date that is the earlier of—

''(i) the last day of the last taxable year for which more than 50 percent of the

gross income of such transferee corporation is derived from, or more than 50 percent of the assets (by value) of such transferee corporation consists of, student loan notes incurred under the Higher Education Act of 1965; or

''(ii) the last day of the taxable year of the issuer during which occurs the date which is 10 years after the date on which the election under this paragraph is made.

''(G) ELECTION.—An election under this paragraph may be revoked only with the consent of the Secretary.''

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

**SEC. 13642. CERTAIN AMOUNTS DERIVED FROM FOREIGN CORPORATIONS TREATED AS UNRELATED BUSINESS TAXABLE INCOME.**

(a) GENERAL RULE.—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end thereof the following new paragraph:

''(18) TREATMENT OF CERTAIN AMOUNTS DERIVED FROM FOREIGN CORPORATIONS.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), any amount included in gross income under section 951(a)(1)(A) shall be included as an item of gross income derived from an unrelated trade or business to the extent the amount so included is attributable to insurance income (as defined in section 953) which, if derived directly by the organization, would be treated as gross income from an unrelated trade or business. There shall be allowed all deductions directly connected with amounts included in gross income under the preceding sentence.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to income attributable to a policy of insurance or reinsurance with respect to which the person (directly or indirectly) insured is—

"(i) such organization,

"(ii) an affiliate of such organization which is exempt from tax under section 501(a), or

"(iii) a director, officer, or employee of such organization or affiliate but only if the insurance covers solely risks associated

with the performance of services for the benefit of such organization or affiliate.

''(C) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations for the application of this paragraph in the case of income paid through 1 or more entities or between 2 or more chains of entities.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts included in gross income in any taxable year beginning after December 31, 1995.

## PART VIII—EXCISE TAX ON AMOUNTS OF PRIVATE EXCESS BENEFITS

### SEC. 13646. EXCISE TAXES FOR FAILURE BY CERTAIN CHARITABLE ORGANIZATIONS TO MEET CERTAIN QUALIFICATION REQUIREMENTS.

(a) IN GENERAL.—Chapter 42 (relating to private foundations and certain other tax-exempt organizations) is amended by redesignating subchapter D as subchapter E and by inserting after subchapter C the following new subchapter:

## "Subchapter D—Failure By Certain Charitable Organizations To Meet Certain Qualification Requirements

''Sec. 4958. Taxes on excess benefit transactions.

**"SEC. 4958. TAXES ON EXCESS BENEFIT TRANSACTIONS.**

''(a) INITIAL TAXES.—

''(1) ON THE DISQUALIFIED PERSON.—There is hereby imposed on each excess benefit transaction a tax equal to 25 percent of the excess benefit. The tax imposed by this paragraph shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

''(2) ON THE MANAGEMENT.—In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any organization manager in the excess benefit transaction, knowing that it is such a transaction, a tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who participated in the excess benefit transaction.

''(b) ADDITIONAL TAX ON THE DISQUALIFIED PERSON.—In any case in which an initial tax is imposed by

subsection (a)(1) on an excess benefit transaction and the excess benefit involved in such transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess benefit involved. The tax imposed by this subsection shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

''(c) EXCESS BENEFIT TRANSACTION; EXCESS BENEFIT.—For purposes of this section—

''(1) EXCESS BENEFIT TRANSACTION.—

''(A) IN GENERAL.—The term 'excess benefit transaction' means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit.

"(B) EXCESS BENEFIT.—The term 'excess benefit' means the excess referred to in subparagraph (A).

"(2) AUTHORITY TO INCLUDE CERTAIN OTHER PRIVATE INUREMENT.—To the extent provided in regulations prescribed by the Secretary, the term 'excess benefit transaction' includes any transaction in which the amount of any economic benefit provided to or for the use of a disqualified person is determined in whole or in part by the revenues of 1 or more activities of the organization but only if such transaction results in inurement not permitted under paragraph (3) or (4) of section 501(c), as the case may be. In the case of any such transaction, the excess benefit shall be the amount of the inurement not so permitted.

"(d) SPECIAL RULES.—For purposes of this section—

"(1) JOINT AND SEVERAL LIABILITY.—If more than 1 person is liable for any tax imposed by subsection (a) or subsection (b), all such persons shall be jointly and severally liable for such tax.

"(2) LIMIT FOR MANAGEMENT.—With respect to any 1 excess benefit transaction, the maximum

amount of the tax imposed by subsection (a)(2) shall not exceed $10,000.

''(e) APPLICABLE TAX-EXEMPT ORGANIZATION.—For purposes of this subchapter, the term 'applicable tax-exempt organization' means any organization which (without regard to any excess benefit) would be described in paragraph (3) or (4) of section 501(c) and exempt from tax under section 501(a). Such term shall not include a private foundation (as defined in section 509(a)).

''(f) OTHER DEFINITIONS.—For purposes of this section—

''(1) DISQUALIFIED PERSON.—The term 'disqualified person' means, with respect to any transaction—

''(A) any person who was, at any time during the 5-year period ending on the date of such transaction—

''(i) an organization manager, or

''(ii) an individual (other than an organization manager) in a position to exercise substantial influence over the affairs of the organization,

''(B) a member of the family of an individual described in subparagraph (A), and

''(C) a 35-percent controlled entity.

''(2) ORGANIZATION MANAGER.—The term 'organization manager' means, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization (or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization).

''(3) 35-PERCENT CONTROLLED ENTITY.—

''(A) IN GENERAL.—The term '35-percent controlled entity' means—

''(i) a corporation in which persons described in subparagraph (A) or (B) of paragraph (1) own more than 35 percent of the total combined voting power,

''(ii) a partnership in which such persons own more than 35 percent of the profits interest, and

''(iii) a trust or estate in which such persons own more than 35 percent of the beneficial interest.

''(B) CONSTRUCTIVE OWNERSHIP RULES.—Rules similar to the rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of this paragraph.

"(4) FAMILY MEMBERS.—The members of an individual's family shall be determined under section 4946(d); except that such members also shall include the brothers and sisters (whether by the whole or half blood) of the individual and their spouses.

"(5) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earliest of—

"(A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or

"(B) the date on which the tax imposed by subsection (a)(1) is assessed.

"(6) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to any excess benefit transaction, undoing the excess benefit to the extent possible, and where fully undoing the excess benefit is not possible, such additional corrective action as is prescribed by the Secretary by regulations.

"(g) TREATMENT OF PREVIOUSLY EXEMPT ORGANIZATIONS.—

"(1) IN GENERAL.—For purposes of this section, the status of any organization as an applicable

tax-exempt organization shall be terminated only if—

''(A)(i) such organization notifies the Secretary (at such time and in such manner as the Secretary may by regulations prescribe) of its intent to accomplish such termination, or

''(ii) there is a final determination by the Secretary that such status has terminated, and

''(B)(i) such organization pays the tax imposed by paragraph (2) (or any portion not abated pursuant to paragraph (3)), or

''(ii) the entire amount of such tax is abated pursuant to paragraph (3).

''(2) IMPOSITION OF TAX.—There is hereby imposed on each organization referred to in paragraph (1) a tax equal to the lesser of—

''(A) the amount which the organization substantiates by adequate records or other corroborating evidence as the aggregate tax benefit resulting from its exemption from tax under section 501(a), or

''(B) the value of the net assets of such organization.

''(3) ABATEMENT OF TAX.—The Secretary may abate the unpaid portion of the assessment of any

tax imposed by paragraph (2), or any liability in respect thereof, if the applicable tax-exempt organization distributes all of its net assets to 1 or more organizations each of which has been in existence, and described in section 501(c)(3), for a continuous period of at least 60 calendar months. If the distributing organization is described in section 501(c)(4), the preceding sentence shall be applied by treating the reference to section 501(c)(3) as including a reference to section 501(c)(4).

''(4) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subsections (d), (e), and (f) of section 507 shall apply for purposes of this subsection.''

(b) APPLICATION OF PRIVATE INUREMENT RULE TO TAX-EXEMPT ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).—Paragraph (4) of section 501(c) is amended by inserting ''(A)'' after ''(4)'' and by adding at the end the following:

''(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.''

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4955 is amended—

(A) by striking ''SECTION 4945'' in the heading and inserting ''SECTIONS 4945 and 4958'', and

(B) by inserting before the period ''or an excess benefit for purposes of section 4958''.

(2) Subsections (a), (b), and (c) of section 4963 are each amended by inserting ''4958,'' after ''4955,''.

(3) Subsection (e) of section 6213 is amended by inserting ''4958 (relating to private excess benefit),'' before ''4971''.

(4) Paragraphs (2) and (3) of section 7422(g) are each amended by inserting ''4958,'' after ''4955,''.

(5) Subsection (b) of section 7454 is amended by inserting ''or whether an organization manager (as defined in section 4958(f)(2)) has 'knowingly' participated in an excess benefit transaction (as defined in section 4958(c)),'' after ''section 4912(b),''.

(6) The table of subchapters for chapter 42 is amended by striking the last item and inserting the following:

''Subchapter D. Failure by certain charitable organizations to meet certain qualification requirements.
''Subchapter E. Abatement of first and second tier taxes in certain cases.''

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section (other than subsection (b)) shall apply to excess benefit transactions occurring on or after September 14, 1995.

(2) BINDING CONTRACTS FOR PERSONAL SERVICES.—The amendments referred to in paragraph (1) shall not apply to any transaction pursuant to any written contract for the performance of personal services which was binding on September 13, 1995, and at all times thereafter before such transaction occurred.

(3) APPLICATION OF PRIVATE INUREMENT RULE TO TAX-EXEMPT ORGANIZATIONS DESCRIBED IN SECTION 501(C)(4).—

(A) IN GENERAL.—The amendment made by subsection (b) shall apply to inurement occurring on or after September 14, 1995.

(B) BINDING CONTRACTS.—The amendment made by subsection (b) shall not apply to any inurement occurring before January 1, 1997, pursuant to a written contract which was binding on September 13, 1995, and at all

times thereafter before such inurement occurred.

**SEC. 13647. REPORTING OF CERTAIN EXCISE TAXES AND OTHER INFORMATION.**

(a) REPORTING BY ORGANIZATIONS DESCRIBED IN SECTION 501(c)(3).—Subsection (b) of section 6033 (relating to certain organizations described in section 501(c)(3)) is amended by striking ''and'' at the end of paragraph (9), by redesignating paragraph (10) as paragraph (14), and by inserting after paragraph (9) the following new paragraphs:

''(10) the respective amounts (if any) of the taxes paid by the organization during the taxable year under the following provisions:

''(A) section 4911 (relating to tax on excess expenditures to influence legislation),

''(B) section 4912 (relating to tax on disqualifying lobbying expenditures of certain organizations), and

''(C) section 4955 (relating to taxes on political expenditures of section 501(c)(3) organizations),

''(11) the respective amounts (if any) of the taxes paid by the organization or any disqualified person during the taxable year under section 4958

(relating to taxes on private excess benefit from certain charitable organizations),

''(12) such information as the Secretary may require with respect to any excess benefit transaction (as defined in section 4958),

''(13) the name of each disqualified person who receives an economic benefit from an applicable tax-exempt organization (as defined in section 4958(e)) and such other information as the Secretary may prescribe with respect to such benefit, and''.

(b) ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).—Section 6033 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) CERTAIN ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).—Every organization described in section 501(c)(4) which is subject to the requirements of subsection (a) shall include on the return required under subsection (a) the information referred to in paragraphs (10), (11), (12) and (13) of subsection (b) with respect to such organization.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns for taxable years beginning after the date of the enactment of this Act.

**SEC. 13648. EXEMPT ORGANIZATIONS REQUIRED TO PROVIDE COPY OF RETURN.**

(a) GENERAL RULE.—

(1) Subparagraph (A) of section 6104(e)(1) (relating to public inspection of annual returns) is amended to read as follows:

''(A) IN GENERAL.—During the 3-year period beginning on the filing date—

''(i) a copy of the annual return filed under section 6033 (relating to returns by exempt organizations) by any organization to which this paragraph applies shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office, and

''(ii) upon request of an individual made at such principal office or such a regional or district office, a copy of such annual return shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

If the request under clause (ii) is made in person, such copy shall be provided immediately and, if made other than in person, shall be provided within 30 days.''

(2) Clause (ii) of section 6104(e)(2)(A) is amended by inserting before the period at the end thereof the following: ''(and, upon request of an individual made at such principal office or such a regional or district office, a copy of the material required to be available for inspection under this subparagraph shall be provided (in accordance with the last sentence of paragraph (1)(A)) to such individual without charge other than a reasonable fee for any reproduction and mailing costs)''.

(3) Subsection (e) of section 6104 is amended by adding at the end the following new paragraph:

''(3) LIMITATION.—Paragraph (1)(A)(ii) (and the corresponding provision of paragraph (2)) shall not apply to any request if the Secretary determines, upon application by an organization, that such request is part of a harassment campaign and that compliance with such request is not in the public interest.''

(b) ADVERTISEMENTS ETC., REQUIRED TO DISCLOSE AVAILABILITY OF ANNUAL RETURN.—

(1) Paragraph (1) of section 6104(e) is amended by adding at the end thereof the following new subparagraph:

''(E) ADVERTISEMENTS ETC., REQUIRED TO DISCLOSE AVAILABILITY OF ANNUAL RETURN.—In the case of an organization required by subparagraph (A) to provide a copy of its annual return under section 6033 upon request to individuals, each written advertisement or solicitation by (or on behalf of) such organization shall contain an express statement (in a conspicuous and easily recognizable format) that such return shall be provided to individuals upon request.''

(2) Section 6716, as added by section 13649 of this title, is amended—

(A) by striking ''section 6116'' each place it appears and inserting ''section 6116 or section 6104(e)(1)(E)'',

(B) by striking ''$1,000'' in subsection (a) and inserting ''$1,000 ($100 in the case of a failure to meet the requirements of 6104(e)(1)(E))'', and

(C) by inserting before the period at the end of the section heading ''**; FAILURE OF**

**CERTAIN EXEMPT ORGANIZATIONS TO DISCLOSE AVAILABILITY OF ANNUAL RETURN**''.

(3) Subparagraph (C) of section 6652(c)(1) is amended by striking ''(e)(1)'' and inserting ''(e)(1) (other than subparagraph (E))'', by striking ''$10'' and inserting ''$20'', and by striking ''$5,000'' and inserting ''$10,000''.

(4) Subparagraph (D) of section 6652(c)(1) is amended by striking ''$10'' and inserting ''$20''.

(5) The item relating to section 6716 in the table of sections for part I of subchapter B of chapter 68 is amended by inserting before the period ''; failure of certain exempt organizations to disclose availability of annual return''.

(c) INCREASE IN PENALTY FOR WILLFUL FAILURE TO ALLOW PUBLIC INSPECTION OF CERTAIN RETURNS, ETC.—Section 6685 is amended by striking ''$1,000'' and inserting ''$5,000''.

(d) COPIES OF RETURNS OF EXEMPT ORGANIZATIONS AVAILABLE FROM SECRETARY IN CERTAIN CASES.—Subsection (b) of section 6104 is amended to read as follows:

''(b) INSPECTION OF ANNUAL INFORMATION RETURNS.—

"(1) IN GENERAL.—The information required to be furnished by sections 6033, 6034, and 6058, together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary may prescribe. Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a)) which is required to furnish such information.

"(2) COPIES PROVIDED OF RETURNS FILED UNDER SECTION 6033 AND APPLICATIONS FILED UNDER SECTION 508 IN CERTAIN CASES.—The Secretary shall provide copies of returns filed under section 6033 and applications for exemption filed under section 508 by any organization to which subsection (d) or (e)(1) applies to any person who agrees (subject to such conditions as the Secretary shall prescribe)—

"(A) to accept broad categories of such returns and applications, and

"(B) to provide electronic access to the provided returns and applications on an electronic network available to the general public.

Such copies shall be provided without charge if such person agrees to provide such access without charge. Otherwise, the Secretary may impose a reasonable fee for any reproduction and mailing costs.

''(3) RETURNS AND APPLICATIONS FILED BEFORE 1996.—Paragraph (2) shall apply to returns and applications filed before January 1, 1996, only to the extent provided by the Secretary.''

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996 (or, if later, the 90th day after the date of the enactment of this Act).

**SEC. 13649. CERTAIN ORGANIZATIONS REQUIRED TO DISCLOSE NONEXEMPT STATUS.**

(a) GENERAL RULE.—Subchapter B of chapter 61 (relating to miscellaneous provisions) is amended by redesignating section 6116 as section 6117 and by inserting after section 6115 the following new section:

**''SEC. 6116. CERTAIN ORGANIZATIONS REQUIRED TO DISCLOSE NONEXEMPT STATUS.**

''(a) IN GENERAL.—If—

''(1) in an advertisement or solicitation by (or on behalf of) an organization, such organization is referred to as being nonprofit, and

''(2) such organization is not exempt from tax under subtitle A,

such advertisement or solicitation shall contain an express statement (in a conspicuous and easily recognizable format) that such organization is not exempt from Federal income taxes.

''(b) CROSS REFERENCE.—

**"For penalties for violation of subsection (a), see section 6716."**

(b) PENALTY.—Part I of subchapter B of chapter 68 is amended by adding at the end thereof the following new section:

**"SEC. 6716. FAILURE TO DISCLOSE NONEXEMPT STATUS.**

''(a) IMPOSITION OF PENALTY.—If there is a failure to meet the requirements of section 6116 with respect to any advertisement or solicitation by (or on behalf of) an organization, such organization shall pay a penalty of $1,000 for each day on which such a failure occurred. The maximum penalty imposed under this subsection on failures by any organization during any calendar year shall not exceed $10,000.

''(b) REASONABLE CAUSE EXEMPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

"(c) $10,000 LIMITATION NOT TO APPLY WHERE INTENTIONAL DISREGARD.—If any failure to which subsection (a) applies is due to intentional disregard of the requirements of section 6116—

"(1) the penalty under subsection (a) for the day on which failure occurred shall be the greater of—

"(A) $1,000, or

"(B) 50 percent of the aggregate cost of the advertisements and solicitations which occurred on such day and with respect to which there was such failure,

"(2) the $10,000 limitation of subsection (a) shall not apply to any penalty under subsection (a) for the day on which such failure occurred, and

"(3) such penalty shall not be taken into account in applying such limitation to other penalties under subsection (a).

"(d) DAY ON WHICH FAILURE OCCURS.—For purposes of this section, rules similar to the rules of section 6710(d) shall apply in determining the day on which any failure occurs."

(c) CLERICAL AMENDMENTS.—

(1) The table of sections for subchapter B of chapter 61 is amended by striking the item relating to section 6116 and inserting the following:

"Sec. 6116. Certain organizations required to disclose nonexempt status.
"Sec. 6117. Cross reference."

(2) The table of sections of part I of subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6716. Failure to disclose nonexempt status."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996 (or, if later, the 90th day after the date of the enactment of this Act).

**SEC. 13650. INCREASE IN PENALTIES ON EXEMPT ORGANIZATIONS FOR FAILURE TO FILE COMPLETE AND TIMELY ANNUAL RETURNS.**

(a) IN GENERAL.—Subparagraph (A) of section 6652(c)(1) (relating to annual returns under section 6033) is amended by striking "$10" and inserting "$20" and by striking "$5,000" and inserting "$10,000".

(b) LARGER PENALTY ON ORGANIZATIONS HAVING GROSS RECEIPTS IN EXCESS OF $1,000,000.—Subparagraph (A) of section 6652(c)(1) is amended by adding at the end the following new sentence: "In the case of an organization having gross receipts exceeding $1,000,000 for any year, with respect to the return required under

section 6033 for such year, the first sentence of this subparagraph shall be applied by substituting '$100' for '$20' and, in lieu of applying the second sentence of this subparagraph, the maximum penalty under this subparagraph shall not exceed $50,000.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns for taxable years ending on or after December 31, 1995.

**SEC. 13651. STUDIES.**

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of—

(1) whether the statutory prohibition on private inurement, and the provisions of section 4958 of the Internal Revenue Code of 1986 (as added by this part), should apply to other tax-exempt organizations,

(2) whether State officials responsible for overseeing charitable organizations should be provided with Federal tax information in addition to the information available under section 6103 of such Code for purposes of such oversight, and

(3) whether the return required to be filed by section 6033 of such Code should be modified to assure the return's utility to such Secretary and to the

public and to reduce any unnecessary reporting burdens.

(b) REPORT.—Not later than January 1, 1997, the report of such study shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

# Subtitle G—Reform of the Earned Income Tax Credit

## SEC. 13701. REPEAL OF EARNED INCOME CREDIT FOR INDIVIDUALS WITHOUT QUALIFYING CHILDREN; MODIFICATIONS TO CREDIT PHASEOUT.

(a) REPEAL OF CREDIT FOR INDIVIDUALS WITHOUT CHILDREN.—Subparagraph (A) of section 32(c)(1) (defining eligible individual) is amended to read as follows:

''(A) IN GENERAL.—The term 'eligible individual' means any individual who has a qualifying child for the taxable year.''

(b) MODIFICATIONS TO PHASEOUT.—

(1) Subsection (b) of section 32 is amended to read as follows:

''(b) PERCENTAGES.—

''(1) IN GENERAL.—The credit percentage and the phaseout percentage shall be determined as follows:

| ''In the case of an eligible individual with: | The credit percentage is: | The phaseout percentage is: |
|---|---|---|
| 1 qualifying child | 34 | 18 |
| 2 or more qualifying children | 40 | 23 |

''(2) AMOUNTS.—The earned income amount and the phaseout amount shall be determined as follows:

| ''In the case of an eligible individual with: | The earned income amount is: | The phaseout amount is: |
|---|---|---|
| 1 qualifying child | $6,340 | $11,630 |
| 2 or more qualifying children | $8,910 | $11,630.'' |

(2) Subsection (j) of section 32 is amended—

(A) by striking ''subsection (b)(2)(A)'' and inserting ''subsection (b)(2)'',

(B) by striking ''1994'' and inserting ''1996'', and

(C) by striking ''1993'' and inserting ''1995''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

**SEC. 13702. MODIFICATION OF ADJUSTED GROSS INCOME USED FOR PHASEOUT.**

(a) IN GENERAL.—Subsections (a)(2)(B), (c)(1)(C), and (f)(2)(B) of section 32 are each amended by striking ''adjusted gross income'' each place it appears and inserting ''modified adjusted gross income''.

(b) MODIFIED ADJUSTED GROSS INCOME.—Subsection (c) of section 32 is amended by adding at the end the following new paragraph:

''(5) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this section, the term 'modified adjusted gross income' means adjusted gross income increased by—

''(A) any amount received as a pension or annuity, and any distribution or payment received from an individual retirement plan, by the taxpayer during the taxable year to the extent not otherwise included in gross income, and

''(B) the social security benefits (as defined in section 86(d)) received by the taxpayer during the taxable year to the extent not included in gross income.

Any amount which is not includible in gross income by reason of paragraph (3), (4), or (5) of section 408(d) or section 402(c), 403(a)(4), 403(b)(8), or 457(e)(10) shall be treated as not described in subparagraph (A).''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

**SEC. 13703. EARNED INCOME TAX CREDIT DENIED TO INDIVIDUALS NOT AUTHORIZED TO BE EMPLOYED IN THE UNITED STATES.**

(a) IN GENERAL.—Section 32(c)(1) (relating to individuals eligible to claim the earned income tax credit) is amended by adding at the end the following new subparagraph:

''(F) IDENTIFICATION NUMBER REQUIREMENT.—The term 'eligible individual' does not include any individual who does not include on the return of tax for the taxable year—

''(i) such individual's taxpayer identification number, and

''(ii) if the individual is married (within the meaning of section 7703), the taxpayer identification number of such individual's spouse.''

(b) SPECIAL IDENTIFICATION NUMBER.—Section 32 is amended by adding at the end the following new subsection:

''(l) IDENTIFICATION NUMBERS.—Solely for purposes of subsections (c)(1)(F) and (c)(3)(D), a taxpayer identification number means a social security number issued to an individual by the Social Security Administration (other than a social security number issued pursuant to clause (II) (or that portion of clause (III) that relates

to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act).''

(c) EXTENSION OF PROCEDURES APPLICABLE TO MATHEMATICAL OR CLERICAL ERRORS.—Section 6213(g)(2) (relating to the definition of mathematical or clerical errors) is amended by striking ''and' at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting a comma, and by inserting after subparagraph (E) the following new subparagraphs:

''(F) an omission of a correct taxpayer identification number required under section 32 (relating to the earned income tax credit) to be included on a return, and

''(G) an entry on a return claiming the credit under section 32 with respect to net earnings from self-employment described in section 32(c)(2)(A) to the extent the tax imposed by section 1401 (relating to self-employment tax) on such net earnings has not been paid.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

# Subtitle H—Increase in Public Debt Limit

**SEC. 13801. INCREASE IN PUBLIC DEBT LIMIT.**

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar amount contained therein and inserting ''$5,500,000,000,000''.

# Subtitle I—Coal Industry Retiree Health Equity

**SEC. 13901. REPEAL OF REACHBACK PROVISIONS OF COAL INDUSTRY HEALTH BENEFIT SYSTEM.**

(a) AMENDMENTS RELATED TO DEFINITIONS.—

(1) AGREEMENTS.—

(A) IN GENERAL.—Paragraph (1) of section 9701(b) (relating to agreements) is amended to read as follows:

''(1) COAL WAGE AGREEMENTS.—

''(A) 1988 AGREEMENT.—The term '1988 agreement' means the collective bargaining agreement between the settlors which became effective on February 1, 1988.

''(B) COAL WAGE AGREEMENT.—The term 'coal wage agreement' means any predecessor to the 1988 agreement.''

(B) CONFORMING AMENDMENT.—Section 9701(b) is amended by striking paragraph (3).

(2) OPERATORS.—

(A) SIGNATORY OPERATOR.—Paragraph (1) of section 9701(c) (relating to operators) is amended to read as follows:

''(1) SIGNATORY OPERATOR.—The term 'signatory operator' means a 1988 agreement operator.''

(B) 1988 AGREEMENT OPERATOR.—Paragraph (3) of section 9701(c) is amended to read as follows:

''(3) 1988 AGREEMENT OPERATOR.—The term '1988 agreement operator' means—

''(A) an operator which was a signatory to the 1988 agreement, or

''(B) a person in business which, during the term of the 1988 agreement, was a signatory to an agreement (other than the National Coal Mine Construction Agreement and the Coal Haulers' Agreement) containing pension and health care contribution and benefit provisions which are the same as those contained in the 1988 agreement.

Such term shall not include any operator who was assessed, and did pay the full amount of, contractual withdrawal liability to the 1950 UMWA Benefit

Plan, the 1974 UMWA Benefit Plan, or the Combined Fund.''

(C) LAST SIGNATORY OPERATOR.—Section 9701(c)(4) is amended by inserting ''bituminous'' before ''coal'' each place it appears.

(b) COMBINED BENEFIT FUND.—Section 9702(b)(1) is amended to read as follows:

''(b) BOARD OF TRUSTEES.—

''(1) IN GENERAL.—For purposes of subsection (a), the board of trustees for the Combined Fund shall be appointed as follows:

''(A) two individuals who represent employers in the coal mining industry shall be designated by the BCOA;

''(B) two individuals designated by the United Mine Workers of America; and

''(C) three persons selected by the persons appointed under subparagraphs (A) and (B).''

(c) ASSIGNMENT OF ELIGIBLE BENEFICIARIES.—Subsection (a) of section 9706 is amended by adding at the end the following new flush sentence:

''For purposes of assessing premiums on or after October 1, 1995, under this chapter, the Commissioner of Social Security shall, effective October 1, 1995, revoke all assignments previously made (and shall make no further assign-

ments and shall terminate all unpaid liabilities for any pending assignments) to all persons other than signatory operators and shall deem each affected coal industry retiree who is an eligible beneficiary to be an unassigned beneficiary under section 9706. The preceding sentence shall not be construed to prevent any transfer, or any treatment of a successor as an assigned operator, under subsection (b)(2).''

(d) 1992 UMWA BENEFIT PLAN.—Section 9712(d) is amended—

(1) by striking paragraph (3) and by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively, and

(2) by striking ''or last signatory operator described in paragraph (3),'' in paragraph (3) (as redesignated under paragraph (1)).

(e) INFORMATION REQUIREMENTS.—

(1) IN GENERAL.—Subsection (h) of section 9704 is amended by adding at the end the following new paragraph:

''(2) INFORMATION TO CONTRIBUTORS.—

''(A) IN GENERAL.—The trustees of the Combined Fund shall, within 30 days of a written request, make available to any person re-

quired to make contributions to the Combined Fund, or their agent—

''(i) all documents which reflect its financial and operational status, including documents under which it is operated, and

''(ii) all documents prepared at the request of the trustees or staff of the Combined Fund which form the basis for any of its actions or reports, including the eligibility of participants in predecessor plans.

''(B) FEES.—The trustees may charge reasonable fees (not in excess of actual expenses) for providing documents under this paragraph.''

(2) CONFORMING AMENDMENT.—Subsection (h) of section 9704 is amended by striking ''(h) INFORMATION.—The'' and inserting the following:

''(h) INFORMATION.—

''(1) INFORMATION TO SECRETARY.—The''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after September 30, 1995.

# TITLE XIV—COMMITTEE ON WAYS AND MEANS—TAX SIMPLIFICATION

**SEC. 14001. SHORT TITLE; AMENDMENT TO 1986 CODE.**

(a) SHORT TITLE.—This title may be cited as the ''Tax Simplification Act of 1995''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this title is as follows:

TITLE XIV—COMMITTEE ON WAYS AND MEANS—TAX SIMPLIFICATION

Sec. 14001. Short title; amendment to 1986 Code.

Subtitle A—Provisions Relating to Individuals

PART I—PROVISIONS RELATING TO ROLLOVER OF GAIN ON SALE OF PRINCIPAL RESIDENCE

Sec. 14101. Multiple sales within rollover period.
Sec. 14102. Special rules in case of divorce.
Sec. 14103. One-time exclusion of gain from sale of principal residence for certain spouses.

PART II—OTHER PROVISIONS

Sec. 14111. Payment of tax by commercially acceptable means.
Sec. 14112. Simplified foreign tax credit limitation for individuals.
Sec. 14113. Treatment of personal transactions by individuals under foreign currency rules.
Sec. 14114. Treatment of certain reimbursed expenses of rural mail carriers.
Sec. 14115. Exclusion of combat pay from withholding limited to amount excludable from gross income.

Sec. 14116. Treatment of traveling expenses of certain Federal employees engaged in criminal investigations.

Subtitle B—Pension Simplification

PART I—SIMPLIFIED DISTRIBUTION RULES

Sec. 14201. Repeal of 5-year income averaging for lump-sum distributions.
Sec. 14202. Repeal of $5,000 exclusion of employees' death benefits.
Sec. 14203. Simplified method for taxing annuity distributions under certain employer plans.
Sec. 14204. Required distributions.

PART II—INCREASED ACCESS TO PENSION PLANS

Sec. 14211. Modifications of simplified employee pensions.
Sec. 14212. State and local governments and tax-exempt organizations eligible under section 401(k).

PART III—NONDISCRIMINATION PROVISIONS

Sec. 14221. Definition of highly compensated employees.
Sec. 14222. Repeal of family aggregation rules.
Sec. 14223. Modification of additional participation requirements.
Sec. 14224. Nondiscrimination rules for qualified cash or deferred arrangements and matching contributions.

PART IV—MISCELLANEOUS SIMPLIFICATION

Sec. 14231. Treatment of leased employees.
Sec. 14232. Plans covering self-employed individuals.
Sec. 14233. Elimination of special vesting rule for multiemployer plans.
Sec. 14234. Distributions under rural cooperative plans.
Sec. 14235. Treatment of governmental plans under section 415.
Sec. 14236. Uniform retirement age.
Sec. 14237. Uniform penalty provisions to apply to certain pension reporting requirements.
Sec. 14238. Contributions on behalf of disabled employees.
Sec. 14239. Treatment of deferred compensation plans of State and local governments and tax-exempt organizations.
Sec. 14240. Trust requirement for deferred compensation plans of State and local governments.
Sec. 14241. Transition rule for computing maximum benefits under section 415 limitations.
Sec. 14242. Multiple salary reduction agreements permitted under section 403(b).
Sec. 14243. Waiver of minimum period for joint and survivor annuity explanation before annuity starting date.
Sec. 14244. Repeal of limitation in case of defined benefit plan and defined contribution plan for same employee.
Sec. 14245. Date for adoption of plan amendments.

Subtitle C—Treatment of Large Partnerships

PART I—GENERAL PROVISIONS

Sec. 14301. Simplified flow-through for large partnerships.
Sec. 14302. Simplified audit procedures for large partnerships.

Sec. 14303. Due date for furnishing information to partners of large partnerships.
Sec. 14304. Returns may be required on magnetic media.
Sec. 14305. Treatment of partnership items of individual retirement accounts.
Sec. 14306. Effective date.

PART II—PROVISIONS RELATED TO CERTAIN PARTNERSHIP PROCEEDINGS

Sec. 14311. Treatment of partnership items in deficiency proceedings.
Sec. 14312. Partnership return to be determinative of audit procedures to be followed.
Sec. 14313. Provisions relating to statute of limitations.
Sec. 14314. Expansion of small partnership exception.
Sec. 14315. Exclusion of partial settlements from 1-year limitation on assessment.
Sec. 14316. Extension of time for filing a request for administrative adjustment.
Sec. 14317. Availability of innocent spouse relief in context of partnership proceedings.
Sec. 14318. Determination of penalties at partnership level.
Sec. 14319. Provisions relating to court jurisdiction, etc.
Sec. 14320. Treatment of premature petitions filed by notice partners or 5-percent groups.
Sec. 14321. Bonds in case of appeals from certain proceeding.
Sec. 14322. Suspension of interest where delay in computational adjustment resulting from certain settlements.
Sec. 14323. Special rules for administrative adjustment requests with respect to bad debts or worthless securities.

Subtitle D—Foreign Provisions

PART I—MODIFICATIONS TO TREATMENT OF PASSIVE FOREIGN INVESTMENT COMPANIES

Sec. 14401. United States shareholders of controlled foreign corporations not subject to PFIC inclusion.
Sec. 14402. Election of mark to market for marketable stock in passive foreign investment company.
Sec. 14403. Modifications to definition of passive income.
Sec. 14404. Effective date.

PART II—TREATMENT OF CONTROLLED FOREIGN CORPORATIONS

Sec. 14411. Gain on certain stock sales by controlled foreign corporations treated as dividends.
Sec. 14412. Miscellaneous modifications to subpart F.
Sec. 14413. Indirect foreign tax credit allowed for certain lower tier companies.
Sec. 14414. Repeal of inclusion of certain earnings invested in excess passive assets.

PART III—OTHER PROVISIONS

Sec. 14421. Exchange rate used in translating foreign taxes.
Sec. 14422. Election to use simplified section 904 limitation for alternative minimum tax.
Sec. 14423. Modification of section 1491.
Sec. 14424. Modification of section 367(b).

Sec. 14425. Increase in filing thresholds for returns as to organization of foreign corporations and acquisitions of stock in such corporations.
Sec. 14426. Application of uniform capitalization rules to foreign persons.
Sec. 14427. Certain prizes and awards.
Sec. 14428. Treatment for estate tax purposes of short-term obligations held by nonresident aliens.

Subtitle E—Other Income Tax Provisions

PART I—PROVISIONS RELATING TO S CORPORATIONS

Sec. 14501. S corporations permitted to have 75 shareholders.
Sec. 14502. Electing small business trusts.
Sec. 14503. Expansion of post-death qualification for certain trusts.
Sec. 14504. Financial institutions permitted to hold safe harbor debt.
Sec. 14505. Rules relating to inadvertent terminations and invalid elections.
Sec. 14506. Agreement to terminate year.
Sec. 14507. Expansion of post-termination transition period.
Sec. 14508. S corporations permitted to hold subsidiaries.
Sec. 14509. Treatment of distributions during loss years.
Sec. 14510. Treatment of S corporations under subchapter C.
Sec. 14511. Elimination of certain earnings and profits.
Sec. 14512. Carryover of disallowed losses and deductions under at-risk rules allowed.
Sec. 14513. Adjustments to basis of inherited S stock to reflect certain items of income.
Sec. 14514. S corporations eligible for rules applicable to real property subdivided for sale by noncorporate taxpayers.
Sec. 14515. Effective date.

PART II—PROVISIONS RELATING TO REGULATED INVESTMENT COMPANIES

Sec. 14521. Repeal of 30-percent gross income limitation.

PART III—PROVISIONS RELATING TO REAL ESTATE INVESTMENT TRUSTS

Sec. 14531. Clarification of limitation on maximum number of shareholders.
Sec. 14532. De minimis rule for tenant services income.
Sec. 14533. Attribution rules applicable to tenant ownership.
Sec. 14534. Credit for tax paid by REIT on retained capital gains.
Sec. 14535. Repeal of 30-percent gross income requirement.
Sec. 14536. Modification of earnings and profits rules for determining whether REIT has earnings and profits from non-REIT year.
Sec. 14537. Treatment of foreclosure property.
Sec. 14538. Payments under hedging instruments.
Sec. 14539. Excess noncash income.
Sec. 14540. Prohibited transaction safe harbor.
Sec. 14541. Shared appreciation mortgages.
Sec. 14542. Wholly owned subsidiaries.
Sec. 14543. Effective date.

PART IV—ACCOUNTING PROVISIONS

Sec. 14551. Modifications to look-back method for long-term contracts.
Sec. 14552. Application of mark to market accounting method to traders in securities.

Sec. 14553. Modification of ruling amounts for nuclear decommissioning costs.
Sec. 14554. Election of alternative taxable years by partnerships and S corporations.
Sec. 14555. Special rule for crop insurance proceeds and disaster payments.

PART V—TAX-EXEMPT BOND PROVISIONS

Sec. 14561. Repeal of $100,000 limitation on unspent proceeds under 1-year exception from rebate.
Sec. 14562. Exception from rebate for earnings on bona fide debt service fund under construction bond rules.
Sec. 14563. Repeal of debt service-based limitation on investment in certain nonpurpose investments.
Sec. 14564. Repeal of expired provisions.
Sec. 14565. Effective dates.

PART VI—INSURANCE PROVISIONS

Sec. 14571. Treatment of certain insurance contracts on retired lives.
Sec. 14572. Treatment of modified guaranteed contracts.
Sec. 14573. Minimum tax treatment of certain property and casualty insurance companies.

PART VII—OTHER PROVISIONS

Sec. 14581. Closing of partnership taxable year with respect to deceased partner, etc.
Sec. 14582. Credit for Social Security taxes paid with respect to employee cash tips.
Sec. 14583. Due date for first quarter estimated tax payments by private foundations.
Sec. 14584. Treatment of dues paid to agricultural or horticultural organizations.

Subtitle F—Estates and Trusts

PART I—INCOME TAX PROVISIONS

Sec. 14601. Certain revocable trusts treated as part of estate.
Sec. 14602. Distributions during first 65 days of taxable year of estate.
Sec. 14603. Separate share rules available to estates.
Sec. 14604. Executor of estate and beneficiaries treated as related persons for disallowance of losses, etc.
Sec. 14605. Limitation on taxable year of estates.
Sec. 14606. Repeal of certain throwback rules applicable to domestic trusts.
Sec. 14607. Treatment of funeral trusts.

PART II—ESTATE AND GIFT TAX PROVISIONS

Sec. 14611. Clarification of waiver of certain rights of recovery.
Sec. 14612. Adjustments for gifts within 3 years of decedent's death.
Sec. 14613. Clarification of qualified terminable interest rules.
Sec. 14614. Transitional rule under section 2056A.
Sec. 14615. Opportunity to correct certain failures under section 2032A.
Sec. 14616. Unified credit of decedent increased by unified credit of spouse used on split gift included in decedent's gross estate.
Sec. 14617. Reformation of defective bequests, etc. to spouse of decedent.

Sec. 14618. Gifts may not be revalued for estate tax purposes after expiration of statute of limitations.
Sec. 14619. Clarifications relating to disclaimers.
Sec. 14620. Clarification of treatment of survivor annuities under qualified terminable interest rules.
Sec. 14621. Treatment under qualified domestic trust rules of forms of ownership which are not trusts.
Sec. 14622. Authority to waive requirement of United States trustee for qualified domestic trusts.

PART III—GENERATION-SKIPPING TAX PROVISIONS

Sec. 14631. Severing of trusts holding property having an inclusion ratio of greater than zero.
Sec. 14632. Clarification of who is transferor where subsequent gift by reason of power of appointment.
Sec. 14633. Taxable termination not to include direct skips.
Sec. 14634. Expansion of exception from generation-skipping transfer tax for transfers to individuals with deceased parents.

Subtitle G—Excise Tax Simplification

PART I—PROVISIONS RELATED TO DISTILLED SPIRITS, WINES, AND BEER

Sec. 14701. Credit or refund for imported bottled distilled spirits returned to distilled spirits plant.
Sec. 14702. Authority to cancel or credit export bonds without submission of records.
Sec. 14703. Repeal of required maintenance of records on premises of distilled spirits plant.
Sec. 14704. Fermented material from any brewery may be received at a distilled spirits plant.
Sec. 14705. Repeal of requirement for wholesale dealers in liquors to post sign.
Sec. 14706. Refund of tax on wine returned to bond not limited to unmerchantable wine.
Sec. 14707. Use of additional ameliorating material in certain wines.
Sec. 14708. Domestically produced beer may be withdrawn free of tax for use of foreign embassies, legations, etc.
Sec. 14709. Beer may be withdrawn free of tax for destruction.
Sec. 14710. Authority to allow drawback on exported beer without submission of records.
Sec. 14711. Transfer to brewery of beer imported in bulk without payment of tax.

PART II—CONSOLIDATION OF TAXES ON AVIATION GASOLINE

Sec. 14721. Consolidation of taxes on aviation gasoline.

PART III—OTHER EXCISE TAX PROVISIONS

Sec. 14731. Authority to grant exemptions from registration requirements.
Sec. 14732. Certain combinations not treated as manufacture under retail sales tax on heavy trucks.
Sec. 14733. Exemption from diesel fuel dyeing requirements with respect to certain States.
Sec. 14734. Repeal of expired provisions.

Subtitle H—Administrative Provisions

PART I—GENERAL PROVISIONS

Sec. 14801. Repeal of authority to disclose whether prospective juror has been audited.
Sec. 14802. Clarification of statute of limitations.
Sec. 14803. Certain notices disregarded under provision increasing interest rate on large corporate underpayments.
Sec. 14804. Clarification of authority to withhold Puerto Rico income taxes from salaries of Federal employees.

PART II—TAX COURT PROCEDURES

Sec. 14811. Overpayment determinations of tax court.
Sec. 14812. Awarding of administrative costs.
Sec. 14813. Redetermination of interest pursuant to motion.
Sec. 14814. Application of net worth requirement for awards of litigation costs.

PART III—AUTHORITY FOR CERTAIN COOPERATIVE AGREEMENTS

Sec. 14821. Cooperative agreements with State tax authorities.

# Subtitle A—Provisions Relating to Individuals

## PART I—PROVISIONS RELATING TO ROLLOVER OF GAIN ON SALE OF PRINCIPAL RESIDENCE

### SEC. 14101. MULTIPLE SALES WITHIN ROLLOVER PERIOD.

(a) GENERAL RULE.—

(1) Section 1034 (relating to rollover of gain on sale of principal residence) is amended by striking subsection (d).

(2) Paragraph (4) of section 1034(c) is amended to read as follows:

''(4) If the taxpayer, during the period described in subsection (a), purchases more than 1 residence which is used by him as his principal residence at some time within 2 years after the date of the sale of the old residence, only the first of such

residences so used by him after the date of such sale shall constitute the new residence.''

(3) Subsections (h)(1) and (k) of section 1034 are each amended by striking ''(other than the 2 years referred to in subsection (c)(4))''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales of old residences (within the meaning of section 1034 of the Internal Revenue Code of 1986) after the date of the enactment of this Act.

**SEC. 14102. SPECIAL RULES IN CASE OF DIVORCE.**

(a) IN GENERAL.—Subsection (c) of section 1034 is amended by adding at the end the following new paragraph:

''(5) If—

''(A) a residence is sold by an individual pursuant to a divorce or marital separation, and

''(B) the taxpayer used such residence as his principal residence at any time during the 2-year period ending on the date of such sale,

for purposes of this section, such residence shall be treated as the taxpayer's principal residence at the time of such sale.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales of old residences (within

the meaning of section 1034 of the Internal Revenue Code of 1986) after the date of the enactment of this Act.

**SEC. 14103. ONE-TIME EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE FOR CERTAIN SPOUSES.**

(a) IN GENERAL.—Paragraph (2) of section 121(b) (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is amended by adding at the end the following new sentence: ''For purposes of applying the preceding sentence to individuals who are married to each other, an election by one individual with respect to a sale or exchange occurring before the marriage shall be disregarded for purposes of permitting an election with respect to property owned and used by the other individual as his principal residence throughout the 3-year period ending on the date of the marriage.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of determining whether an election may be made under section 121 of the Internal Revenue Code of 1986 with respect to a sale or exchange occurring after September 13, 1995.

## PART II—OTHER PROVISIONS

### SEC. 14111. PAYMENT OF TAX BY COMMERCIALLY ACCEPTABLE MEANS.

(a) GENERAL RULE.—Section 6311 is amended to read as follows:

### "SEC. 6311. PAYMENT OF TAX BY COMMERCIALLY ACCEPTABLE MEANS.

''(a) AUTHORITY TO RECEIVE.—It shall be lawful for the Secretary to receive for internal revenue taxes (or in payment for internal revenue stamps) any commercially acceptable means that the Secretary deems appropriate to the extent and under the conditions provided in regulations prescribed by the Secretary.

''(b) ULTIMATE LIABILITY.—If a check, money order, or other method of payment, including payment by credit card, debit card, or charge card so received is not duly paid, or is paid and subsequently charged back to the Secretary, the person by whom such check, or money order, or other method of payment has been tendered shall remain liable for the payment of the tax or for the stamps, and for all legal penalties and additions, to the same extent as if such check, money order, or other method of payment had not been tendered.

''(c) LIABILITY OF BANKS AND OTHERS.—If any certified, treasurer's, or cashier's check (or other guaranteed draft), or any money order, or any other means of pay-

ment that has been guaranteed by a financial institution (such as a credit card, debit card, or charge card transaction which has been guaranteed expressly by a financial institution) so received is not duly paid, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for—

''(1) the amount of such check (or draft) upon all assets of the financial institution on which drawn,

''(2) the amount of such money order upon all the assets of the issuer thereof, or

''(3) the guaranteed amount of any other transaction upon all the assets of the institution making such guarantee,

and such amount shall be paid out of such assets in preference to any other claims whatsoever against such financial institution, issuer, or guaranteeing institution, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such financial institution.

''(d) PAYMENT BY OTHER MEANS.—

''(1) AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary shall prescribe such regulations as the Secretary deems necessary to receive

payment by commercially acceptable means, including regulations that—

''(A) specify which methods of payment by commercially acceptable means will be acceptable,

''(B) specify when payment by such means will be considered received,

''(C) identify types of nontax matters related to payment by such means that are to be resolved by persons ultimately liable for payment and financial intermediaries, without the involvement of the Secretary, and

''(D) ensure that tax matters will be resolved by the Secretary, without the involvement of financial intermediaries.

''(2) AUTHORITY TO ENTER INTO CONTRACTS.—Notwithstanding section 3718(f) of title 31, United States Code, the Secretary is authorized to enter into contracts to obtain services related to receiving payment by other means where cost beneficial to the Government. The Secretary may not pay any fee or provide any other consideration under such contracts.

''(3) SPECIAL PROVISIONS FOR USE OF CREDIT CARDS.—If use of credit cards is accepted as a

method of payment of taxes pursuant to subsection (a)—

''(A) a payment of internal revenue taxes (or a payment for internal revenue stamps) by a person by use of a credit card shall not be subject to section 161 of the Truth-in-Lending Act (15 U.S.C. 1666), or to any similar provisions of State law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the credit card account such as a computational error or numerical transposition in the credit card transaction or an issue as to whether the person authorized payment by use of the credit card,

''(B) a payment of internal revenue taxes (or a payment for internal revenue stamps) shall not be subject to section 170 of the Truth-in-Lending Act (15 U.S.C. 1666i), or to any similar provisions of State law,

''(C) a payment of internal revenue taxes (or a payment for internal revenue stamps) by a person by use of a debit card shall not be subject to section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or to any simi-

lar provisions of State law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the debit card account such as a computational error or numerical transposition in the debit card transaction or an issue as to whether the person authorized payment by use of the debit card,

''(D) the term 'creditor' under section 103(f) of the Truth-in-Lending Act (15 U.S.C. 1602(f)) shall not include the Secretary with respect to credit card transactions in payment of internal revenue taxes (or payment for internal revenue stamps), and

''(E) notwithstanding any other provision of law to the contrary, in the case of payment made by credit card or debit card transaction of an amount owed to a person as the result of the correction of an error under section 161 of the Truth-in-Lending Act (15 U.S.C. 1666) or section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), the Secretary is authorized to provide such amount to such person as a credit to that person's credit card or debit card

account through the applicable credit card or debit card system.

''(e) CONFIDENTIALITY OF INFORMATION.—

''(1) IN GENERAL.—Except as otherwise authorized by this subsection, no person may use or disclose any information relating to credit or debit card transactions obtained pursuant to section 6103(k)(8) other than for purposes directly related to the processing of such transactions, or the billing or collection of amounts charged or debited pursuant thereto.

''(2) EXCEPTIONS.—

''(A) Debit or credit card issuers or others acting on behalf of such issuers may also use and disclose such information for purposes directly related to servicing an issuer's accounts.

''(B) Debit or credit card issuers or others directly involved in the processing of credit or debit card transactions or the billing or collection of amounts charged or debited thereto may also use and disclose such information for purposes directly related to—

''(i) statistical risk and profitability assessment;

''(ii) transferring receivables, accounts, or interest therein;

''(iii) auditing the account information;

''(iv) complying with Federal, State, or local law; and

''(v) properly authorized civil, criminal, or regulatory investigation by Federal, State, or local authorities.

''(3) PROCEDURES.—Use and disclosure of information under this paragraph shall be made only to the extent authorized by written procedures promulgated by the Secretary.

''(4) CROSS REFERENCE.—

**"For provision providing for civil damages for violation of paragraph (1), see section 7431."**

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 64 is amended by striking the item relating to section 6311 and inserting the following:

''Sec. 6311. Payment of tax by commercially acceptable means.''

(c) AMENDMENTS TO SECTIONS 6103 AND 7431 WITH RESPECT TO DISCLOSURE AUTHORIZATION.—

(1) Subsection (k) of section 6103 (relating to confidentiality and disclosure of returns and return

information) is amended by adding at the end the following new paragraph:

''(8) DISCLOSURE OF INFORMATION TO ADMINISTER SECTION 6311.—The Secretary may disclose returns or return information to financial institutions and others to the extent the Secretary deems necessary for the administration of section 6311. Disclosures of information for purposes other than to accept payments by checks or money orders shall be made only to the extent authorized by written procedures promulgated by the Secretary.''

(2) Section 7431 (relating to civil damages for unauthorized disclosure of returns and return information) is amended by adding at the end the following new subsection:

''(g) SPECIAL RULE FOR INFORMATION OBTAINED UNDER SECTION 6103(k)(8).—For purposes of this section, any reference to section 6103 shall be treated as including a reference to section 6311(e).''

(3) Section 6103(p)(3)(A) is amended by striking ''or (6)'' and inserting ''(6), or (8)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the day 9 months after the date of the enactment of this Act.

**SEC. 14112. SIMPLIFIED FOREIGN TAX CREDIT LIMITATION FOR INDIVIDUALS.**

(a) GENERAL RULE.—Section 904 (relating to limitations on foreign tax credit) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

''(j) SIMPLIFIED LIMITATION FOR CERTAIN INDIVIDUALS.—

''(1) IN GENERAL.—In the case of an individual to whom this subsection applies for any taxable year, the limitation of subsection (a) shall be the lesser of—

''(A) 25 percent of such individual's gross income for the taxable year from sources without the United States, or

''(B) the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year (determined without regard to subsection (c)).

No taxes paid or accrued by the individual during such taxable year may be deemed paid or accrued in any other taxable year under subsection (c).

''(2) INDIVIDUALS TO WHOM SUBSECTION APPLIES.—This subsection shall apply to an individual for any taxable year if—

''(A) the entire amount of such individual's gross income for the taxable year from sources without the United States consists of qualified passive income,

''(B) the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year does not exceed $200 ($400 in the case of a joint return), and

''(C) such individual elects to have this subsection apply for the taxable year.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) QUALIFIED PASSIVE INCOME.—The term 'qualified passive income' means any item of gross income if—

''(i) such item of income is passive income (as defined in subsection (d)(2)(A) without regard to clause (iii) thereof), and

''(ii) such item of income is shown on a payee statement furnished to the individual.

''(B) CREDITABLE FOREIGN TAXES.—The term 'creditable foreign taxes' means any taxes for which a credit is allowable under section 901; except that such term shall not include

any tax unless such tax is shown on a payee statement furnished to such individual.

''(C) PAYEE STATEMENT.—The term 'payee statement' has the meaning given to such term by section 6724(d)(2).

''(D) ESTATES AND TRUSTS NOT ELIGIBLE.—This subsection shall not apply to any estate or trust.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

**SEC. 14113. TREATMENT OF PERSONAL TRANSACTIONS BY INDIVIDUALS UNDER FOREIGN CURRENCY RULES.**

(a) GENERAL RULE.—Subsection (e) of section 988 (relating to application to individuals) is amended to read as follows:

''(e) APPLICATION TO INDIVIDUALS.—

''(1) IN GENERAL.—The preceding provisions of this section shall not apply to any section 988 transaction entered into by an individual which is a personal transaction.

''(2) EXCLUSION FOR CERTAIN PERSONAL TRANSACTIONS.—If—

''(A) nonfunctional currency is disposed of by an individual in any transaction, and

''(B) such transaction is a personal transaction,

no gain shall be recognized for purposes of this subtitle by reason of changes in exchange rates after such currency was acquired by such individual and before such disposition. The preceding sentence shall not apply if the gain which would otherwise be recognized exceeds $200.

''(3) PERSONAL TRANSACTIONS.—For purposes of this subsection, the term 'personal transaction' means any transaction entered into by an individual, except that such term shall not include any transaction to the extent that expenses properly allocable to such transaction meet the requirements of section 162 or 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes).''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

**SEC. 14114. TREATMENT OF CERTAIN REIMBURSED EXPENSES OF RURAL MAIL CARRIERS.**

(a) IN GENERAL.—Section 162 (relating to trade or business expenses) is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

''(o) TREATMENT OF CERTAIN REIMBURSED EXPENSES OF RURAL MAIL CARRIERS.—

''(1) GENERAL RULE.—In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route and who receives qualified reimbursements for the expenses incurred by such employee for the use of a vehicle in performing such services—

''(A) the amount allowable as a deduction under this chapter for the use of a vehicle in performing such services shall be equal to the amount of such qualified reimbursements; and

''(B) such qualified reimbursements shall be treated as paid under a reimbursement or other expense allowance arrangement for purposes of section 62(a)(2)(A) (and section 62(c) shall not apply to such qualified reimbursements).

"(2) DEFINITION OF QUALIFIED REIMBURSEMENTS.—For purposes of this subsection, the term 'qualified reimbursements' means the amounts paid by the United States Postal Service to employees as an equipment maintenance allowance under the 1991 collective bargaining agreement between the United States Postal Service and the National Rural Letter Carriers' Association. Amounts paid as an equipment maintenance allowance by such Postal Service under later collective bargaining agreements that supersede the 1991 agreement shall be considered qualified reimbursements if such amounts do not exceed the amounts that would have been paid under the 1991 agreement, adjusted for changes in the Consumer Price Index (as defined in section 1(f)(5)) since 1991."

(b) TECHNICAL AMENDMENT.—Section 6008 of the Technical and Miscellaneous Revenue Act of 1988 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

**SEC. 14115. EXCLUSION OF COMBAT PAY FROM WITHHOLDING LIMITED TO AMOUNT EXCLUDABLE FROM GROSS INCOME.**

(a) IN GENERAL.—Paragraph (1) of section 3401(a) (defining wages) is amended by inserting before the semicolon the following: ''to the extent remuneration for such service is excludable from gross income under such section''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to remuneration paid after December 31, 1995.

**SEC. 14116. TREATMENT OF TRAVELING EXPENSES OF CERTAIN FEDERAL EMPLOYEES ENGAGED IN CRIMINAL INVESTIGATIONS.**

(a) IN GENERAL.—Subsection (a) of section 162 is amended by adding at the end the following new sentence: ''The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate, or provide support services for the investigation of, a Federal crime.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

# Subtitle B—Pension Simplification

## PART I—SIMPLIFIED DISTRIBUTION RULES

### SEC. 14201. REPEAL OF 5-YEAR INCOME AVERAGING FOR LUMP-SUM DISTRIBUTIONS.

(a) IN GENERAL.—Subsection (d) of section 402 (relating to taxability of beneficiary of employees' trust) is amended by adding at the end the following new paragraph:

''(8) TERMINATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), this subsection shall not apply to any taxable year beginning after December 31, 1995.

''(B) RETENTION OF CERTAIN TRANSITION RULES.—Subparagraph (A) shall not apply to any distribution for which the taxpayer elects the benefits of section 1122 (h)(3) or (h)(5) of the Tax Reform Act of 1986.''

### SEC. 14202. REPEAL OF $5,000 EXCLUSION OF EMPLOYEES' DEATH BENEFITS.

(a) IN GENERAL.—Subsection (b) of section 101 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 101 is amended by striking ''subsection (a) or (b)'' and inserting ''subsection (a)''.

(2) Sections 406(e) and 407(e) are each amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(3) Section 7701(a)(20) is amended by striking '', for the purposes of applying the provisions of section 101(b) with respect to employees' death benefits''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

**SEC. 14203. SIMPLIFIED METHOD FOR TAXING ANNUITY DISTRIBUTIONS UNDER CERTAIN EMPLOYER PLANS.**

(a) GENERAL RULE.—Subsection (d) of section 72 (relating to annuities; certain proceeds of endowment and life insurance contracts) is amended to read as follows:

''(d) SPECIAL RULES FOR QUALIFIED EMPLOYER RETIREMENT PLANS.—

''(1) SIMPLIFIED METHOD OF TAXING ANNUITY PAYMENTS.—

"(A) IN GENERAL.—In the case of any amount received as an annuity under a qualified employer retirement plan—

"(i) subsection (b) shall not apply, and

"(ii) the investment in the contract shall be recovered as provided in this paragraph.

"(B) METHOD OF RECOVERING INVESTMENT IN CONTRACT.—

"(i) IN GENERAL.—Gross income shall not include so much of any monthly annuity payment under a qualified employer retirement plan as does not exceed the amount obtained by dividing—

"(I) the investment in the contract (as of the annuity starting date), by

"(II) the number of anticipated payments determined under the table contained in clause (iii) (or, in the case of a contract to which subsection (c)(3)(B) applies, the number of monthly annuity payments under such contract).

"(ii) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2) and (3) of subsection (b) shall apply for purposes of this paragraph.

"(iii) NUMBER OF ANTICIPATED PAYMENTS.—

| "If the age of the primary annuitant on the annuity starting date is: | The number of anticipated payments is: |
|---|---|
| Not more than 55 | 300 |
| More than 55 but not more than 60 | 260 |
| More than 60 but not more than 65 | 240 |
| More than 65 but not more than 70 | 170 |
| More than 70 | 120 |

"(C) ADJUSTMENT FOR REFUND FEATURE NOT APPLICABLE.—For purposes of this paragraph, investment in the contract shall be determined under subsection (c)(1) without regard to subsection (c)(2).

"(D) SPECIAL RULE WHERE LUMP SUM PAID IN CONNECTION WITH COMMENCEMENT OF ANNUITY PAYMENTS.—If, in connection with the commencement of annuity payments under any qualified employer retirement plan, the taxpayer receives a lump sum payment—

"(i) such payment shall be taxable under subsection (e) as if received before the annuity starting date, and

"(ii) the investment in the contract for purposes of this paragraph shall be determined as if such payment had been so received.

"(E) EXCEPTION.—This paragraph shall not apply in any case where the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity.

"(F) ADJUSTMENT WHERE ANNUITY PAYMENTS NOT ON MONTHLY BASIS.—In any case where the annuity payments are not made on a monthly basis, appropriate adjustments in the application of this paragraph shall be made to take into account the period on the basis of which such payments are made.

"(G) QUALIFIED EMPLOYER RETIREMENT PLAN.—For purposes of this paragraph, the term 'qualified employer retirement plan' means any plan or contract described in paragraph (1), (2), or (3) of section 4974(c).

"(2) TREATMENT OF EMPLOYEE CONTRIBUTIONS UNDER DEFINED CONTRIBUTION PLANS.—For purposes of this section, employee contributions (and any income allocable thereto) under a defined

contribution plan may be treated as a separate contract.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply in cases where the annuity starting date is after December 31, 1995.

**SEC. 14204. REQUIRED DISTRIBUTIONS.**

(a) IN GENERAL.—Section 401(a)(9)(C) (defining required beginning date) is amended to read as follows:

''(C) REQUIRED BEGINNING DATE.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'required beginning date' means April 1 of the calendar year following the later of—

''(I) the calendar year in which the employee attains age 70½, or

''(II) the calendar year in which the employee retires.

''(ii) EXCEPTION.—Subclause (II) of clause (i) shall not apply—

''(I) except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year

in which the employee attains age 70½, or

''(II) for purposes of section 408 (a)(6) or (b)(3).

''(iii) ACTUARIAL ADJUSTMENT.—In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70½, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.

''(iv) EXCEPTION FOR GOVERNMENTAL AND CHURCH PLANS.—Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term 'church plan' means a plan maintained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1995.

## PART II—INCREASED ACCESS TO PENSION PLANS

### SEC. 14211. MODIFICATIONS OF SIMPLIFIED EMPLOYEE PENSIONS.

(a) INCREASE IN NUMBER OF ALLOWABLE PARTICIPANTS FOR SALARY REDUCTION ARRANGEMENTS.—Section 408(k)(6)(B) is amended by striking ''25'' each place it appears in the text and heading thereof and inserting ''100''.

(b) REPEAL OF PARTICIPATION REQUIREMENT.—

(1) IN GENERAL.—Section 408(k)(6)(A) is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(2) CONFORMING AMENDMENTS.—Clause (ii) of section 408(k)(6)(C) and clause (ii) of section 408(k)(6)(F) are each amended by striking ''subparagraph (A)(iii)'' and inserting ''subparagraph (A)(ii)''.

(c) ALTERNATIVE TEST.—Clause (ii) of section 408(k)(6)(A), as redesignated by subsection (b)(1), is

amended by adding at the end the following new flush sentence:

> ''The requirements of the preceding sentence are met if the employer makes contributions to the simplified employee pension meeting the requirements of sections 401(k)(11) (B) or (C), 401(k)(11)(D), and 401(m)(10)(B).''

(d) YEAR FOR COMPUTING NONHIGHLY COMPENSATED EMPLOYEE PERCENTAGE.—Clause (ii) of section 408(k)(6)(A), as redesignated by subsection (b)(1), is amended—

(1) by striking ''such year'' in subclause (I) and inserting ''the preceding year'', and

(2) by adding at the end the following new flush sentence:

> ''In the case of the first plan year for which an employer makes contributions to a simplified employee pension, rules similar to the rules of section 401(k)(3)(E) shall apply.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

**SEC. 14212. STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS ELIGIBLE UNDER SECTION 401(k).**

(a) IN GENERAL.—Subparagraph (B) of section 401(k)(4) is amended to read as follows:

''(B) ELIGIBILITY OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—Any—

''(i) State or local government or political subdivision thereof, or any agency or instrumentality thereof, and

''(ii) any organization exempt from tax under this subtitle,

may include a qualified cash or deferred arrangement as part of a plan maintained by it unless the entity maintains an eligible deferred compensation plan (as defined in section 457(b)). This subparagraph shall not apply to a rural cooperative plan.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning after December 31, 1996, but shall not apply to any cash or deferred arrangement to which clause (i) or (ii) of section 1116(f)(2)(B) of the Tax Reform Act of 1986 applies.

## PART III—NONDISCRIMINATION PROVISIONS

### SEC. 14221. DEFINITION OF HIGHLY COMPENSATED EMPLOYEES.

(a) IN GENERAL.—Paragraph (1) of section 414(q) (defining highly compensated employee) is amended to read as follows:

''(1) IN GENERAL.—The term 'highly compensated employee' means any employee who—

''(A) was a 5-percent owner at any time during the year or the preceding year, or

''(B) had compensation for the preceding year from the employer in excess of $80,000.

The Secretary shall adjust the $80,000 amount under subparagraph (B) at the same time and in the same manner as under section 415(d), except that the base period in applying such section for purposes of this paragraph shall be the calendar quarter ending September 30, 1995.''

(b) CONFORMING AMENDMENTS.—

(1)(A) Subsection (q) of section 414 is amended by striking paragraphs (2), (4), (5), (8), and (12) and by redesignating paragraphs (3), (6), (7), (9), (10), and (11) as paragraphs (2) through (7), respectively.

(B) Section 129(d)(8)(B), 401(a)(5)(D)(ii), 408(k)(2)(C), and 416(i)(1)(D) are each amended

by striking ''section 414(q)(7)'' and inserting ''section 414(q)(4)''.

(C) Sections 401(a)(17) and 404(l) are each amended by striking ''section 414(q)(6)'' and inserting ''section 414(q)(3)''.

(D) Section 416(i)(1)(A) is amended by striking ''section 414(q)(8)'' and inserting ''section 414(r)(9)''.

(2)(A) Section 414(r) is amended by adding at the end the following new paragraph:

''(9) EXCLUDED EMPLOYEES.—For purposes of paragraph (2)(A), the following employees shall be excluded:

''(A) Employees who have not completed 6 months of service.

''(B) Employees who normally work less than 17½ hours per week.

''(C) Employees who normally work not more than 6 months during any year.

''(D) Employees who have not attained the age of 21.

''(E) Except to the extent provided in regulations, employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective

bargaining agreement between employee representatives and the employer.

Except as provided by the Secretary, the employer may elect to apply subparagraph (A), (B), (C), or (D) by substituting a shorter period of service, smaller number of hours or months, or lower age for the period of service, number of hours or months, or age (as the case may be) specified in such subparagraph.''

(B) Subparagraph (A) of section 414(r)(2) is amended by striking ''subsection (q)(8)'' and inserting ''paragraph (9)''.

(3) Section 1114(c)(4) of the Tax Reform Act of 1986 is amended by adding at the end the following new sentence: ''Any reference in this paragraph to section 414(q) shall be treated as a reference to such section as in effect before the Tax Simplification Act of 1995''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

**SEC. 14222. REPEAL OF FAMILY AGGREGATION RULES.**

(a) IN GENERAL.—Paragraph (6) of section 414(q) is hereby repealed.

(b) COMPENSATION LIMIT.—Subparagraph (A) of section 401(a)(17) is amended by striking the last sentence.

(c) DEDUCTION.—Subsection (l) of section 404 is amended by striking the last sentence.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

**SEC. 14223. MODIFICATION OF ADDITIONAL PARTICIPATION REQUIREMENTS.**

(a) GENERAL RULE.—Section 401(a)(26)(A) (relating to additional participation requirements) is amended to read as follows:

''(A) IN GENERAL.—In the case of a trust which is a part of a defined benefit plan, such trust shall not constitute a qualified trust under this subsection unless on each day of the plan year such trust benefits at least the lesser of—

''(i) 50 employees of the employer, or

''(ii) the greater of—

''(I) 40 percent of all employees of the employer, or

''(II) 2 employees (or if there is only 1 employee, such employee).''

(b) SEPARATE LINE OF BUSINESS TEST.—Section 401(a)(26)(G) (relating to separate line of business) is amended by striking ''paragraph (7)'' and inserting ''paragraph (2)(A) or (7)''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1995.

**SEC. 14224. NONDISCRIMINATION RULES FOR QUALIFIED CASH OR DEFERRED ARRANGEMENTS AND MATCHING CONTRIBUTIONS.**

(a) ALTERNATIVE METHODS OF SATISFYING SECTION 401(k) NONDISCRIMINATION TESTS.—Section 401(k) (relating to cash or deferred arrangements) is amended by adding at the end the following new paragraph:

''(11) ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—

''(A) IN GENERAL.—A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement—

''(i) meets the contribution requirements of subparagraph (B) or (C), and

''(ii) meets the notice requirements of subparagraph (D).

"(B) MATCHING CONTRIBUTIONS.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to—

"(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and

"(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

"(ii) RATE FOR HIGHLY COMPENSATED EMPLOYEES.—The requirements of this subparagraph are not met if, under the arrangement, the matching contribution with respect to any elective contribution of a highly compensated employee at any level of compensation is greater

than that with respect to an employee who is not a highly compensated employee.

''(iii) ALTERNATIVE PLAN DESIGNS.—If the matching contribution with respect to any elective contribution at any specific level of compensation is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—

''(I) the level of an employer's matching contribution does not increase as an employee's elective contributions increase, and

''(II) the aggregate amount of matching contributions with respect to elective contributions not in excess of such level of compensation is at least equal to the amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

''(C) NONELECTIVE CONTRIBUTIONS.—The requirements of this subparagraph are met if, under the arrangement, the employer is re-

quired, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

''(D) NOTICE REQUIREMENT.—An arrangement meets the requirements of this paragraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written notice of the employee's rights and obligations under the arrangement which—

''(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

''(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

''(E) OTHER REQUIREMENTS.—

''(i) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of

subparagraph (B) or (C) unless the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to all employer contributions (including matching contributions).

''(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (l), and, for purposes of subsection (l), employer contributions under subparagraph (B) or (C) shall not be taken into account.

''(F) OTHER PLANS.—An arrangement shall be treated as meeting the requirements under subparagraph (A)(i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.''

(b) ALTERNATIVE METHODS OF SATISFYING SECTION 401(m) NONDISCRIMINATION TESTS.—Section 401(m) (relating to nondiscrimination test for matching contributions and employee contributions) is amended by

redesignating paragraph (10) as paragraph (11) and by adding after paragraph (9) the following new paragraph:

"(10) ALTERNATIVE METHOD OF SATISFYING TESTS.—

"(A) IN GENERAL.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

"(i) meets the contribution requirements of subparagraph (B) or (C) of subsection (k)(11),

"(ii) meets the notice requirements of subsection (k)(11)(D), and

"(iii) meets the requirements of subparagraph (B).

"(B) LIMITATION ON MATCHING CONTRIBUTIONS.—The requirements of this subparagraph are met if—

"(i) matching contributions on behalf of any employee may not be made with respect to an employee's contributions or elective deferrals in excess of 6 percent of the employee's compensation,

"(ii) the level of an employer's matching contribution does not increase as an

employee's contributions or elective deferrals increase, and

"(iii) the matching contribution with respect to any highly compensated employee at a specific level of compensation is not greater than that with respect to an employee who is not a highly compensated employee."

(c) YEAR FOR COMPUTING NONHIGHLY COMPENSATED EMPLOYEE PERCENTAGE.—

(1) CASH OR DEFERRED ARRANGEMENTS.—Clause (ii) of section 401(k)(3)(A) is amended—

(A) by striking "such year" and inserting "the plan year", and

(B) by striking "for such plan year" and inserting "the preceding plan year".

(2) MATCHING AND EMPLOYEE CONTRIBUTIONS.—Section 401(m)(2)(A) is amended—

(A) by inserting "for such plan year" after "highly compensated employees", and

(B) by inserting "for the preceding plan year" after "eligible employees" each place it appears in clause (i) and clause (ii).

(d) SPECIAL RULE FOR DETERMINING AVERAGE DEFERRAL PERCENTAGE FOR FIRST PLAN YEAR, ETC.—

(1) Paragraph (3) of section 401(k) is amended by adding at the end the following new subparagraph:

''(E) For purposes of this paragraph, in the case of the first plan year of any plan, the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

''(i) 3 percent, or

''(ii) if the employer makes an election under this subclause, the actual deferral percentage of nonhighly compensated employees determined for such first plan year.''

(2) Paragraph (3) of section 401(m) is amended by adding at the end the following: ''Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection.''

(e) DISTRIBUTION OF EXCESS CONTRIBUTIONS.—

(1) Subparagraph (C) of section 401(k)(8) (relating to arrangement not disqualified if excess contributions distributed) is amended by striking ''on the basis of the respective portions of the excess contributions attributable to each of such employees'' and inserting ''on the basis of the amount of con-

tributions by, or on behalf of, each of such employees''.

(2) Subparagraph (C) of section 401(m)(6) (relating to method of distributing excess aggregate contributions) is amended by striking ''on the basis of the respective portions of such amounts attributable to each of such employees'' and inserting ''on the basis of the amount of contributions on behalf of, or by, each such employee''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

## PART IV—MISCELLANEOUS SIMPLIFICATION

### SEC. 14231. TREATMENT OF LEASED EMPLOYEES.

(a) GENERAL RULE.—Subparagraph (C) of section 414(n)(2) (defining leased employee) is amended to read as follows:

> ''(C) such services are performed under significant direction or control by the recipient.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1995, but shall not apply to any relationship determined under an Internal Revenue Service ruling issued before the date of the enactment of this Act pursuant to

section 414(n)(2)(C) of the Internal Revenue Code of 1986 (as in effect on the day before such date) not to involve a leased employee.

**SEC. 14232. PLANS COVERING SELF-EMPLOYED INDIVIDUALS.**

(a) AGGREGATION RULES.—Section 401(d) (relating to additional requirements for qualification of trusts and plans benefiting owner-employees) is amended to read as follows:

''(d) CONTRIBUTION LIMIT ON OWNER-EMPLOYEES.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the plan provides that contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

**SEC. 14233. ELIMINATION OF SPECIAL VESTING RULE FOR MULTIEMPLOYER PLANS.**

(a) IN GENERAL.—Paragraph (2) of section 411(a) (relating to minimum vesting standards) is amended—

(1) by striking ''subparagraph (A), (B), or (C)'' and inserting ''subparagraph (A) or (B)''; and

(2) by striking subparagraph (C).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after the earlier of—

(1) the later of—

(A) January 1, 1996, or

(B) the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) January 1, 1998.

Such amendments shall not apply to any individual who does not have more than 1 hour of service under the plan on or after the 1st day of the 1st plan year to which such amendments apply.

**SEC. 14234. DISTRIBUTIONS UNDER RURAL COOPERATIVE PLANS.**

(a) DISTRIBUTIONS AFTER CERTAIN AGE.—Section 401(k)(7) is amended by adding at the end the following new subparagraph:

"(C) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS.—A rural cooperative plan which includes a qualified cash or deferred arrangement shall not be treated as violating the requirements of section 401(a) merely by reason of a distribution to a participant after attainment of age 59½."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after December 31, 1995.

**SEC. 14235. TREATMENT OF GOVERNMENTAL PLANS UNDER SECTION 415.**

(a) DEFINITION OF COMPENSATION.—Subsection (k) of section 415 (regarding limitations on benefits and contributions under qualified plans) is amended by adding immediately after paragraph (2) the following new paragraph:

"(3) DEFINITION OF COMPENSATION FOR GOVERNMENTAL PLANS.—For purposes of this section, in the case of a governmental plan (as defined in section 414(d)), the term 'compensation' includes, in

addition to the amounts described in subsection (c)(3)—

''(A) any elective deferral (as defined in section 402(g)(3)), and

''(B) any amount which is contributed by the employer at the election of the employee and which is not includible in the gross income of an employee under section 125 or 457.''

(b) COMPENSATION LIMIT.—Subsection (b) of section 415 is amended by adding immediately after paragraph (10) the following new paragraph:

''(11) SPECIAL LIMITATION RULE FOR GOVERNMENTAL PLANS.—In the case of a governmental plan (as defined in section 414(d)), subparagraph (B) of paragraph (1) shall not apply.''

(c) TREATMENT OF CERTAIN EXCESS BENEFIT PLANS.—

(1) IN GENERAL.—Section 415 is amended by adding at the end the following new subsection:

''(m) TREATMENT OF QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENTS.—

''(1) GOVERNMENTAL PLAN NOT AFFECTED.—In determining whether a governmental plan (as defined in section 414(d)) meets the requirements of this section, benefits provided under a qualified gov-

ernmental excess benefit arrangement shall not be taken into account. Income accruing to a governmental plan (or to a trust that is maintained solely for the purpose of providing benefits under a qualified governmental excess benefit arrangement) in respect of a qualified governmental excess benefit arrangement shall constitute income derived from the exercise of an essential governmental function upon which such governmental plan (or trust) shall be exempt from tax under section 115.

''(2) TAXATION OF PARTICIPANT.—For purposes of this chapter—

''(A) the taxable year or years for which amounts in respect of a qualified governmental excess benefit arrangement are includible in gross income by a participant, and

''(B) the treatment of such amounts when so includible by the participant,

shall be determined as if such qualified governmental excess benefit arrangement were treated as a plan for the deferral of compensation which is maintained by a corporation not exempt from tax under this chapter and which does not meet the requirements for qualification under section 401.

''(3) QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT.—For purposes of this subsection, the term 'qualified governmental excess benefit arrangement' means a portion of a governmental plan if—

''(A) such portion is maintained solely for the purpose of providing to participants in the plan that part of the participant's annual benefit otherwise payable under the terms of the plan that exceeds the limitations on benefits imposed by this section,

''(B) under such portion no election is provided at any time to the participant (directly or indirectly) to defer compensation, and

''(C) benefits described in subparagraph (A) are not paid from a trust forming a part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits.''

(2) COORDINATION WITH SECTION 457.—Subsection (e) of section 457 is amended by adding at the end the following new paragraph:

''(15) TREATMENT OF QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENTS.—Subsections (b)(2) and (c)(1) shall not apply to any

qualified governmental excess benefit arrangement (as defined in section 415(m)(3)), and benefits provided under such an arrangement shall not be taken into account in determining whether any other plan is an eligible deferred compensation plan.''

(3) CONFORMING AMENDMENT.—Paragraph (2) of section 457(f) is amended by striking ''and'' at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting '', and'', and by inserting immediately thereafter the following new subparagraph:

''(E) a qualified governmental excess benefit arrangement described in section 415(m).''

(d) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS.—Paragraph (2) of section 415(b) is amended by adding at the end the following new subparagraph:

''(I) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS PROVIDED UNDER GOVERNMENTAL PLANS.—Subparagraph (B) of paragraph (1), subparagraph (C) of this paragraph, and paragraph (5) shall not apply to—

''(i) income received from a governmental plan (as defined in section 414(d)) as a pension, annuity, or similar allowance as the result of the recipient becoming dis-

abled by reason of personal injuries or sickness, or

''(ii) amounts received from a governmental plan by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee.''

(e) REVOCATION OF GRANDFATHER ELECTION.—

(1) IN GENERAL.—Subparagraph (C) of section 415(b)(10) is amended by adding at the end the following new clause:

''(ii) REVOCATION OF ELECTION.—An election under clause (i) may be revoked not later than the last day of the third plan year beginning after the date of the enactment of this clause. The revocation shall apply to all plan years to which the election applied and to all subsequent plan years. Any amount paid by a plan in a taxable year ending after the revocation shall be includible in income in such taxable year under the rules of this chapter in effect for such taxable year, except that, for purposes of applying the limitations imposed by this section, any portion of such amount which is attributable to any tax-

able year during which the election was in effect shall be treated as received in such taxable year.''

(2) CONFORMING AMENDMENT.—Subparagraph (C) of section 415(b)(10) is amended by striking ''This'' and inserting:

''(i) IN GENERAL.—This''.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), (c), and (d) shall apply to taxable years beginning on or after the date of the enactment of this Act. The amendment made by subsection (e) shall apply with respect to election revocations adopted after the date of the enactment of this Act.

(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), such plan shall be treated as satisfying the requirements of section 415 of such Code for all taxable years beginning before the date of the enactment of this Act.

**SEC. 14236. UNIFORM RETIREMENT AGE.**

(a) DISCRIMINATION TESTING.—Paragraph (5) of section 401(a) (relating to special rules relating to non-

discrimination requirements) is amended by adding at the end the following new subparagraph:

"(F) SOCIAL SECURITY RETIREMENT AGE.—For purposes of testing for discrimination under paragraph (4)—

"(i) the social security retirement age (as defined in section 415(b)(8)) shall be treated as a uniform retirement age, and

"(ii) subsidized early retirement benefits and joint and survivor annuities shall not be treated as being unavailable to employees on the same terms merely because such benefits or annuities are based in whole or in part on an employee's social security retirement age (as so defined)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1995.

**SEC. 14237. UNIFORM PENALTY PROVISIONS TO APPLY TO CERTAIN PENSION REPORTING REQUIREMENTS.**

(a) PENALTIES.—

(1) STATEMENTS.—Paragraph (1) of section 6724(d) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end

of subparagraph (B) and inserting ‘‘, and’’, and by inserting after subparagraph (B) the following new subparagraph:

‘‘(C) any statement of the amount of payments to another person required to be made to the Secretary under—

‘‘(i) section 408(i) (relating to reports with respect to individual retirement accounts or annuities), or

‘‘(ii) section 6047(d) (relating to reports by employers, plan administrators, etc.).’’

(2) REPORTS.—Paragraph (2) of section 6724(d) is amended by striking ‘‘or’’ at the end of subparagraph (S), by striking the period at the end of subparagraph (T) and inserting a comma, and by inserting after subparagraph (T) the following new subparagraphs:

‘‘(U) section 408(i) (relating to reports with respect to individual retirement plans) to any person other than the Secretary with respect to the amount of payments made to such person, or

‘‘(V) section 6047(d) (relating to reports by plan administrators) to any person other

than the Secretary with respect to the amount of payments made to such person.''

(b) MODIFICATION OF REPORTABLE DESIGNATED DISTRIBUTIONS.—

(1) SECTION 408.—Subsection (i) of section 408 (relating to individual retirement account reports) is amended by inserting ''aggregating $10 or more in any calendar year'' after ''distributions''.

(2) SECTION 6047.—Paragraph (1) of section 6047(d) (relating to reports by employers, plan administrators, etc.) is amended by adding at the end the following new sentence: ''No return or report may be required under the preceding sentence with respect to distributions to any person during any year unless such distributions aggregate $10 or more.''

(c) QUALIFYING ROLLOVER DISTRIBUTIONS.—Section 6652(i) is amended—

(1) by striking ''the $10'' and inserting ''$100'', and

(2) by striking ''$5,000'' and inserting ''$50,000''.

(d) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 6047(f) is amended to read as follows:

**"(1) For provisions relating to penalties for failures to file returns and reports required under this section, see sections 6652(e), 6721, and 6722."**

(2) Subsection (e) of section 6652 is amended by adding at the end the following new sentence: ''This subsection shall not apply to any return or statement which is an information return described in section 6724(d)(1)(C)(ii) or a payee statement described in section 6724(d)(2)(U).''

(3) Subsection (a) of section 6693 is amended by adding at the end the following new sentence: ''This subsection shall not apply to any report which is an information return described in section 6724(d)(1)(C)(i) or a payee statement described in section 6724(d)(2)(T).''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to returns, reports, and other statements the due date for which (determined without regard to extensions) is after December 31, 1995.

**SEC. 14238. CONTRIBUTIONS ON BEHALF OF DISABLED EMPLOYEES.**

(a) ALL DISABLED PARTICIPANTS RECEIVING CONTRIBUTIONS.—Section 415(c)(3)(C) is amended by adding at the end the following: ''If a defined contribution plan provides for the continuation of contributions on behalf

of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1995.

**SEC. 14239. TREATMENT OF DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.**

(a) SPECIAL RULES FOR PLAN DISTRIBUTIONS.—Paragraph (9) of section 457(e) (relating to other definitions and special rules) is amended to read as follows:

''(9) BENEFITS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS, ETC.—

''(A) TOTAL AMOUNT PAYABLE IS $3,500 OR LESS.—The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to receive such amount (or the plan may distribute such amount without the participant's consent) if—

''(i) such amount does not exceed $3,500, and

''(ii) such amount may be distributed only if—

''(I) no amount has been deferred under the plan with respect to such participant during the 2-year period ending on the date of the distribution, and

''(II) there has been no prior distribution under the plan to such participant to which this subparagraph applied.

A plan shall not be treated as failing to meet the distribution requirements of subsection (d) by reason of a distribution to which this subparagraph applies.

''(B) ELECTION TO DEFER COMMENCEMENT OF DISTRIBUTIONS.—The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to defer commencement of distributions under the plan if—

''(i) such election is made after amounts may be available under the plan in accordance with subsection (d)(1)(A) and before commencement of such distributions, and

"(ii) the participant may make only 1 such election."

(b) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DEFERRAL AMOUNT.—Subsection (e) of section 457 is amended by adding at the end the following new paragraph:

"(14) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DEFERRAL AMOUNT.—The Secretary shall adjust the $7,500 amount specified in subsections (b)(2) and (c)(1) at the same time and in the same manner as under section 415(d) (determined without regard to paragraph (4)), except that the base period in applying such section for purposes of this paragraph shall be the calendar quarter ending September 30, 1994."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

**SEC. 14240. TRUST REQUIREMENT FOR DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS.**

(a) IN GENERAL.—Section 457 is amended by adding at the end the following new subsection:

"(g) GOVERNMENTAL PLANS MUST MAINTAIN SET ASIDES FOR EXCLUSIVE BENEFIT OF PARTICIPANTS.—

"(1) IN GENERAL.—A plan maintained by an eligible employer described in subsection (e)(1)(A) shall not be treated as an eligible deferred compensation plan unless all assets and income of the plan described in subsection (b)(6) are held in trust for the exclusive benefit of participants and their beneficiaries.

"(2) TAXABILITY OF TRUSTS AND PARTICIPANTS.—For purposes of this title—

"(A) a trust described in paragraph (1) shall be treated as an organization exempt from taxation under section 501(a), and

"(B) notwithstanding any other provision of this title, amounts in the trust shall be includible in the gross income of participants and beneficiaries only to the extent, and at the time, provided in this section.

"(3) CUSTODIAL ACCOUNTS AND CONTRACTS.—For purposes of this subsection, custodial accounts and contracts described in section 401(f) shall be treated as trusts under rules similar to the rules under section 401(f)."

(b) CONFORMING AMENDMENT.—Paragraph (6) of section 457(b) is amended by inserting "except as provided in subsection (g)," before "which provides that".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to assets and income described in section 457(b)(6) of the Internal Revenue Code of 1986 held by a plan on and after the date of the enactment of this Act.

(2) TRANSITION RULE.—In the case of assets and income described in paragraph (1) held by a plan before the 90th day after the date of the enactment of this Act, a trust need not be established by reason of the amendments made by this section before such 90th day.

**SEC. 14241. TRANSITION RULE FOR COMPUTING MAXIMUM BENEFITS UNDER SECTION 415 LIMITATIONS.**

(a) IN GENERAL.—Subparagraph (A) of section 767(d)(3) of the Uruguay Round Agreements Act is amended to read as follows:

''(A) EXCEPTION.—A plan that was adopted and in effect before December 8, 1994, shall not be required to apply the amendments made by subsection (b) with respect to benefits accrued before the earlier of—

"(i) the later of the date a plan amendment applying such amendment is adopted or made effective, or

"(ii) the first day of the first limitation year beginning after December 31, 1999.

Determinations under section 415(b)(2)(E) of the Internal Revenue Code of 1986 shall be made with respect to such benefits on the basis of such section as in effect on December 7, 1994, and the provisions of the plan as in effect on December 7, 1994, but only if such provisions of the plan meet the requirements of such section (as so in effect)."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the provisions of section 767 of the Uruguay Round Agreements Act.

(c) TRANSITIONAL RULE.—In the case of a plan that was adopted and in effect before December 8, 1994, if—

(1) a plan amendment was adopted or made effective on or before the date of the enactment of this Act applying the amendments made by section 767(b) of the Uruguay Round Agreements Act, and

(2) within 1 year after the date of the enactment of this Act, a plan amendment is adopted

which repeals the amendment referred to in paragraph (1),

the amendment referred to in paragraph (1) shall not be taken into account in applying section 767(d)(3)(A) of the Uruguay Round Agreements Act, as amended by subsection (a).

**SEC. 14242. MULTIPLE SALARY REDUCTION AGREEMENTS PERMITTED UNDER SECTION 403(b).**

(a) GENERAL RULE.—For purposes of section 403(b) of the Internal Revenue Code of 1986, the frequency that an employee is permitted to enter into a salary reduction agreement, the salary to which such an agreement may apply, and the ability to revoke such an agreement shall be determined under the rules applicable to cash or deferred elections under section 401(k) of such Code.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to taxable years beginning after December 31, 1995.

**SEC. 14243. WAIVER OF MINIMUM PERIOD FOR JOINT AND SURVIVOR ANNUITY EXPLANATION BEFORE ANNUITY STARTING DATE.**

(a) GENERAL RULE.—For purposes of section 417(a)(3)(A) of the Internal Revenue Code of 1986 (relating to plan to provide written explanations), the minimum period prescribed by the Secretary of the Treasury between the date that the explanation referred to in such

section is provided and the annuity starting date shall not apply if waived by the participant and, if applicable, the participant's spouse.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to plan years beginning after December 31, 1995.

**SEC. 14244. REPEAL OF LIMITATION IN CASE OF DEFINED BENEFIT PLAN AND DEFINED CONTRIBUTION PLAN FOR SAME EMPLOYEE.**

(a) IN GENERAL.—Section 415(e) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 415(b)(5) is amended by striking ''and subsection (e)''.

(2) Paragraph (1) of section 415(f) is amended by striking ''subsections (b), (c), and (e)'' and inserting ''subsections (b) and (c)''.

(3) Subsection (g) of section 415 is amended by striking ''subsections (e) and (f)'' in the last sentence and inserting ''subsection (f)''.

(4) Clause (i) of section 415(k)(2)(A) is amended to read as follows:

''(i) any contribution made directly by an employee under such an arrangement shall not be treated as an annual addition for purposes of subsection (c), and''.

(5) Clause (ii) of section 415(k)(2)(A) is amended by striking ''subsections (c) and (e)'' and inserting ''subsection (c)''.

(6) Section 416 is amended by striking subsection (h).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to limitation years beginning after December 31, 1996.

**SEC. 14245. DATE FOR ADOPTION OF PLAN AMENDMENTS.**

If any amendment made by this title requires an amendment to any plan, such plan amendment shall not be required to be made before the first day of the first plan year beginning on or after January 1, 1997, if—

(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

(2) such plan amendment applies retroactively to such period.

# Subtitle C—Treatment of Large Partnerships

## PART I—GENERAL PROVISIONS

### SEC. 14301. SIMPLIFIED FLOW-THROUGH FOR LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Subchapter K (relating to partners and partnerships) is amended by adding at the end the following new part:

## "PART IV—SPECIAL RULES FOR LARGE PARTNERSHIPS

''Sec. 771. Application of subchapter to large partnerships.
''Sec. 772. Simplified flow-through.
''Sec. 773. Computations at partnership level.
''Sec. 774. Other modifications.
''Sec. 775. Large partnership defined.
''Sec. 776. Special rules for partnerships holding oil and gas properties.
''Sec. 777. Regulations.

### "SEC. 771. APPLICATION OF SUBCHAPTER TO LARGE PARTNERSHIPS.

''The preceding provisions of this subchapter to the extent inconsistent with the provisions of this part shall not apply to a large partnership and its partners.

### "SEC. 772. SIMPLIFIED FLOW-THROUGH.

''(a) GENERAL RULE.—In determining the income tax of a partner of a large partnership, such partner shall take into account separately such partner's distributive share of the partnership's—

''(1) taxable income or loss from passive loss limitation activities,

''(2) taxable income or loss from other activities,

''(3) net capital gain (or net capital loss)—

''(A) to the extent allocable to passive loss limitation activities, and

''(B) to the extent allocable to other activities,

''(4) tax-exempt interest,

''(5) applicable net AMT adjustment separately computed for—

''(A) passive loss limitation activities, and

''(B) other activities,

''(6) general credits,

''(7) low-income housing credit determined under section 42,

''(8) rehabilitation credit determined under section 47,

''(9) foreign income taxes,

''(10) the credit allowable under section 29, and

''(11) other items to the extent that the Secretary determines that the separate treatment of such items is appropriate.

"(b) SEPARATE COMPUTATIONS.—In determining the amounts required under subsection (a) to be separately taken into account by any partner, this section and section 773 shall be applied separately with respect to such partner by taking into account such partner's distributive share of the items of income, gain, loss, deduction, or credit of the partnership.

"(c) TREATMENT AT PARTNER LEVEL.—

"(1) IN GENERAL.—Except as provided in this subsection, rules similar to the rules of section 702(b) shall apply to any partner's distributive share of the amounts referred to in subsection (a).

"(2) INCOME OR LOSS FROM PASSIVE LOSS LIMITATION ACTIVITIES.—For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(1) shall be treated as an item of income or loss (as the case may be) from the conduct of a trade or business which is a single passive activity (as defined in section 469). A similar rule shall apply to a partner's distributive share of amounts referred to in paragraphs (3)(A) and (5)(A) of subsection (a).

"(3) INCOME OR LOSS FROM OTHER ACTIVITIES.—

"(A) IN GENERAL.—For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(2) shall be treated as an item of income or expense (as the case may be) with respect to property held for investment.

"(B) DEDUCTIONS FOR LOSS NOT SUBJECT TO SECTION 67.—The deduction under section 212 for any loss described in subparagraph (A) shall not be treated as a miscellaneous itemized deduction for purposes of section 67.

"(4) TREATMENT OF NET CAPITAL GAIN OR LOSS.—For purposes of this chapter, any partner's distributive share of any gain or loss described in subsection (a)(3) shall be treated as a long-term capital gain or loss, as the case may be.

"(5) MINIMUM TAX TREATMENT.—In determining the alternative minimum taxable income of any partner, such partner's distributive share of any applicable net AMT adjustment shall be taken into account in lieu of making the separate adjustments provided in sections 56, 57, and 58 with respect to the items of the partnership. Except as provided in regulations, the applicable net AMT adjustment

shall be treated, for purposes of section 53, as an adjustment or item of tax preference not specified in section 53(d)(1)(B)(ii).

''(6) GENERAL CREDITS.—A partner's distributive share of the amount referred to in paragraph (6) of subsection (a) shall be taken into account as a current year business credit.

''(d) OPERATING RULES.—For purposes of this section—

''(1) PASSIVE LOSS LIMITATION ACTIVITY.—The term 'passive loss limitation activity' means—

''(A) any activity which involves the conduct of a trade or business, and

''(B) any rental activity.

For purposes of the preceding sentence, the term 'trade or business' includes any activity treated as a trade or business under paragraph (5) or (6) of section 469(c).

''(2) TAX-EXEMPT INTEREST.—The term 'tax-exempt interest' means interest excludable from gross income under section 103.

''(3) APPLICABLE NET AMT ADJUSTMENT.—

''(A) IN GENERAL.—The applicable net AMT adjustment is—

"(i) with respect to taxpayers other than corporations, the net adjustment determined by using the adjustments applicable to individuals, and

"(ii) with respect to corporations, the net adjustment determined by using the adjustments applicable to corporations.

"(B) NET ADJUSTMENT.—The term 'net adjustment' means the net adjustment in the items attributable to passive loss activities or other activities (as the case may be) which would result if such items were determined with the adjustments of sections 56, 57, and 58.

"(4) TREATMENT OF CERTAIN SEPARATELY STATED ITEMS.—

"(A) EXCLUSION FOR CERTAIN PURPOSES.—In determining the amounts referred to in paragraphs (1) and (2) of subsection (a), any net capital gain or net capital loss (as the case may be), and any item referred to in subsection (a)(11), shall be excluded.

"(B) ALLOCATION RULES.—The net capital gain shall be treated—

"(i) as allocable to passive loss limitation activities to the extent the net capital

gain does not exceed the net capital gain determined by only taking into account gains and losses from sales and exchanges of property used in connection with such activities, and

''(ii) as allocable to other activities to the extent such gain exceeds the amount allocated under clause (i).

A similar rule shall apply for purposes of allocating any net capital loss.

''(C) NET CAPITAL LOSS.—The term 'net capital loss' means the excess of the losses from sales or exchanges of capital assets over the gains from sales or exchange of capital assets.

''(5) GENERAL CREDITS.—The term 'general credits' means any credit other than the low-income housing credit, the rehabilitation credit, the foreign tax credit, and the credit allowable under section 29.

''(6) FOREIGN INCOME TAXES.—The term 'foreign income taxes' means taxes described in section 901 which are paid or accrued to foreign countries and to possessions of the United States.

''(e) SPECIAL RULE FOR UNRELATED BUSINESS TAX.—In the case of a partner which is an organization subject to tax under section 511, such partner's distribu-

tive share of any items shall be taken into account separately to the extent necessary to comply with the provisions of section 512(c)(1).

''(f) SPECIAL RULES FOR APPLYING PASSIVE LOSS LIMITATIONS.—If any person holds an interest in a large partnership other than as a limited partner—

''(1) paragraph (2) of subsection (c) shall not apply to such partner, and

''(2) such partner's distributive share of the partnership items allocable to passive loss limitation activities shall be taken into account separately to the extent necessary to comply with the provisions of section 469.

The preceding sentence shall not apply to any items allocable to an interest held as a limited partner.

**"SEC. 773. COMPUTATIONS AT PARTNERSHIP LEVEL.**

''(a) GENERAL RULE.—

''(1) TAXABLE INCOME.—The taxable income of a large partnership shall be computed in the same manner as in the case of an individual except that—

''(A) the items described in section 772(a) shall be separately stated, and

''(B) the modifications of subsection (b) shall apply.

"(2) ELECTIONS.—All elections affecting the computation of the taxable income of a large partnership or the computation of any credit of a large partnership shall be made by the partnership; except that the election under section 901, and any election under section 108, shall be made by each partner separately.

"(3) LIMITATIONS, ETC.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), all limitations and other provisions affecting the computation of the taxable income of a large partnership or the computation of any credit of a large partnership shall be applied at the partnership level (and not at the partner level).

"(B) CERTAIN LIMITATIONS APPLIED AT PARTNER LEVEL.—The following provisions shall be applied at the partner level (and not at the partnership level):

"(i) Section 68 (relating to overall limitation on itemized deductions).

"(ii) Sections 49 and 465 (relating to at risk limitations).

"(iii) Section 469 (relating to limitation on passive activity losses and credits).

"(iv) Any other provision specified in regulations.

"(4) COORDINATION WITH OTHER PROVISIONS.—Paragraphs (2) and (3) shall apply notwithstanding any other provision of this chapter other than this part.

"(b) MODIFICATIONS TO DETERMINATION OF TAXABLE INCOME.—In determining the taxable income of a large partnership—

"(1) CERTAIN DEDUCTIONS NOT ALLOWED.—The following deductions shall not be allowed:

"(A) The deduction for personal exemptions provided in section 151.

"(B) The net operating loss deduction provided in section 172.

"(C) The additional itemized deductions for individuals provided in part VII of subchapter B (other than section 212 thereof).

"(2) CHARITABLE DEDUCTIONS.—In determining the amount allowable under section 170, the limitation of section 170(b)(2) shall apply.

"(3) COORDINATION WITH SECTION 67.—In lieu of applying section 67, 70 percent of the amount of the miscellaneous itemized deductions shall be disallowed.

''(c) SPECIAL RULES FOR INCOME FROM DISCHARGE OF INDEBTEDNESS.—If a large partnership has income from the discharge of any indebtedness—

''(1) such income shall be excluded in determining the amounts referred to in section 772(a), and

''(2) in determining the income tax of any partner of such partnership—

''(A) such income shall be treated as an item required to be separately taken into account under section 772(a), and

''(B) the provisions of section 108 shall be applied without regard to this part.

**''SEC. 774. OTHER MODIFICATIONS.**

''(a) TREATMENT OF CERTAIN OPTIONAL ADJUSTMENTS, ETC.—In the case of a large partnership—

''(1) computations under section 773 shall be made without regard to any adjustment under section 743(b) or 108(b), but

''(2) a partner's distributive share of any amount referred to in section 772(a) shall be appropriately adjusted to take into account any adjustment under section 743(b) or 108(b) with respect to such partner.

''(b) CREDIT RECAPTURE DETERMINED AT PARTNERSHIP LEVEL.—

"(1) IN GENERAL.—In the case of a large partnership—

"(A) any credit recapture shall be taken into account by the partnership, and

"(B) the amount of such recapture shall be determined as if the credit with respect to which the recapture is made had been fully utilized to reduce tax.

"(2) METHOD OF TAKING RECAPTURE INTO ACCOUNT.—A large partnership shall take into account a credit recapture by reducing the amount of the appropriate current year credit to the extent thereof, and if such recapture exceeds the amount of such current year credit, the partnership shall be liable to pay such excess.

"(3) DISPOSITIONS NOT TO TRIGGER RECAPTURE.—No credit recapture shall be required by reason of any transfer of an interest in a large partnership.

"(4) CREDIT RECAPTURE.—For purposes of this subsection, the term 'credit recapture' means any increase in tax under section 42(j) or 50(a).

"(c) PARTNERSHIP NOT TERMINATED BY REASON OF CHANGE IN OWNERSHIP.—Subparagraph (B) of section 708(b)(1) shall not apply to a large partnership.

"(d) PARTNERSHIP ENTITLED TO CERTAIN CREDITS.—The following shall be allowed to a large partnership and shall not be taken into account by the partners of such partnership:

"(1) The credit provided by section 34.

"(2) Any credit or refund under section 852(b)(3)(D).

"(e) TREATMENT OF REMIC RESIDUALS.—For purposes of applying section 860E(e)(6) to any large partnership—

"(1) all interests in such partnership shall be treated as held by disqualified organizations,

"(2) in lieu of applying subparagraph (C) of section 860E(e)(6), the amount subject to tax under section 860E(e)(6) shall be excluded from the gross income of such partnership, and

"(3) subparagraph (D) of section 860E(e)(6) shall not apply.

"(f) SPECIAL RULES FOR APPLYING CERTAIN INSTALLMENT SALE RULES.—In the case of a large partnership—

"(1) the provisions of sections 453(l)(3) and 453A shall be applied at the partnership level, and

"(2) in determining the amount of interest payable under such sections, such partnership shall be

treated as subject to tax under this chapter at the highest rate of tax in effect under section 1 or 11.

**"SEC. 775. LARGE PARTNERSHIP DEFINED.**

''(a) GENERAL RULE.—For purposes of this part—

''(1) IN GENERAL.—Except as otherwise provided in this section or section 776, the term 'large partnership' means, with respect to any partnership taxable year, any partnership if the number of persons who were partners in such partnership in any preceding partnership taxable year beginning after December 31, 1995, equaled or exceeded 250. To the extent provided in regulations, a partnership shall cease to be treated as a large partnership for any partnership taxable year if in such taxable year fewer than 100 persons were partners in such partnership.

''(2) ELECTION FOR PARTNERSHIPS WITH AT LEAST 100 PARTNERS.—If a partnership makes an election under this paragraph, paragraph (1) shall be applied by substituting '100' for '250'. Such an election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

''(b) SPECIAL RULES FOR CERTAIN SERVICE PARTNERSHIPS.—

"(1) CERTAIN PARTNERS NOT COUNTED.—For purposes of this section, the term 'partner' does not include any individual performing substantial services in connection with the activities of the partnership and holding an interest in such partnership, or an individual who formerly performed substantial services in connection with such activities and who held an interest in such partnership at the time the individual performed such services.

"(2) EXCLUSION.—For purposes of this part, the term 'large partnership' does not include any partnership if substantially all the partners of such partnership—

"(A) are individuals performing substantial services in connection with the activities of such partnership or are personal service corporations (as defined in section 269A(b)) the owner-employees (as defined in section 269A(b)) of which perform such substantial services,

"(B) are retired partners who had performed such substantial services, or

"(C) are spouses of partners who are performing (or had previously performed) such substantial services.

"(3) SPECIAL RULE FOR LOWER TIER PARTNERSHIPS.—For purposes of this subsection, the activities of a partnership shall include the activities of any other partnership in which the partnership owns directly an interest in the capital and profits of at least 80 percent.

"(c) EXCLUSION OF COMMODITY POOLS.—For purposes of this part, the term 'large partnership' does not include any partnership the principal activity of which is the buying and selling of commodities (not described in section 1221(1)), or options, futures, or forwards with respect to such commodities.

"(d) SECRETARY MAY RELY ON TREATMENT ON RETURN.—If, on the partnership return of any partnership, such partnership is treated as a large partnership, such treatment shall be binding on such partnership and all partners of such partnership but not on the Secretary.

**"SEC. 776. SPECIAL RULES FOR PARTNERSHIPS HOLDING OIL AND GAS PROPERTIES.**

"(a) EXCEPTION FOR PARTNERSHIPS HOLDING SIGNIFICANT OIL AND GAS PROPERTIES.—

"(1) IN GENERAL.—For purposes of this part, the term 'large partnership' shall not include any partnership if the average percentage of assets (by value) held by such partnership during the taxable

year which are oil or gas properties is at least 25 percent. For purposes of the preceding sentence, any interest held by a partnership in another partnership shall be disregarded, except that the partnership shall be treated as holding its proportionate share of the assets of such other partnership.

''(2) ELECTION TO WAIVE EXCEPTION.—Any partnership may elect to have paragraph (1) not apply. Such an election shall apply to the partnership taxable year for which made and all subsequent partnership taxable years unless revoked with the consent of the Secretary.

''(b) SPECIAL RULES WHERE PART APPLIES.—

''(1) COMPUTATION OF PERCENTAGE DEPLETION.—In the case of a large partnership, except as provided in paragraph (2)—

''(A) the allowance for depletion under section 611 with respect to any partnership oil or gas property shall be computed at the partnership level without regard to any provision of section 613A requiring such allowance to be computed separately by each partner,

''(B) such allowance shall be determined without regard to the provisions of section 613A(c) limiting the amount of production for

which percentage depletion is allowable and without regard to paragraph (1) of section 613A(d), and

''(C) paragraph (3) of section 705(a) shall not apply.

''(2) TREATMENT OF CERTAIN PARTNERS.—

''(A) IN GENERAL.—In the case of a disqualified person, the treatment under this chapter of such person's distributive share of any item of income, gain, loss, deduction, or credit attributable to any partnership oil or gas property shall be determined without regard to this part. Such person's distributive share of any such items shall be excluded for purposes of making determinations under sections 772 and 773.

''(B) DISQUALIFIED PERSON.—For purposes of subparagraph (A), the term 'disqualified person' means, with respect to any partnership taxable year—

''(i) any person referred to in paragraph (2) or (4) of section 613A(d) for such person's taxable year in which such partnership taxable year ends, and

''(ii) any other person if such person's average daily production of domestic crude oil and natural gas for such person's taxable year in which such partnership taxable year ends exceeds 500 barrels.

''(C) AVERAGE DAILY PRODUCTION.—For purposes of subparagraph (B), a person's average daily production of domestic crude oil and natural gas for any taxable year shall be computed as provided in section 613A(c)(2)—

''(i) by taking into account all production of domestic crude oil and natural gas (including such person's proportionate share of any production of a partnership),

''(ii) by treating 6,000 cubic feet of natural gas as a barrel of crude oil, and

''(iii) by treating as 1 person all persons treated as 1 taxpayer under section 613A(c)(8) or among whom allocations are required under such section.

**''SEC. 777. REGULATIONS.**

''The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this part.''

(b) CLERICAL AMENDMENT.—The table of parts for subchapter K of chapter 1 is amended by adding at the end the following new item:

''Part IV. Special rules for large partnerships.''

**SEC. 14302. SIMPLIFIED AUDIT PROCEDURES FOR LARGE PARTNERSHIPS.**

(a) GENERAL RULE.—Chapter 63 is amended by adding at the end the following new subchapter:

## ''Subchapter D—Treatment of Large Partnerships

''Part I. Treatment of partnership items and adjustments.
''Part II. Partnership level adjustments.
''Part III. Definitions and special rules.

### ''PART I—TREATMENT OF PARTNERSHIP ITEMS AND ADJUSTMENTS

''Sec. 6240. Application of subchapter.
''Sec. 6241. Partner's return must be consistent with partnership return.
''Sec. 6242. Procedures for taking partnership adjustments into account.

**''SEC. 6240. APPLICATION OF SUBCHAPTER.**

''(a) GENERAL RULE.—This subchapter shall only apply to large partnerships and partners in such partnerships.

''(b) COORDINATION WITH OTHER PARTNERSHIP AUDIT PROCEDURES.—

''(1) IN GENERAL.—Subchapter C of this chapter shall not apply to any large partnership other

than in its capacity as a partner in another partnership which is not a large partnership.

''(2) TREATMENT WHERE PARTNER IN OTHER PARTNERSHIP.—If a large partnership is a partner in another partnership which is not a large partnership—

''(A) subchapter C of this chapter shall apply to items of such large partnership which are partnership items with respect to such other partnership, but

''(B) any adjustment under such subchapter C shall be taken into account in the manner provided by section 6242.

**''SEC. 6241. PARTNER'S RETURN MUST BE CONSISTENT WITH PARTNERSHIP RETURN.**

''(a) GENERAL RULE.—A partner of any large partnership shall, on the partner's return, treat each partnership item attributable to such partnership in a manner which is consistent with the treatment of such partnership item on the partnership return.

''(b) UNDERPAYMENT DUE TO INCONSISTENT TREATMENT ASSESSED AS MATH ERROR.—Any underpayment of tax by a partner by reason of failing to comply with the requirements of subsection (a) shall be assessed and collected in the same manner as if such

underpayment were on account of a mathematical or clerical error appearing on the partner's return. Paragraph (2) of section 6213(b) shall not apply to any assessment of an underpayment referred to in the preceding sentence.

"(c) ADJUSTMENTS NOT TO AFFECT PRIOR YEAR OF PARTNERS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), subsections (a) and (b) shall apply without regard to any adjustment to the partnership item under part II.

"(2) CERTAIN CHANGES IN DISTRIBUTIVE SHARE TAKEN INTO ACCOUNT BY PARTNER.—

"(A) IN GENERAL.—To the extent that any adjustment under part II involves a change under section 704 in a partner's distributive share of the amount of any partnership item shown on the partnership return, such adjustment shall be taken into account in applying this title to such partner for the partner's taxable year for which such item was required to be taken into account.

"(B) COORDINATION WITH DEFICIENCY PROCEDURES.—

"(i) IN GENERAL.—Subchapter B shall not apply to the assessment or collec-

tion of any underpayment of tax attributable to an adjustment referred to in subparagraph (A).

''(ii) ADJUSTMENT NOT PRECLUDED.—Notwithstanding any other law or rule of law, nothing in subchapter B (or in any proceeding under subchapter B) shall preclude the assessment or collection of any underpayment of tax (or the allowance of any credit or refund of any overpayment of tax) attributable to an adjustment referred to in subparagraph (A) and such assessment or collection or allowance (or any notice thereof) shall not preclude any notice, proceeding, or determination under subchapter B.

''(C) PERIOD OF LIMITATIONS.—The period for—

''(i) assessing any underpayment of tax, or

''(ii) filing a claim for credit or refund of any overpayment of tax,

attributable to an adjustment referred to in subparagraph (A) shall not expire before the close of the period prescribed by section 6248

for making adjustments with respect to the partnership taxable year involved.

''(D) TIERED STRUCTURES.—If the partner referred to in subparagraph (A) is another partnership or an S corporation, the rules of this paragraph shall also apply to persons holding interests in such partnership or S corporation (as the case may be); except that, if such partner is a large partnership, the adjustment referred to in subparagraph (A) shall be taken into account in the manner provided by section 6242.

''(d) ADDITION TO TAX FOR FAILURE TO COMPLY WITH SECTION.—

**"For addition to tax in case of partner's disregard of requirements of this section, see part II of subchapter A of chapter 68.**

**"SEC. 6242. PROCEDURES FOR TAKING PARTNERSHIP ADJUSTMENTS INTO ACCOUNT.**

''(a) ADJUSTMENTS FLOW THROUGH TO PARTNERS FOR YEAR IN WHICH ADJUSTMENT TAKES EFFECT.—

''(1) IN GENERAL.—If any partnership adjustment with respect to any partnership item takes effect (within the meaning of subsection (d)(2)) during any partnership taxable year and if an election under paragraph (2) does not apply to such adjustment, such adjustment shall be taken into account

in determining the amount of such item for the partnership taxable year in which such adjustment takes effect. In applying this title to any person who is (directly or indirectly) a partner in such partnership during such partnership taxable year, such adjustment shall be treated as an item actually arising during such taxable year.

''(2) PARTNERSHIP LIABLE IN CERTAIN CASES.—If—

''(A) a partnership elects under this paragraph to not take an adjustment into account under paragraph (1),

''(B) a partnership does not make such an election but in filing its return for any partnership taxable year fails to take fully into account any partnership adjustment as required under paragraph (1), or

''(C) any partnership adjustment involves a reduction in a credit which exceeds the amount of such credit determined for the partnership taxable year in which the adjustment takes effect,

the partnership shall pay to the Secretary an amount determined by applying the rules of subsection (b)(4) to the adjustments not so taken into

account and any excess referred to in subparagraph (C). A partnership may make an election under subparagraph (A) only if such partnership meets such requirements as the Secretary may prescribe to assure payment of such amount.

''(3) OFFSETTING ADJUSTMENTS TAKEN INTO ACCOUNT.—If a partnership adjustment requires another adjustment in a taxable year after the adjusted year and before the partnership taxable year in which such partnership adjustment takes effect, such other adjustment shall be taken into account under this subsection for the partnership taxable year in which such partnership adjustment takes effect.

''(4) COORDINATION WITH PART II.—Amounts taken into account under this subsection for any partnership taxable year shall continue to be treated as adjustments for the adjusted year for purposes of determining whether such amounts may be readjusted under part II.

''(b) PARTNERSHIP LIABLE FOR INTEREST AND PENALTIES.—

''(1) IN GENERAL.—If a partnership adjustment takes effect during any partnership taxable year and such adjustment results in an imputed

underpayment for the adjusted year, the partnership—

"(A) shall pay to the Secretary interest computed under paragraph (2), and

"(B) shall be liable for any penalty, addition to tax, or additional amount as provided in paragraph (3).

"(2) DETERMINATION OF AMOUNT OF INTEREST.—The interest computed under this paragraph with respect to any partnership adjustment is the interest which would be determined under chapter 67—

"(A) on the imputed underpayment determined under paragraph (4) with respect to such adjustment,

"(B) for the period beginning on the day after the return due date for the adjusted year and ending on the return due date for the partnership taxable year in which such adjustment takes effect (or, if earlier, in the case of any adjustment to which subsection (a)(2) applies, the date on which the payment under subsection (a)(2) is made).

Proper adjustments in the amount determined under the preceding sentence shall be made for adjust-

ments required for partnership taxable years after the adjusted year and before the year in which the partnership adjustment takes effect by reason of such partnership adjustment.

''(3) PENALTIES.—A partnership shall be liable for any penalty, addition to tax, or additional amount for which it would have been liable if such partnership had been an individual subject to tax under chapter 1 for the adjusted year and the imputed underpayment determined under paragraph (4) were an actual underpayment (or understatement) for such year.

''(4) IMPUTED UNDERPAYMENT.—For purposes of this subsection, the imputed underpayment determined under this paragraph with respect to any partnership adjustment is the underpayment (if any) which would result—

''(A) by netting all adjustments to items of income, gain, loss, or deduction and by treating any net increase in income as an underpayment equal to the amount of such net increase multiplied by the highest rate of tax in effect under section 1 or 11 for the adjusted year, and

''(B) by taking adjustments to credits into account as increases or decreases (whichever is appropriate) in the amount of tax.

For purposes of the preceding sentence, any net decrease in a loss shall be treated as an increase in income and a similar rule shall apply to a net increase in a loss.

''(c) ADMINISTRATIVE PROVISIONS.—

''(1) IN GENERAL.—Any payment required by subsection (a)(2) or (b)(1)(A)—

''(A) shall be assessed and collected in the same manner as if it were a tax imposed by subtitle C, and

''(B) shall be paid on or before the return due date for the partnership taxable year in which the partnership adjustment takes effect.

''(2) INTEREST.—For purposes of determining interest, any payment required by subsection (a)(2) or (b)(1)(A) shall be treated as an underpayment of tax.

''(3) PENALTIES.—

''(A) IN GENERAL.—In the case of any failure by any partnership to pay on the date prescribed therefor any amount required by subsection (a)(2) or (b)(1)(A), there is hereby

imposed on such partnership a penalty of 10 percent of the underpayment. For purposes of the preceding sentence, the term 'underpayment' means the excess of any payment required under this section over the amount (if any) paid on or before the date prescribed therefor.

''(B) ACCURACY-RELATED AND FRAUD PENALTIES MADE APPLICABLE.—For purposes of part II of subchapter A of chapter 68, any payment required by subsection (a)(2) shall be treated as an underpayment of tax.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) PARTNERSHIP ADJUSTMENT.—The term 'partnership adjustment' means any adjustment in the amount of any partnership item of a large partnership.

''(2) WHEN ADJUSTMENT TAKES EFFECT.—A partnership adjustment takes effect—

''(A) in the case of an adjustment pursuant to the decision of a court in a proceeding brought under part II, when such decision becomes final,

''(B) in the case of an adjustment pursuant to any administrative adjustment request under section 6251, when such adjustment is allowed by the Secretary, or

''(C) in any other case, when such adjustment is made.

''(3) ADJUSTED YEAR.—The term 'adjusted year' means the partnership taxable year to which the item being adjusted relates.

''(4) RETURN DUE DATE.—The term 'return due date' means, with respect to any taxable year, the date prescribed for filing the partnership return for such taxable year (determined without regard to extensions).

''(5) ADJUSTMENTS INVOLVING CHANGES IN CHARACTER.—Under regulations, appropriate adjustments in the application of this section shall be made for purposes of taking into account partnership adjustments which involve a change in the character of any item of income, gain, loss, or deduction.

''(e) PAYMENTS NONDEDUCTIBLE.—No deduction shall be allowed under subtitle A for any payment required to be made by a large partnership under this section.

**"PART II—PARTNERSHIP LEVEL ADJUSTMENTS**

''Subpart A. Adjustments by Secretary.
''Subpart B. Claims for adjustments by partnership.

## "Subpart A—Adjustments by Secretary

''Sec. 6245. Secretarial authority.
''Sec. 6246. Restrictions on partnership adjustments.
''Sec. 6247. Judicial review of partnership adjustment.
''Sec. 6248. Period of limitations for making adjustments.

### "SEC. 6245. SECRETARIAL AUTHORITY.

''(a) GENERAL RULE.—The Secretary is authorized and directed to make adjustments at the partnership level in any partnership item to the extent necessary to have such item be treated in the manner required.

''(b) NOTICE OF PARTNERSHIP ADJUSTMENT.—

''(1) IN GENERAL.—If the Secretary determines that a partnership adjustment is required, the Secretary is authorized to send notice of such adjustment to the partnership by certified mail or registered mail. Such notice shall be sufficient if mailed to the partnership at its last known address even if the partnership has terminated its existence.

''(2) FURTHER NOTICES RESTRICTED.—If the Secretary mails a notice of a partnership adjustment to any partnership for any partnership taxable year and the partnership files a petition under section 6247 with respect to such notice, in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact, the Secretary shall not mail another such notice to such partnership with respect to such taxable year.

''(3) AUTHORITY TO RESCIND NOTICE WITH PARTNERSHIP CONSENT.—The Secretary may, with the consent of the partnership, rescind any notice of a partnership adjustment mailed to such partnership. Any notice so rescinded shall not be treated as a notice of a partnership adjustment, for purposes of this section, section 6246, and section 6247, and the taxpayer shall have no right to bring a proceeding under section 6247 with respect to such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.

**''SEC. 6246. RESTRICTIONS ON PARTNERSHIP ADJUSTMENTS.**

''(a) GENERAL RULE.—Except as otherwise provided in this chapter, no adjustment to any partnership item may be made (and no levy or proceeding in any court for the collection of any amount resulting from such adjustment may be made, begun or prosecuted) before—

''(1) the close of the 90th day after the day on which a notice of a partnership adjustment was mailed to the partnership, and

"(2) if a petition is filed under section 6247 with respect to such notice, the decision of the court has become final.

"(b) PREMATURE ACTION MAY BE ENJOINED.—Notwithstanding section 7421(a), any action which violates subsection (a) may be enjoined in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action under this subsection unless a timely petition has been filed under section 6247 and then only in respect of the adjustments that are the subject of such petition.

"(c) EXCEPTIONS TO RESTRICTIONS ON ADJUSTMENTS.—

"(1) ADJUSTMENTS ARISING OUT OF MATH OR CLERICAL ERRORS.—

"(A) IN GENERAL.—If the partnership is notified that, on account of a mathematical or clerical error appearing on the partnership return, an adjustment to a partnership item is required, rules similar to the rules of paragraphs (1) and (2) of section 6213(b) shall apply to such adjustment.

"(B) SPECIAL RULE.—If a large partnership is a partner in another large partnership, any adjustment on account of such partner-

ship's failure to comply with the requirements of section 6241(a) with respect to its interest in such other partnership shall be treated as an adjustment referred to in subparagraph (A), except that paragraph (2) of section 6213(b) shall not apply to such adjustment.

''(2) PARTNERSHIP MAY WAIVE RESTRICTIONS.—The partnership shall at any time (whether or not a notice of partnership adjustment has been issued) have the right, by a signed notice in writing filed with the Secretary, to waive the restrictions provided in subsection (a) on the making of any partnership adjustment.

''(d) LIMIT WHERE NO PROCEEDING BEGUN.—If no proceeding under section 6247 is begun with respect to any notice of a partnership adjustment during the 90-day period described in subsection (a), the amount for which the partnership is liable under section 6242 (and any increase in any partner's liability for tax under chapter 1 by reason of any adjustment under section 6242(a)) shall not exceed the amount determined in accordance with such notice.

**"SEC. 6247. JUDICIAL REVIEW OF PARTNERSHIP ADJUSTMENT.**

''(a) GENERAL RULE.—Within 90 days after the date on which a notice of a partnership adjustment is mailed to the partnership with respect to any partnership taxable year, the partnership may file a petition for a readjustment of the partnership items for such taxable year with—

''(1) the Tax Court,

''(2) the district court of the United States for the district in which the partnership's principal place of business is located, or

''(3) the Claims Court.

''(b) JURISDICTIONAL REQUIREMENT FOR BRINGING ACTION IN DISTRICT COURT OR CLAIMS COURT.—

''(1) IN GENERAL.—A readjustment petition under this section may be filed in a district court of the United States or the Claims Court only if the partnership filing the petition deposits with the Secretary, on or before the date the petition is filed, the amount for which the partnership would be liable under section 6242(b) (as of the date of the filing of the petition) if the partnership items were adjusted as provided by the notice of partnership adjustment. The court may by order provide that the jurisdictional requirements of this paragraph are satisfied where there has been a good faith attempt

to satisfy such requirement and any shortfall of the amount required to be deposited is timely corrected.

''(2) INTEREST PAYABLE.—Any amount deposited under paragraph (1), while deposited, shall not be treated as a payment of tax for purposes of this title (other than chapter 67).

''(c) SCOPE OF JUDICIAL REVIEW.—A court with which a petition is filed in accordance with this section shall have jurisdiction to determine all partnership items of the partnership for the partnership taxable year to which the notice of partnership adjustment relates and the proper allocation of such items among the partners (and the applicability of any penalty, addition to tax, or additional amount for which the partnership may be liable under section 6242(b)).

''(d) DETERMINATION OF COURT REVIEWABLE.—Any determination by a court under this section shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. The date of any such determination shall be treated as being the date of the court's order entering the decision.

''(e) EFFECT OF DECISION DISMISSING ACTION.—If an action brought under this section is dismissed other than by reason of a rescission under section 6245(b)(3),

the decision of the court dismissing the action shall be considered as its decision that the notice of partnership adjustment is correct, and an appropriate order shall be entered in the records of the court.

**"SEC. 6248. PERIOD OF LIMITATIONS FOR MAKING ADJUSTMENTS.**

''(a) GENERAL RULE.—Except as otherwise provided in this section, no adjustment under this subpart to any partnership item for any partnership taxable year may be made after the date which is 3 years after the later of—

''(1) the date on which the partnership return for such taxable year was filed, or

''(2) the last day for filing such return for such year (determined without regard to extensions).

''(b) EXTENSION BY AGREEMENT.—The period described in subsection (a) (including an extension period under this subsection) may be extended by an agreement entered into by the Secretary and the partnership before the expiration of such period.

''(c) SPECIAL RULE IN CASE OF FRAUD, ETC.—

''(1) FALSE RETURN.—In the case of a false or fraudulent partnership return with intent to evade tax, the adjustment may be made at any time.

''(2) SUBSTANTIAL OMISSION OF INCOME.—If any partnership omits from gross income an amount

properly includible therein which is in excess of 25 percent of the amount of gross income stated in its return, subsection (a) shall be applied by substituting '6 years' for '3 years'.

''(3) NO RETURN.—In the case of a failure by a partnership to file a return for any taxable year, the adjustment may be made at any time.

''(4) RETURN FILED BY SECRETARY.—For purposes of this section, a return executed by the Secretary under subsection (b) of section 6020 on behalf of the partnership shall not be treated as a return of the partnership.

''(d) SUSPENSION WHEN SECRETARY MAILS NOTICE OF ADJUSTMENT.—If notice of a partnership adjustment with respect to any taxable year is mailed to the partnership, the running of the period specified in subsection (a) (as modified by the other provisions of this section) shall be suspended—

''(1) for the period during which an action may be brought under section 6247 (and, if a petition is filed under section 6247 with respect to such notice, until the decision of the court becomes final), and

''(2) for 1 year thereafter.

**"Subpart B—Claims for Adjustments by Partnership**

''Sec. 6251. Administrative adjustment requests.
''Sec. 6252. Judicial review where administrative adjustment request is not allowed in full.

**"SEC. 6251. ADMINISTRATIVE ADJUSTMENT REQUESTS.**

''(a) GENERAL RULE.—A partnership may file a request for an administrative adjustment of partnership items for any partnership taxable year at any time which is—

''(1) within 3 years after the later of—

''(A) the date on which the partnership return for such year is filed, or

''(B) the last day for filing the partnership return for such year (determined without regard to extensions), and

''(2) before the mailing to the partnership of a notice of a partnership adjustment with respect to such taxable year.

''(b) SECRETARIAL ACTION.—If a partnership files an administrative adjustment request under subsection (a), the Secretary may allow any part of the requested adjustments.

''(c) SPECIAL RULE IN CASE OF EXTENSION UNDER SECTION 6248.—If the period described in section 6248(a) is extended pursuant to an agreement under section 6248(b), the period prescribed by subsection (a)(1) shall not expire before the date 6 months after the expiration of the extension under section 6248(b).

**"SEC. 6252. JUDICIAL REVIEW WHERE ADMINISTRATIVE ADJUSTMENT REQUEST IS NOT ALLOWED IN FULL.**

''(a) IN GENERAL.—If any part of an administrative adjustment request filed under section 6251 is not allowed by the Secretary, the partnership may file a petition for an adjustment with respect to the partnership items to which such part of the request relates with—

''(1) the Tax Court,

''(2) the district court of the United States for the district in which the principal place of business of the partnership is located, or

''(3) the Claims Court.

''(b) PERIOD FOR FILING PETITION.—A petition may be filed under subsection (a) with respect to partnership items for a partnership taxable year only—

''(1) after the expiration of 6 months from the date of filing of the request under section 6251, and

''(2) before the date which is 2 years after the date of such request.

The 2-year period set forth in paragraph (2) shall be extended for such period as may be agreed upon in writing by the partnership and the Secretary.

''(c) COORDINATION WITH SUBPART A.—

''(1) NOTICE OF PARTNERSHIP ADJUSTMENT BEFORE FILING OF PETITION.—No petition may be

filed under this section after the Secretary mails to the partnership a notice of a partnership adjustment for the partnership taxable year to which the request under section 6251 relates.

''(2) NOTICE OF PARTNERSHIP ADJUSTMENT AFTER FILING BUT BEFORE HEARING OF PETITION.—If the Secretary mails to the partnership a notice of a partnership adjustment for the partnership taxable year to which the request under section 6251 relates after the filing of a petition under this subsection but before the hearing of such petition, such petition shall be treated as an action brought under section 6247 with respect to such notice, except that subsection (b) of section 6247 shall not apply.

''(3) NOTICE MUST BE BEFORE EXPIRATION OF STATUTE OF LIMITATIONS.—A notice of a partnership adjustment for the partnership taxable year shall be taken into account under paragraphs (1) and (2) only if such notice is mailed before the expiration of the period prescribed by section 6248 for making adjustments to partnership items for such taxable year.

''(d) SCOPE OF JUDICIAL REVIEW.—Except in the case described in paragraph (2) of subsection (c), a court

with which a petition is filed in accordance with this section shall have jurisdiction to determine only those partnership items to which the part of the request under section 6251 not allowed by the Secretary relates and those items with respect to which the Secretary asserts adjustments as offsets to the adjustments requested by the partnership.

''(e) DETERMINATION OF COURT REVIEWABLE.—Any determination by a court under this subsection shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. The date of any such determination shall be treated as being the date of the court's order entering the decision.

**"PART III—DEFINITIONS AND SPECIAL RULES**

''Sec. 6255. Definitions and special rules.

**"SEC. 6255. DEFINITIONS AND SPECIAL RULES.**

''(a) DEFINITIONS.—For purposes of this subchapter—

''(1) LARGE PARTNERSHIP.—The term 'large partnership' has the meaning given to such term by section 775 without regard to section 776(a).

"(2) PARTNERSHIP ITEM.—The term 'partnership item' has the meaning given to such term by section 6231(a)(3).

"(b) PARTNERS BOUND BY ACTIONS OF PARTNERSHIP, ETC.—

"(1) DESIGNATION OF PARTNER.—Each large partnership shall designate (in the manner prescribed by the Secretary) a partner (or other person) who shall have the sole authority to act on behalf of such partnership under this subchapter. In any case in which such a designation is not in effect, the Secretary may select any partner as the partner with such authority.

"(2) BINDING EFFECT.—A large partnership and all partners of such partnership shall be bound—

"(A) by actions taken under this subchapter by the partnership, and

"(B) by any decision in a proceeding brought under this subchapter.

"(c) PARTNERSHIPS HAVING PRINCIPAL PLACE OF BUSINESS OUTSIDE THE UNITED STATES.—For purposes of sections 6247 and 6252, a principal place of business located outside the United States shall be treated as located in the District of Columbia.

"(d) TREATMENT WHERE PARTNERSHIP CEASES TO EXIST.—If a partnership ceases to exist before a partnership adjustment under this subchapter takes effect, such adjustment shall be taken into account by the former partners of such partnership under regulations prescribed by the Secretary.

"(e) DATE DECISION BECOMES FINAL.—For purposes of this subchapter, the principles of section 7481(a) shall be applied in determining the date on which a decision of a district court or the Claims Court becomes final.

"(f) PARTNERSHIPS IN CASES UNDER TITLE 11 OF THE UNITED STATES CODE.—The running of any period of limitations provided in this subchapter on making a partnership adjustment (or provided by section 6501 or 6502 on the assessment or collection of any amount required to be paid under section 6242) shall, in a case under title 11 of the United States Code, be suspended during the period during which the Secretary is prohibited by reason of such case from making the adjustment (or assessment or collection) and—

"(1) for adjustment or assessment, 60 days thereafter, and

"(2) for collection, 6 months thereafter.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subchapter, including regulations—

"(1) to prevent abuse through manipulation of the provisions of this subchapter, and

"(2) providing that this subchapter shall not apply to any case described in section 6231(c)(1) (or the regulations prescribed thereunder) where the application of this subchapter to such a case would interfere with the effective and efficient enforcement of this title.

In any case to which this subchapter does not apply by reason of paragraph (2), rules similar to the rules of sections 6229(f) and 6255(f) shall apply."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 63 is amended by adding at the end the following new item:

"SUBCHAPTER D. Treatment of large partnerships."

**SEC. 14303. DUE DATE FOR FURNISHING INFORMATION TO PARTNERS OF LARGE PARTNERSHIPS.**

(a) GENERAL RULE.—Subsection (b) of section 6031 (relating to copies to partners) is amended by adding at the end the following new sentence: "In the case of a large partnership (as defined in sections 775 and 776(a)), such information shall be furnished on or before the first March 15 following the close of such taxable year."

(b) TREATMENT AS INFORMATION RETURN.—Section 6724 is amended by adding at the end the following new subsection:

''(e) SPECIAL RULE FOR CERTAIN PARTNERSHIP RETURNS.—If any partnership return under section 6031(a) is required under section 6011(e) to be filed on magnetic media or in other machine-readable form, for purposes of this part, each schedule required to be included with such return with respect to each partner shall be treated as a separate information return.''

**SEC. 14304. RETURNS MAY BE REQUIRED ON MAGNETIC MEDIA.**

Paragraph (2) of section 6011(e) (relating to returns on magnetic media) is amended by adding at the end the following new sentence:

''Notwithstanding the preceding sentence, the Secretary shall require partnerships having more than 100 partners to file returns on magnetic media.''

**SEC. 14305. TREATMENT OF PARTNERSHIP ITEMS OF INDIVIDUAL RETIREMENT ACCOUNTS.**

Subsection (b) of section 6012 is amended by adding at the end the following new paragraph:

''(6) IRA SHARE OF PARTNERSHIP INCOME.—In the case of a trust which is exempt from taxation under section 408(e), for purposes of this section,

the trust's distributive share of items of gross income and gain of any partnership to which subchapter C or D of chapter 63 applies shall be treated as equal to the trust's distributive share of the taxable income of such partnership.''

**SEC. 14306. EFFECTIVE DATE.**

The amendments made by this part shall apply to partnership taxable years beginning after December 31, 1995.

## PART II—PROVISIONS RELATED TO CERTAIN PARTNERSHIP PROCEEDINGS

**SEC. 14311. TREATMENT OF PARTNERSHIP ITEMS IN DEFICIENCY PROCEEDINGS.**

(a) IN GENERAL.—Subchapter C of chapter 63 is amended by adding at the end the following new section:

**''SEC. 6234. DECLARATORY JUDGMENT RELATING TO TREATMENT OF ITEMS OTHER THAN PARTNERSHIP ITEMS WITH RESPECT TO AN OVERSHELTERED RETURN.**

''(a) GENERAL RULE.—If—

''(1) a taxpayer files an oversheltered return for a taxable year,

''(2) the Secretary makes a determination with respect to the treatment of items (other than part-

nership items) of such taxpayer for such taxable year, and

''(3) the adjustments resulting from such determination do not give rise to a deficiency (as defined in section 6211) but would give rise to a deficiency if there were no net loss from partnership items,

the Secretary is authorized to send a notice of adjustment reflecting such determination to the taxpayer by certified or registered mail.

''(b) OVERSHELTERED RETURN.—For purposes of this section, the term 'oversheltered return' means an income tax return which—

''(1) shows no taxable income for the taxable year, and

''(2) shows a net loss from partnership items.

''(c) JUDICIAL REVIEW IN THE TAX COURT.—Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the day on which the notice of adjustment authorized in subsection (a) is mailed to the taxpayer, the taxpayer may file a petition with the Tax Court for redetermination of the adjustments. Upon the filing of such a petition, the Tax Court shall have jurisdiction to make a declaration with respect to all items (other than partnership items and affected items which require partner level determinations as described in sec-

tion 6230(a)(2)(A)(i)) for the taxable year to which the notice of adjustment relates, in accordance with the principles of section 6214(a). Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

''(d) FAILURE TO FILE PETITION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), if the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (c), the determination of the Secretary set forth in the notice of adjustment that was mailed to the taxpayer shall be deemed to be correct.

''(2) EXCEPTION.—Paragraph (1) shall not apply after the date that the taxpayer—

''(A) files a petition with the Tax Court within the time prescribed in subsection (c) with respect to a subsequent notice of adjustment relating to the same taxable year, or

''(B) files a claim for refund of an overpayment of tax under section 6511 for the taxable year involved.

If a claim for refund is filed by the taxpayer, then solely for purposes of determining (for the taxable year involved) the amount of any computational adjustment in connection with a partnership proceed-

ing under this subchapter (other than under this section) or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), the items that are the subject of the notice of adjustment shall be presumed to have been correctly reported on the taxpayer's return during the pendency of the refund claim (and, if within the time prescribed by section 6532 the taxpayer commences a civil action for refund under section 7422, until the decision in the refund action becomes final).

''(e) LIMITATIONS PERIOD.—

''(1) IN GENERAL.—Any notice to a taxpayer under subsection (a) shall be mailed before the expiration of the period prescribed by section 6501 (relating to the period of limitations on assessment).

''(2) SUSPENSION WHEN SECRETARY MAILS NOTICE OF ADJUSTMENT.—If the Secretary mails a notice of adjustment to the taxpayer for a taxable year, the period of limitations on the making of assessments shall be suspended for the period during which the Secretary is prohibited from making the assessment (and, in any event, if a proceeding in respect of the notice of adjustment is placed on the docket of the Tax Court, until the decision of the

Tax Court becomes final), and for 60 days thereafter.

''(3) RESTRICTIONS ON ASSESSMENT.—Except as otherwise provided in section 6851, 6852, or 6861, no assessment of a deficiency with respect to any tax imposed by subtitle A attributable to any item (other than a partnership item or any item affected by a partnership item) shall be made—

''(A) until the expiration of the applicable 90-day or 150-day period set forth in subsection (c) for filing a petition with the Tax Court, or

''(B) if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final.

''(f) FURTHER NOTICES OF ADJUSTMENT RESTRICTED.—If the Secretary mails a notice of adjustment to the taxpayer for a taxable year and the taxpayer files a petition with the Tax Court within the time prescribed in subsection (c), the Secretary may not mail another such notice to the taxpayer with respect to the same taxable year in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact.

''(g) COORDINATION WITH OTHER PROCEEDINGS UNDER THIS SUBCHAPTER.—

"(1) IN GENERAL.—The treatment of any item that has been determined pursuant to subsection (c) or (d) shall be taken into account in determining the amount of any computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), for the taxable year involved. Notwithstanding any other law or rule of law pertaining to the period of limitations on the making of assessments, for purposes of the preceding sentence, any adjustment made in accordance with this section shall be taken into account regardless of whether any assessment has been made with respect to such adjustment.

"(2) SPECIAL RULE IN CASE OF COMPUTATIONAL ADJUSTMENT.—In the case of a computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), the provisions of paragraph (1) shall apply only if the computational adjustment is made within the period prescribed by section 6229 for assessing any tax under subtitle A which is at-

tributable to any partnership item or affected item for the taxable year involved.

''(3) CONVERSION TO DEFICIENCY PROCEEDING.—If—

''(A) after the notice referred to in subsection (a) is mailed to a taxpayer for a taxable year but before the expiration of the period for filing a petition with the Tax Court under subsection (c) (or, if a petition is filed with the Tax Court, before the Tax Court makes a declaration for that taxable year), the treatment of any partnership item for the taxable year is finally determined, or any such item ceases to be a partnership item pursuant to section 6231(b), and

''(B) as a result of that final determination or cessation, a deficiency can be determined with respect to the items that are the subject of the notice of adjustment,

the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition filed in respect of the notice shall be treated as an action brought under section 6213.

"(4) FINALLY DETERMINED.—For purposes of this subsection, the treatment of partnership items shall be treated as finally determined if—

"(A) the Secretary enters into a settlement agreement (within the meaning of section 6224) with the taxpayer regarding such items,

"(B) a notice of final partnership administrative adjustment has been issued and—

"(i) no petition has been filed under section 6226 and the time for doing so has expired, or

"(ii) a petition has been filed under section 6226 and the decision of the court has become final, or

"(C) the period within which any tax attributable to such items may be assessed against the taxpayer has expired.

"(h) SPECIAL RULES IF SECRETARY INCORRECTLY DETERMINES APPLICABLE PROCEDURE.—

"(1) SPECIAL RULE IF SECRETARY ERRONEOUSLY MAILS NOTICE OF ADJUSTMENT.—If the Secretary erroneously determines that subchapter B does not apply to a taxable year of a taxpayer and consistent with that determination timely mails a notice of adjustment to the taxpayer pursuant to sub-

section (a) of this section, the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition that is filed in respect of the notice shall be treated as an action brought under section 6213.

''(2) SPECIAL RULE IF SECRETARY ERRONEOUSLY MAILS NOTICE OF DEFICIENCY.—If the Secretary erroneously determines that subchapter B applies to a taxable year of a taxpayer and consistent with that determination timely mails a notice of deficiency to the taxpayer pursuant to section 6212, the notice of deficiency shall be treated as a notice of adjustment under subsection (a) and any petition that is filed in respect of the notice shall be treated as an action brought under subsection (c).''

(b) TREATMENT OF PARTNERSHIP ITEMS IN DEFICIENCY PROCEEDINGS.—Section 6211 (defining deficiency) is amended by adding at the end the following new subsection:

''(c) COORDINATION WITH SUBCHAPTER C.—In determining the amount of any deficiency for purposes of this subchapter, adjustments to partnership items shall be made only as provided in subchapter C.''

(c) CLERICAL AMENDMENT.—The table of sections for subchapter C of chapter 63 is amended by adding at the end the following new item:

"Sec. 6234. Declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

**SEC. 14312. PARTNERSHIP RETURN TO BE DETERMINATIVE OF AUDIT PROCEDURES TO BE FOLLOWED.**

(a) IN GENERAL.—Section 6231 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

"(g) PARTNERSHIP RETURN TO BE DETERMINATIVE OF WHETHER SUBCHAPTER APPLIES.—

"(1) DETERMINATION THAT SUBCHAPTER APPLIES.—If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter applies to such partnership for such year but such determination is erroneous, then the provisions of this subchapter are hereby extended to such partnership (and its items) for such taxable year and to partners of such partnership.

"(2) DETERMINATION THAT SUBCHAPTER DOES NOT APPLY.—If, on the basis of a partnership return for a taxable year, the Secretary reasonably de-

termines that this subchapter does not apply to such partnership for such year but such determination is erroneous, then the provisions of this subchapter shall not apply to such partnership (and its items) for such taxable year or to partners of such partnership.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

**SEC. 14313. PROVISIONS RELATING TO STATUTE OF LIMITATIONS.**

(a) SUSPENSION OF STATUTE WHERE UNTIMELY PETITION FILED.—Paragraph (1) of section 6229(d) (relating to suspension where Secretary makes administrative adjustment) is amended by striking all that follows ''section 6226'' and inserting the following: ''(and, if a petition is filed under section 6226 with respect to such administrative adjustment, until the decision of the court becomes final), and''.

(b) SUSPENSION OF STATUTE DURING BANKRUPTCY PROCEEDING.—Section 6229 is amended by adding at the end the following new subsection:

''(h) SUSPENSION DURING PENDENCY OF BANKRUPTCY PROCEEDING.—If a petition is filed naming a partner as a debtor in a bankruptcy proceeding under title

11 of the United States Code, the running of the period of limitations provided in this section with respect to such partner shall be suspended—

''(1) for the period during which the Secretary is prohibited by reason of such bankruptcy proceeding from making an assessment, and

''(2) for 60 days thereafter.''

(c) TAX MATTERS PARTNER IN BANKRUPTCY.—Section 6229(b) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

''(2) SPECIAL RULE WITH RESPECT TO DEBTORS IN TITLE 11 CASES.—Notwithstanding any other law or rule of law, if an agreement is entered into under paragraph (1)(B) and the agreement is signed by a person who would be the tax matters partner but for the fact that, at the time that the agreement is executed, the person is a debtor in a bankruptcy proceeding under title 11 of the United States Code, such agreement shall be binding on all partners in the partnership unless the Secretary has been notified of the bankruptcy proceeding in accordance with regulations prescribed by the Secretary.''

(d) EFFECTIVE DATES.—

(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) shall apply to partnership taxable years with respect to which the period under section 6229 of the Internal Revenue Code of 1986 for assessing tax has not expired on or before the date of the enactment of this Act.

(2) SUBSECTION (c).—The amendment made by subsection (c) shall apply to agreements entered into after the date of the enactment of this Act.

**SEC. 14314. EXPANSION OF SMALL PARTNERSHIP EXCEPTION.**

(a) IN GENERAL.—Clause (i) of section 6231(a)(1)(B) (relating to exception for small partnerships) is amended to read as follows:

''(i) IN GENERAL.—The term 'partnership' shall not include any partnership having 10 or fewer partners each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner. For purposes of the preceding sentence, a husband and wife (and their estates) shall be treated as 1 partner.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

**SEC. 14315. EXCLUSION OF PARTIAL SETTLEMENTS FROM 1-YEAR LIMITATION ON ASSESSMENT.**

(a) IN GENERAL.—Subsection (f) of section 6229 (relating to items becoming nonpartnership items) is amended—

(1) by striking ''(f) ITEMS BECOMING NONPARTNERSHIP ITEMS.—If'' and inserting the following:

''(f) SPECIAL RULES.—

''(1) ITEMS BECOMING NONPARTNERSHIP ITEMS.—If'',

(2) by moving the text of such subsection 2 ems to the right, and

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

''(2) SPECIAL RULE FOR PARTIAL SETTLEMENT AGREEMENTS.—If a partner enters into a settlement agreement with the Secretary with respect to the treatment of some of the partnership items in dispute for a partnership taxable year but other partnership items for such year remain in dispute, the period of limitations for assessing any tax attrib-

utable to the settled items shall be determined as if such agreement had not been entered into.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to settlements entered into after the date of the enactment of this Act.

**SEC. 14316. EXTENSION OF TIME FOR FILING A REQUEST FOR ADMINISTRATIVE ADJUSTMENT.**

(a) IN GENERAL.—Section 6227 (relating to administrative adjustment requests) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting after subsection (a) the following new subsection:

''(b) SPECIAL RULE IN CASE OF EXTENSION OF PERIOD OF LIMITATIONS UNDER SECTION 6229.—The period prescribed by subsection (a)(1) for filing of a request for an administrative adjustment shall be extended—

''(1) for the period within which an assessment may be made pursuant to an agreement (or any extension thereof) under section 6229(b), and

''(2) for 6 months thereafter.''

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

**SEC. 14317. AVAILABILITY OF INNOCENT SPOUSE RELIEF IN CONTEXT OF PARTNERSHIP PROCEEDINGS.**

(a) IN GENERAL.—Subsection (a) of section 6230 is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULE IN CASE OF ASSERTION BY PARTNER'S SPOUSE OF INNOCENT SPOUSE RELIEF.—

''(A) Notwithstanding section 6404(b), if the spouse of a partner asserts that section 6013(e) applies with respect to a liability that is attributable to any adjustment to a partnership item, then such spouse may file with the Secretary within 60 days after the notice of computational adjustment is mailed to the spouse a request for abatement of the assessment specified in such notice. Upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by subchapter B. The period for making any such reassessment shall not expire before the expiration of 60 days after the date of such abatement.

"(B) If the spouse files a petition with the Tax Court pursuant to section 6213 with respect to the request for abatement described in subparagraph (A), the Tax Court shall only have jurisdiction pursuant to this section to determine whether the requirements of section 6013(e) have been satisfied. For purposes of such determination, the treatment of partnership items under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive.

"(C) Rules similar to the rules contained in subparagraphs (B) and (C) of paragraph (2) shall apply for purposes of this paragraph."

(b) CLAIMS FOR REFUND.—Subsection (c) of section 6230 is amended by adding at the end the following new paragraph:

"(5) RULES FOR SEEKING INNOCENT SPOUSE RELIEF.—

"(A) IN GENERAL.—The spouse of a partner may file a claim for refund on the ground that the Secretary failed to relieve the spouse under section 6013(e) from a liability that is at-

tributable to an adjustment to a partnership item.

''(B) TIME FOR FILING CLAIM.—Any claim under subparagraph (A) shall be filed within 6 months after the day on which the Secretary mails to the spouse the notice of computational adjustment referred to in subsection (a)(3)(A).

''(C) SUIT IF CLAIM NOT ALLOWED.—If the claim under subparagraph (B) is not allowed, the spouse may bring suit with respect to the claim within the period specified in paragraph (3).

''(D) PRIOR DETERMINATIONS ARE BINDING.—For purposes of any claim or suit under this paragraph, the treatment of partnership items under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive.''

(c) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 6230(a) is amended by striking ''paragraph (2)'' and inserting ''paragraph (2) or (3)''.

(2) Subsection (a) of section 6503 is amended by striking ''section 6230(a)(2)(A)'' and inserting ''paragraph (2)(A) or (3) of section 6230(a)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

**SEC. 14318. DETERMINATION OF PENALTIES AT PARTNERSHIP LEVEL.**

(a) IN GENERAL.—Section 6221 (relating to tax treatment determined at partnership level) is amended by striking ''item'' and inserting ''item (and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item)''.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (f) of section 6226 is amended—

(A) by striking ''relates and'' and inserting ''relates,'', and

(B) by inserting before the period '', and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item''.

(2) Clause (i) of section 6230(a)(2)(A) is amended to read as follows:

''(i) affected items which require partner level determinations (other than penalties, additions to tax, and additional amounts that relate to adjustments to partnership items), or''.

(3)(A) Subparagraph (A) of section 6230(a)(3), as added by section 14317, is amended by inserting ''(including any liability for any penalty, addition to tax, or additional amount relating to such adjustment)'' after ''partnership item''.

(B) Subparagraph (B) of such section is amended by inserting ''(and the applicability of any penalties, additions to tax, or additional amounts)'' after ''partnership items''.

(C) Subparagraph (A) of section 6230(c)(5), as added by section 14317, is amended by inserting before the period ''(including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment)''.

(D) Subparagraph (D) of section 6230(c)(5), as added by section 14317, is amended by inserting ''(and the applicability of any penalties, additions to tax, or additional amounts)'' after ''partnership items''.

(4) Paragraph (1) of section 6230(c) is amended by striking ''or'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', or'', and by adding at the end the following new subparagraph:

''(C) the Secretary erroneously imposed any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item.''

(5) So much of subparagraph (A) of section 6230(c)(2) as precedes ''shall be filed'' is amended to read as follows:

''(A) UNDER PARAGRAPH (1) (A) OR (C).—Any claim under subparagraph (A) or (C) of paragraph (1)''.

(6) Paragraph (4) of section 6230(c) is amended by adding at the end the following: ''In addition, the determination under the final partnership administrative adjustment or under the decision of the court (whichever is appropriate) concerning the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item shall also be conclusive. Notwithstanding the preceding sentence, the partner shall be allowed to assert any partner level defenses that may

apply or to challenge the amount of the computational adjustment.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

**SEC. 14319. PROVISIONS RELATING TO COURT JURISDICTION, ETC.**

(a) TAX COURT JURISDICTION TO ENJOIN PREMATURE ASSESSMENTS OF DEFICIENCIES ATTRIBUTABLE TO PARTNERSHIP ITEMS.—Subsection (b) of section 6225 is amended by striking ''the proper court.'' and inserting ''the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a readjustment of the partnership items for the taxable year has been filed and then only in respect of the adjustments that are the subject of such petition.''

(b) JURISDICTION TO CONSIDER STATUTE OF LIMITATIONS WITH RESPECT TO PARTNERS.—Paragraph (1) of section 6226(d) is amended by adding at the end the following new sentence:

''Notwithstanding subparagraph (B), any person treated under subsection (c) as a party to an action shall be permitted to participate in such action (or file a readjustment petition under subsection (b) or

paragraph (2) of this subsection) solely for the purpose of asserting that the period of limitations for assessing any tax attributable to partnership items has expired with respect to such person, and the court having jurisdiction of such action shall have jurisdiction to consider such assertion.''

(c) TAX COURT JURISDICTION TO DETERMINE OVERPAYMENTS ATTRIBUTABLE TO AFFECTED ITEMS.—

(1) Paragraph (6) of section 6230(d) is amended by striking ''(or an affected item)''.

(2) Paragraph (3) of section 6512(b) is amended by adding at the end the following new sentence: ''In the case of a credit or refund relating to an affected item (within the meaning of section 6231(a)(5)), the preceding sentence shall be applied by substituting the periods under sections 6229 and 6230(d) for the periods under section 6511(b)(2), (c), and (d).''

(d) VENUE ON APPEAL.—

(1) Paragraph (1) of section 7482(b) is amended by striking ''or'' at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting '', or'', and by inserting after subparagraph (E) the following new subparagraph:

''(F) in the case of a petition under section 6234(c)—

''(i) the legal residence of the petitioner if the petitioner is not a corporation, and

''(ii) the place or office applicable under subparagraph (B) if the petitioner is a corporation.''

(2) The last sentence of section 7482(b)(1) is amended by striking ''or 6228(a)'' and inserting '', 6228(a), or 6234(c)''.

(e) OTHER PROVISIONS.—

(1) Subsection (c) of section 7459 is amended by striking ''or section 6228(a)'' and inserting '', 6228(a), or 6234(c)''.

(2) Subsection (o) of section 6501 is amended by adding at the end the following new paragraph:

''(3) For declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return, see section 6234.''

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

**SEC. 14320. TREATMENT OF PREMATURE PETITIONS FILED BY NOTICE PARTNERS OR 5-PERCENT GROUPS.**

(a) IN GENERAL.—Subsection (b) of section 6226 (relating to judicial review of final partnership administrative adjustments) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

''(5) TREATMENT OF PREMATURE PETITIONS.—If—

''(A) a petition for a readjustment of partnership items for the taxable year involved is filed by a notice partner (or a 5-percent group) during the 90-day period described in subsection (a), and

''(B) no action is brought under paragraph (1) during the 60-day period described therein with respect to such taxable year which is not dismissed,

such petition shall be treated for purposes of paragraph (1) as filed on the last day of such 60-day period.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to petitions filed after the date of the enactment of this Act.

**SEC. 14321. BONDS IN CASE OF APPEALS FROM CERTAIN PROCEEDING.**

(a) IN GENERAL.—Subsection (b) of section 7485 (relating to bonds to stay assessment of collection) is amended—

(1) by inserting ''penalties,'' after ''any interest,'', and

(2) by striking ''aggregate of such deficiencies'' and inserting ''aggregate liability of the parties to the action''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

**SEC. 14322. SUSPENSION OF INTEREST WHERE DELAY IN COMPUTATIONAL ADJUSTMENT RESULTING FROM CERTAIN SETTLEMENTS.**

(a) IN GENERAL.—Subsection (c) of section 6601 (relating to interest on underpayment, nonpayment, or extension of time for payment, of tax) is amended by adding at the end the following new sentence: ''In the case of a settlement under section 6224(c) which results in the conversion of partnership items to nonpartnership items pursuant to section 6231(b)(1)(C), the preceding sentence shall apply to a computational adjustment resulting from such settlement in the same manner as if such adjustment

were a deficiency and such settlement were a waiver referred to in the preceding sentence.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to adjustments with respect to partnership taxable years beginning after the date of the enactment of this Act.

**SEC. 14323. SPECIAL RULES FOR ADMINISTRATIVE ADJUSTMENT REQUESTS WITH RESPECT TO BAD DEBTS OR WORTHLESS SECURITIES.**

(a) GENERAL RULE.—Section 6227 (relating to administrative adjustment requests) is amended by adding at the end the following new subsection:

''(e) REQUESTS WITH RESPECT TO BAD DEBTS OR WORTHLESS SECURITIES.—In the case of that portion of any request for an administrative adjustment which relates to the deductibility by the partnership under section 166 of a debt as a debt which became worthless, or under section 165(g) of a loss from worthlessness of a security, the period prescribed in subsection (a)(1) shall be 7 years from the last day for filing the partnership return for the year with respect to which such request is made (determined without regard to extensions).''

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect as if included in the

amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

(2) TREATMENT OF REQUESTS FILED BEFORE DATE OF ENACTMENT.—In the case of that portion of any request (filed before the date of the enactment of this Act) for an administrative adjustment which relates to the deductibility of a debt as a debt which became worthless or the deductibility of a loss from the worthlessness of a security—

(A) paragraph (2) of section 6227(a) of the Internal Revenue Code of 1986 shall not apply,

(B) the period for filing a petition under section 6228 of the Internal Revenue Code of 1986 with respect to such request shall not expire before the date 6 months after the date of the enactment of this Act, and

(C) such a petition may be filed without regard to whether there was a notice of the beginning of an administrative proceeding or a final partnership administrative adjustment.

# Subtitle D—Foreign Provisions

## PART I—MODIFICATIONS TO TREATMENT OF PASSIVE FOREIGN INVESTMENT COMPANIES

### SEC. 14401. UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS NOT SUBJECT TO PFIC INCLUSION.

Section 1296 is amended by adding at the end the following new subsection:

''(e) EXCEPTION FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—

''(1) IN GENERAL.—For purposes of this part, a corporation shall not be treated with respect to a shareholder as a passive foreign investment company during the qualified portion of such shareholder's holding period with respect to stock in such corporation.

''(2) QUALIFIED PORTION.—For purposes of this subsection, the term 'qualified portion' means the portion of the shareholder's holding period—

''(A) which is after December 31, 1995, and

''(B) during which the shareholder is a United States shareholder (as defined in section 951(b)) of the corporation and the corporation is a controlled foreign corporation.

"(3) NEW HOLDING PERIOD IF QUALIFIED PORTION ENDS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if the qualified portion of a shareholder's holding period with respect to any stock ends after December 31, 1995, solely for purposes of this part, the shareholder's holding period with respect to such stock shall be treated as beginning as of the first day following such period.

"(B) EXCEPTION.—Subparagraph (A) shall not apply if such stock was, with respect to such shareholder, stock in a passive foreign investment company at any time before the qualified portion of the shareholder's holding period with respect to such stock and no election under section 1298(b)(1) is made."

**SEC. 14402. ELECTION OF MARK TO MARKET FOR MARKETABLE STOCK IN PASSIVE FOREIGN INVESTMENT COMPANY.**

(a) IN GENERAL.—Part VI of subchapter P of chapter 1 is amended by redesignating subpart C as subpart D, by redesignating sections 1296 and 1297 as sections 1297 and 1298, respectively, and by inserting after subpart B the following new subpart:

## "Subpart C—Election of Mark to Market For Marketable Stock

''Sec. 1296. Election of mark to market for marketable stock.

### "SEC. 1296. ELECTION OF MARK TO MARKET FOR MARKETABLE STOCK.

''(a) GENERAL RULE.—In the case of marketable stock in a passive foreign investment company which is owned (or treated under subsection (g) as owned) by a United States person at the close of any taxable year of such person, at the election of such person—

''(1) If the fair market value of such stock as of the close of such taxable year exceeds its adjusted basis, such United States person shall include in gross income for such taxable year an amount equal to the amount of such excess.

''(2) If the adjusted basis of such stock exceeds the fair market value of such stock as of the close of such taxable year, such United States person shall be allowed a deduction for such taxable year equal to the lesser of—

''(A) the amount of such excess, or

''(B) the unreversed inclusions with respect to such stock.

''(b) BASIS ADJUSTMENTS.—

"(1) IN GENERAL.—The adjusted basis of stock in a passive foreign investment company—

"(A) shall be increased by the amount included in the gross income of the United States person under subsection (a)(1) with respect to such stock, and

"(B) shall be decreased by the amount allowed as a deduction to the United States person under subsection (a)(2) with respect to such stock.

"(2) SPECIAL RULE FOR STOCK CONSTRUCTIVELY OWNED.—In the case of stock in a passive foreign investment company which the United States person is treated as owning under subsection (g)—

"(A) the adjustments under paragraph (1) shall apply to such stock in the hands of the person actually holding such stock but only for purposes of determining the subsequent treatment under this chapter of the United States person with respect to such stock, and

"(B) similar adjustments shall be made to the adjusted basis of the property by reason of which the United States person is treated as owning such stock.

"(c) CHARACTER AND SOURCE RULES.—

''(1) ORDINARY TREATMENT.—

''(A) GAIN.—Any amount included in gross income under subsection (a)(1), and any gain on the sale or other disposition of marketable stock in a passive foreign investment company (with respect to which an election under this section is in effect), shall be treated as ordinary income.

''(B) LOSS.—Any—

''(i) amount allowed as a deduction under subsection (a)(2), and

''(ii) loss on the sale or other disposition of marketable stock in a passive foreign investment company (with respect to which an election under this section is in effect) to the extent that the amount of such loss does not exceed the unreversed inclusions with respect to such stock,

shall be treated as an ordinary loss. The amount so treated shall be treated as a deduction allowable in computing adjusted gross income.

''(2) SOURCE.—The source of any amount included in gross income under subsection (a)(1) (or allowed as a deduction under subsection (a)(2)) shall

be determined in the same manner as if such amount were gain or loss (as the case may be) from the sale of stock in the passive foreign investment company.

''(d) UNREVERSED INCLUSIONS.—For purposes of this section, the term 'unreversed inclusions' means, with respect to any stock in a passive foreign investment company, the excess (if any) of—

''(1) the amount included in gross income of the taxpayer under subsection (a)(1) with respect to such stock for prior taxable years, over

''(2) the amount allowed as a deduction under subsection (a)(2) with respect to such stock for prior taxable years.

The amount referred to in paragraph (1) shall include any amount which would have been included in gross income under subsection (a)(1) with respect to such stock for any prior taxable year but for section 1291.

''(e) MARKETABLE STOCK.—For purposes of this section—

''(1) IN GENERAL.—The term 'marketable stock' means—

''(A) any stock which is regularly traded on—

"(i) a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or

"(ii) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this part,

"(B) to the extent provided in regulations, stock in any foreign corporation which is comparable to a regulated investment company and which offers for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, and

"(C) to the extent provided in regulations, any option on stock described in subparagraph (A) or (B).

"(2) SPECIAL RULE FOR REGULATED INVESTMENT COMPANIES.—In the case of any regulated investment company which is offering for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, all stock in a passive foreign investment company which it

owns directly or indirectly shall be treated as marketable stock for purposes of this section. Except as provided in regulations, similar treatment as marketable stock shall apply in the case of any other regulated investment company which publishes net asset valuations at least annually.

''(f) TREATMENT OF CONTROLLED FOREIGN CORPORATIONS WHICH ARE SHAREHOLDERS IN PASSIVE FOREIGN INVESTMENT COMPANIES.—In the case of a foreign corporation which is a controlled foreign corporation and which owns (or is treated under subsection (g) as owning) stock in a passive foreign investment company—

''(1) this section (other than subsection (c)(2)) shall apply to such foreign corporation in the same manner as if such corporation were a United States person, and

''(2) for purposes of subpart F of part III of subchapter N—

''(A) any amount included in gross income under subsection (a)(1) shall be treated as foreign personal holding company income described in section 954(c)(1)(A), and

''(B) any amount allowed as a deduction under subsection (a)(2) shall be treated as a de-

duction allocable to foreign personal holding company income so described.

''(g) STOCK OWNED THROUGH CERTAIN FOREIGN ENTITIES.—Except as provided in regulations—

''(1) IN GENERAL.—For purposes of this section, stock owned, directly or indirectly, by or for a foreign partnership or foreign trust or foreign estate shall be considered as being owned proportionately by its partners or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

''(2) TREATMENT OF CERTAIN DISPOSITIONS.—In any case in which a United States person is treated as owning stock in a passive foreign investment company by reason of paragraph (1)—

''(A) any disposition by the United States person or by any other person which results in the United States person being treated as no longer owning such stock, and

''(B) any disposition by the person owning such stock,

shall be treated as a disposition by the United States person of the stock in the passive foreign investment company.

''(h) COORDINATION WITH SECTION 851(b).—For purposes of paragraphs (2) and (3) of section 851(b), any amount included in gross income under subsection (a) shall be treated as a dividend.

''(i) STOCK ACQUIRED FROM A DECEDENT.—In the case of stock of a passive foreign investment company which is acquired by bequest, devise, or inheritance (or by the decedent's estate) and with respect to which an election under this section was in effect as of the date of the decedent's death, notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this subsection).

''(j) COORDINATION WITH SECTION 1291 FOR FIRST YEAR OF ELECTION.—

''(1) TAXPAYERS OTHER THAN REGULATED INVESTMENT COMPANIES.—

''(A) IN GENERAL.—If the taxpayer elects the application of this section with respect to any marketable stock in a corporation after the

beginning of the taxpayer's holding period in such stock, and if the requirements of subparagraph (B) are not satisfied, section 1291 shall apply to—

''(i) any distributions with respect to, or disposition of, such stock in the first taxable year of the taxpayer for which such election is made, and

''(ii) any amount which, but for section 1291, would have been included in gross income under subsection (a) with respect to such stock for such taxable year in the same manner as if such amount were gain on the disposition of such stock.

''(B) REQUIREMENTS.—The requirements of this subparagraph are met if, with respect to each of such corporation's taxable years for which such corporation was a passive foreign investment company and which begin after December 31, 1986, and included any portion of the taxpayer's holding period in such stock, such corporation was treated as a qualified electing fund under this part with respect to the taxpayer.

"(2) SPECIAL RULES FOR REGULATED INVESTMENT COMPANIES.—

"(A) IN GENERAL.—If a regulated investment company elects the application of this section with respect to any marketable stock in a corporation after the beginning of the taxpayer's holding period in such stock, then, with respect to such company's first taxable year for which such company elects the application of this section with respect to such stock—

"(i) section 1291 shall not apply to such stock with respect to any distribution or disposition during, or amount included in gross income under this section for, such first taxable year, but

"(ii) such regulated investment company's tax under this chapter for such first taxable year shall be increased by the aggregate amount of interest which would have been determined under section 1291(c)(3) if section 1291 were applied without regard to this subparagraph.

Clause (ii) shall not apply if for the preceding taxable year the company elected to mark to

market the stock held by such company as of the last day of such preceding taxable year.

''(B) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed to any regulated investment company for the increase in tax under subparagraph (A)(ii).

''(k) ELECTION.—This section shall apply to marketable stock in a passive foreign investment company which is held by a United States person only if such person elects to apply this section with respect to such stock. Such an election shall apply to the taxable year for which made and all subsequent taxable years unless—

''(1) such stock ceases to be marketable stock, or

''(2) the Secretary consents to the revocation of such election.

''(l) TRANSITION RULE FOR INDIVIDUALS BECOMING SUBJECT TO UNITED STATES TAX.—If any individual becomes a United States person in a taxable year beginning after December 31, 1995, solely for purposes of this section, the adjusted basis (before adjustments under subsection (b)) of any marketable stock in a passive foreign investment company owned by such individual on the first day of such taxable year shall be treated as being the

greater of its fair market value on such first day or its adjusted basis on such first day.''

(b) COORDINATION WITH INTEREST CHARGE, ETC.—

(1) Paragraph (1) of section 1291(d) is amended by adding at the end the following new flush sentence:

''Except as provided in section 1296(j), this section also shall not apply if an election under section 1296(k) is in effect for the taxpayer's taxable year.''

(2) The subsection heading for subsection (d) of section 1291 is amended by striking ''SUBPART B'' and inserting ''SUBPARTS B AND C''.

(3) Subparagraph (A) of section 1291(a)(3) is amended to read as follows:

''(A) HOLDING PERIOD.—The taxpayer's holding period shall be determined under section 1223; except that—

''(i) for purposes of applying this section to an excess distribution, such holding period shall be treated as ending on the date of such distribution, and

''(ii) if section 1296 applied to such stock with respect to the taxpayer for any prior taxable year, such holding period

shall be treated as beginning on the first day of the first taxable year beginning after the last taxable year for which section 1296 so applied.''

(c) CONFORMING AMENDMENTS.—

(1) Sections 532(b)(4) and 542(c)(10) are each amended by striking ''section 1296'' and inserting ''section 1297''.

(2) Subsection (f) of section 551 is amended by striking ''section 1297(b)(5)'' and inserting ''section 1298(b)(5)''

(3) Subsections (a)(1) and (d) of section 1293 are each amended by striking ''section 1297(a)'' and inserting ''section 1298(a)''.

(4) Paragraph (3) of section 1297(b), as redesignated by subsection (a), is hereby repealed.

(5) The table of sections for subpart D of part VI of subchapter P of chapter 1, as redesignated by subsection (a), is amended to read as follows:

''Sec. 1297. Passive foreign investment company.
''Sec. 1298. Special rules.''

(6) The table of subparts for part VI of subchapter P of chapter 1 is amended by striking the last item and inserting the following new items:

''Subpart C. Election of mark to market for marketable stock.
''Subpart D. General provisions.''

(d) CLARIFICATION OF GAIN RECOGNITION ELECTION.—The last sentence of section 1298(b)(1), as so redesignated, is amended by inserting ''(determined without regard to the preceding sentence)'' after ''investment company''.

**SEC. 14403. MODIFICATIONS TO DEFINITION OF PASSIVE INCOME.**

(a) EXCEPTION FOR SAME COUNTRY INCOME NOT TO APPLY.—Paragraph (1) of section 1297(b) (defining passive income), as redesignated by section 14402, is amended by inserting before the period ''without regard to paragraph (3) thereof''.

(b) PASSIVE INCOME NOT TO INCLUDE FSC INCOME.—Paragraph (2) of section 1297(b), as so redesignated, is amended by striking ''or'' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting '', or'', and by inserting after subparagraph (C) the following new subparagraph:

''(D) any foreign trade income of a FSC.''

**SEC. 14404. EFFECTIVE DATE.**

The amendments made by this part shall apply to—

(1) taxable years of United States persons beginning after December 31, 1995, and

(2) taxable years of foreign corporations ending with or within such taxable years of United States persons.

## PART II—TREATMENT OF CONTROLLED FOREIGN CORPORATIONS

### SEC. 14411. GAIN ON CERTAIN STOCK SALES BY CONTROLLED FOREIGN CORPORATIONS TREATED AS DIVIDENDS.

(a) GENERAL RULE.—Section 964 (relating to miscellaneous provisions) is amended by adding at the end the following new subsection:

''(e) GAIN ON CERTAIN STOCK SALES BY CONTROLLED FOREIGN CORPORATIONS TREATED AS DIVIDENDS.—

''(1) IN GENERAL.—If a controlled foreign corporation sells or exchanges stock in any other foreign corporation, gain recognized on such sale or exchange shall be included in the gross income of such controlled foreign corporation as a dividend to the same extent that it would have been so included under section 1248(a) if such controlled foreign corporation were a United States person. For purposes of determining the amount which would have been so includible, the determination of whether such other foreign corporation was a controlled foreign corpora-

tion shall be made without regard to the preceding sentence.

''(2) SAME COUNTRY EXCEPTION NOT APPLICABLE.—Clause (i) of section 954(c)(3)(A) shall not apply to any amount treated as a dividend by reason of paragraph (1).

''(3) CLARIFICATION OF DEEMED SALES.—For purposes of this subsection, a controlled foreign corporation shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such controlled foreign corporation is treated as having gain from the sale or exchange of such stock.''

(b) AMENDMENT OF SECTION 904(d).—Clause (i) of section 904(d)(2)(E) is amended by striking ''and except as provided in regulations, the taxpayer was a United States shareholder in such corporation''.

(c) EFFECTIVE DATES.—

(1) The amendment made by subsection (a) shall apply to gain recognized on transactions occurring after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to distributions after the date of the enactment of this Act.

**SEC. 14412. MISCELLANEOUS MODIFICATIONS TO SUBPART F.**

(a) SECTION 1248 GAIN TAKEN INTO ACCOUNT IN DETERMINING PRO RATA SHARE.—

(1) IN GENERAL.—Paragraph (2) of section 951(a) (defining pro rata share of subpart F income) is amended by adding at the end the following new sentence: ''For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved.''

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to dispositions after the date of the enactment of this Act.

(b) BASIS ADJUSTMENTS IN STOCK HELD BY FOREIGN CORPORATION.—

(1) IN GENERAL.—Section 961 (relating to adjustments to basis of stock in controlled foreign corporations and of other property) is amended by adding at the end the following new subsection:

''(c) BASIS ADJUSTMENTS IN STOCK HELD BY FOREIGN CORPORATION.—Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning any stock in a controlled foreign corporation which is actually owned by an-

other controlled foreign corporation, adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to the basis of such stock in the hands of such other controlled foreign corporation, but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).''

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply for purposes of determining inclusions for taxable years of United States shareholders beginning after December 31, 1995.

(c) DETERMINATION OF PREVIOUSLY TAXED INCOME IN SECTION 304 DISTRIBUTIONS, ETC.—

(1) IN GENERAL.—Section 959 (relating to exclusion from gross income of previously taxed earnings and profits) is amended by adding at the end the following new subsection:

''(g) ADJUSTMENTS FOR CERTAIN TRANSACTIONS.—If by reason of—

''(1) a transaction to which section 304 applies,

''(2) the structure of a United States shareholder's holdings in controlled foreign corporations, or

''(3) other circumstances,

there would be a multiple inclusion of any item in income (or an inclusion or exclusion without an appropriate basis adjustment) by reason of this subpart, the Secretary may prescribe regulations providing such modifications in the application of this subpart as may be necessary to eliminate such multiple inclusion or provide such basis adjustment, as the case may be.''

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(d) CLARIFICATION OF TREATMENT OF BRANCH TAX EXEMPTIONS OR REDUCTIONS.—

(1) IN GENERAL.—Subsection (b) of section 952 is amended by adding at the end the following new sentence: ''For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1986.

**SEC. 14413. INDIRECT FOREIGN TAX CREDIT ALLOWED FOR CERTAIN LOWER TIER COMPANIES.**

(a) SECTION 902 CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 902 (relating to deemed taxes increased in case of certain 2nd and 3rd tier foreign corporations) is amended to read as follows:

''(b) DEEMED TAXES INCREASED IN CASE OF CERTAIN LOWER TIER CORPORATIONS.—

''(1) IN GENERAL.—If—

''(A) any foreign corporation is a member of a qualified group, and

''(B) such foreign corporation owns 10 percent or more of the voting stock of another member of such group from which it receives dividends in any taxable year,

such foreign corporation shall be deemed to have paid the same proportion of such other member's post-1986 foreign income taxes as would be determined under subsection (a) if such foreign corporation were a domestic corporation.

''(2) QUALIFIED GROUP.—For purposes of paragraph (1), the term 'qualified group' means—

''(A) the foreign corporation described in subsection (a), and

''(B) any other foreign corporation if—

''(i) the domestic corporation owns at least 5 percent of the voting stock of such other foreign corporation indirectly through a chain of foreign corporations connected through stock ownership of at least 10 percent of their voting stock,

''(ii) the foreign corporation described in subsection (a) is the first tier corporation in such chain, and

''(iii) such other corporation is not below the sixth tier in such chain.

The term 'qualified group' shall not include any foreign corporation below the third tier in the chain referred to in clause (i) unless such foreign corporation is a controlled foreign corporation (as defined in section 957) and the domestic corporation is a United States shareholder (as defined in section 951(b)) in such foreign corporation. Paragraph (1) shall apply to those taxes paid by a member of the qualified group below the third tier only with respect to periods during which it was a controlled foreign corporation.''

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 902(c)(3) is amended by adding ''or'' at the end of clause

(i) and by striking clauses (ii) and (iii) and inserting the following new clause:

''(ii) the requirements of subsection (b)(2) are met with respect to such foreign corporation.''

(B) Subparagraph (B) of section 902(c)(4) is amended by striking ''3rd foreign corporation'' and inserting ''sixth tier foreign corporation''.

(C) The heading for paragraph (3) of section 902(c) is amended by striking ''WHERE DOMESTIC CORPORATION ACQUIRES 10 PERCENT OF FOREIGN CORPORATION'' and inserting ''WHERE FOREIGN CORPORATION FIRST QUALIFIES''.

(D) Paragraph (3) of section 902(c) is amended by striking ''ownership'' each place it appears.

(b) SECTION 960 CREDIT.—Paragraph (1) of section 960(a) (relating to special rules for foreign tax credits) is amended to read as follows:

''(1) DEEMED PAID CREDIT.—For purposes of subpart A of this part, if there is included under section 951(a) in the gross income of a domestic corporation any amount attributable to earnings and

profits of a foreign corporation which is a member of a qualified group (as defined in section 902(b)) with respect to the domestic corporation, then, except to the extent provided in regulations, section 902 shall be applied as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)).''

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of enactment of this Act.

(2) SPECIAL RULE.—In the case of any chain of foreign corporations described in clauses (i) and (ii) of section 902(b)(2)(B) of the Internal Revenue Code of 1986 (as amended by this section), no liquidation, reorganization, or similar transaction in a taxable year beginning after the date of the enactment of this Act shall have the effect of permitting taxes to be taken into account under section 902 of the Internal Revenue Code of 1986 which could not have been taken into account under such section but for such transaction.

**SEC. 14414. REPEAL OF INCLUSION OF CERTAIN EARNINGS INVESTED IN EXCESS PASSIVE ASSETS.**

(a) IN GENERAL.—

(1) REPEAL OF INCLUSION.—Paragraph (1) of section 951(a) (relating to amounts included in gross income of United States shareholders) is amended by striking subparagraph (C), by striking ''; and'' at the end of subparagraph (B) and inserting a period, and by adding ''and'' at the end of subparagraph (A).

(2) REPEAL OF INCLUSION AMOUNT.—Section 956A (relating to earnings invested in excess passive assets) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (G) of section 904(d)(3) is amended by striking ''subparagraph (B) or (C) of section 951(a)(1)'' and inserting ''section 951(a)(1)(B)''.

(2) Paragraph (1) of section 956(b) is amended to read as follows:

''(1) APPLICABLE EARNINGS.—For purposes of this section, the term 'applicable earnings' means, with respect to any controlled foreign corporation, the sum of—

''(A) the amount (not including a deficit) referred to in section 316(a)(1), and

"(B) the amount referred to in section 316(a)(2),

but reduced by distributions made during the taxable year."

(3) Paragraph (3) of section 956(b) is amended to read as follows:

"(3) SPECIAL RULE WHERE CORPORATION CEASES TO BE CONTROLLED FOREIGN CORPORATION.—If any foreign corporation ceases to be a controlled foreign corporation during any taxable year—

"(A) the determination of any United States shareholder's pro rata share shall be made on the basis of stock owned (within the meaning of section 958(a)) by such shareholder on the last day during the taxable year on which the foreign corporation is a controlled foreign corporation,

"(B) the average referred to in subsection (a)(1)(A) for such taxable year shall be determined by only taking into account quarters ending on or before such last day, and

"(C) in determining applicable earnings, the amount taken into account by reason of being described in paragraph (2) of section

316(a) shall be the portion of the amount so described which is allocable (on a pro rata basis) to the part of such year during which the corporation is a controlled foreign corporation.''

(4) Subsection (a) of section 959 (relating to exclusion from gross income of previously taxed earnings and profits) is amended by adding ''or'' at the end of paragraph (1), by striking ''or'' at the end of paragraph (2), and by striking paragraph (3).

(5) Subsection (a) of section 959 is amended by striking ''paragraphs (2) and (3)'' in the last sentence and inserting ''paragraph (2)''.

(6) Subsection (c) of section 959 is amended by adding at the end the following flush sentence:

''References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Tax Simplification Act of 1995.''

(7) Paragraph (1) of section 959(f) is amended to read as follows:

''(1) IN GENERAL.—For purposes of this section, amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection

(c)(2), and then to earnings described in subsection (c)(3).''

(8) Paragraph (2) of section 959(f) is amended by striking ''subparagraphs (B) and (C) of section 951(a)(1)'' and inserting ''section 951(a)(1)(B)''.

(9) Subsection (b) of section 989 is amended by striking ''subparagraph (B) or (C) of section 951(a)(1)'' and inserting ''section 951(a)(1)(B)''.

(10) Paragraph (9) of section 1298(b), as redesignated by section 14402, is amended by striking ''subparagraph (B) or (C) of section 951(a)(1)'' and inserting ''section 951(a)(1)(B)''.

(11) Subsections (d)(3)(B) and (e)(2)(B)(ii) of section 1298, as redesignated by section 14402, are each amended by striking ''or section 956A''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by striking the item relating to section 956A.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after September 30, 1995, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end.

## PART III—OTHER PROVISIONS

### SEC. 14421. EXCHANGE RATE USED IN TRANSLATING FOREIGN TAXES.

(a) ACCRUED TAXES TRANSLATED BY USING AVERAGE RATE FOR YEAR TO WHICH TAXES RELATE.—

(1) IN GENERAL.—Subsection (a) of section 986 (relating to translation of foreign taxes) is amended to read as follows:

''(a) FOREIGN INCOME TAXES.—

''(1) TRANSLATION OF ACCRUED TAXES.—

''(A) IN GENERAL.—For purposes of determining the amount of the foreign tax credit, in the case of a taxpayer who takes foreign income taxes into account when accrued, the amount of any foreign income taxes (and any adjustment thereto) shall be translated into dollars by using the average exchange rate for the taxable year to which such taxes relate.

''(B) EXCEPTION FOR TAXES NOT PAID WITHIN FOLLOWING 2 YEARS.—

''(i) Subparagraph (A) shall not apply to any foreign income taxes paid after the date 2 years after the close of the taxable year to which such taxes relate.

"(ii) Subparagraph (A) shall not apply to taxes paid before the beginning of the taxable year to which such taxes relate.

"(C) EXCEPTION FOR INFLATIONARY CURRENCIES.—Subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any currency determined to be an inflationary currency under regulations prescribed by the Secretary.

"(D) CROSS REFERENCE.—

**"For adjustments where tax is not paid within 2 years, see section 905(c).**

"(2) TRANSLATION OF TAXES TO WHICH PARAGRAPH (1) DOES NOT APPLY.—For purposes of determining the amount of the foreign tax credit, in the case of any foreign income taxes to which subparagraph (A) of paragraph (1) does not apply—

"(A) such taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

"(B) any adjustment to the amount of such taxes shall be translated into dollars using—

"(i) except as provided in clause (ii), the exchange rate as of the time when such

adjustment is paid to the foreign country or possession, or

''(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of the original payment of such foreign income taxes.

''(3) FOREIGN INCOME TAXES.—For purposes of this subsection, the term 'foreign income taxes' means any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States.''

(2) ADJUSTMENT WHEN NOT PAID WITHIN 2 YEARS AFTER YEAR TO WHICH TAXES RELATE.—Subsection (c) of section 905 is amended to read as follows:

''(c) ADJUSTMENTS TO ACCRUED TAXES.—

''(1) IN GENERAL.—If—

''(A) accrued taxes when paid differ from the amounts claimed as credits by the taxpayer,

''(B) accrued taxes are not paid before the date 2 years after the close of the taxable year to which such taxes relate, or

''(C) any tax paid is refunded in whole or in part,

the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected.

''(2) SPECIAL RULE FOR TAXES NOT PAID WITHIN 2 YEARS.—In making the redetermination under paragraph (1), no credit shall be allowed for accrued taxes not paid before the date referred to in subparagraph (B) of paragraph (1). Any such taxes if subsequently paid shall be taken into account for the taxable year in which paid and no redetermination under this section shall be made on account of such payment.

''(3) ADJUSTMENTS.—The amount of tax due on any redetermination under paragraph (1) (if any) shall be paid by the taxpayer on notice and demand by the Secretary, and the amount of tax overpaid (if any) shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (section 6511 et seq.).

''(4) BOND REQUIREMENTS.—In the case of any tax accrued but not paid, the Secretary, as a condition precedent to the allowance of the credit provided in this subpart, may require the taxpayer to give a bond, with sureties satisfactory to and approved by the Secretary, in such sum as the Sec-

retary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination. Any such bond shall contain such further conditions as the Secretary may require.

''(5) OTHER SPECIAL RULES.—In any redetermination under paragraph (1) by the Secretary of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, or deduction under section 164, shall be allowed for any taxable year with respect to any such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period.''

(b) AUTHORITY TO USE AVERAGE RATES.—

(1) IN GENERAL.—Subsection (a) of section 986 (as amended by subsection (a)) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following new paragraph:

''(3) AUTHORITY TO PERMIT USE OF AVERAGE RATES.—To the extent prescribed in regulations, the average exchange rate for the period (specified in such regulations) during which the taxes or adjustment is paid may be used instead of the exchange rate as of the time of such payment.''

(2) DETERMINATION OF AVERAGE RATES.—Subsection (c) of section 989 is amended by striking ''and'' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting '', and'', and by adding at the end the following new paragraph:

''(6) setting forth procedures for determining the average exchange rate for any period.''

(3) CONFORMING AMENDMENTS.—Subsection (b) of section 989 is amended by striking ''weighted'' each place it appears.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a)(1) and (b) shall apply to taxes paid

or accrued in taxable years beginning after December 31, 1995.

(2) SUBSECTION (a)(2).—The amendment made by subsection (a)(2) shall apply to taxes which relate to taxable years beginning after December 31, 1995.

**SEC. 14422. ELECTION TO USE SIMPLIFIED SECTION 904 LIMITATION FOR ALTERNATIVE MINIMUM TAX.**

(a) GENERAL RULE.—Subsection (a) of section 59 (relating to alternative minimum tax foreign tax credit) is amended by adding at the end the following new paragraph:

''(3) ELECTION TO USE SIMPLIFIED SECTION 904 LIMITATION.—

''(A) IN GENERAL.—In determining the alternative minimum tax foreign tax credit for any taxable year to which an election under this paragraph applies—

''(i) subparagraph (B) of paragraph (1) shall not apply, and

''(ii) the limitation of section 904 shall be based on the proportion which—

''(I) the taxpayer's taxable income (as determined for purposes of the regular tax) from sources without

the United States (but not in excess of the taxpayer's entire alternative minimum taxable income), bears to

''(II) the taxpayer's entire alternative minimum taxable income for the taxable year.

''(B) ELECTION.—

''(i) IN GENERAL.—An election under this paragraph may be made only for the taxpayer's first taxable year which begins after December 31, 1995, and for which the taxpayer claims an alternative minimum tax foreign tax credit.

''(ii) ELECTION REVOCABLE ONLY WITH CONSENT.—An election under this paragraph, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

**SEC. 14423. MODIFICATION OF SECTION 1491.**

(a) GENERAL RULE.—So much of chapter 5 (relating to tax on transfers to avoid income tax) as precedes section 1492 is amended to read as follows:

## "CHAPTER 5—TREATMENT OF TRANSFERS TO AVOID INCOME TAX

''Sec. 1491. Recognition of gain.
''Sec. 1492. Exceptions.

**"SEC. 1491. RECOGNITION OF GAIN.**

''In the case of any transfer of property by a United States person to a foreign corporation as paid-in surplus or as a contribution to capital, to a foreign estate or trust, or to a foreign partnership, for purposes of this subtitle (other than for purposes of section 679), such transfer shall be treated as a sale or exchange for an amount equal to the fair market value of the property transferred, and the transferor shall recognize as gain the excess of—

''(1) the fair market value of the property so transferred, over

''(2) the adjusted basis (for purposes of determining gain) of such property in the hands of the transferor.''

(b) CONFORMING AMENDMENTS.—

(1) Section 1057 is hereby repealed.

(2) Section 1492 is amended to read as follows:

**"SEC. 1492. EXCEPTIONS.**

''The provisions of section 1491 shall not apply—

''(1) If the transferee is an organization exempt from income tax under part I of subchapter F of chapter 1 (other than an organization described in section 401(a)),

''(2) To a transfer described in section 367, or

''(3) To any other transfer, to the extent provided in regulations in accordance with principles similar to the principles of section 367 or otherwise consistent with the purpose of section 1491.''

(3) Section 1494 is hereby repealed.

(4) Paragraph (8) of section 6501(c) is amended by inserting ''or on any transfer by reason of section 1491'' after ''section 367''.

(5) Subsection (a) of section 6038B is amended by striking ''or'' at the end of paragraph (1), by adding ''or'' at the end of paragraph (2), and by inserting after paragraph (2) the following new paragraph:

''(3) makes any transfer described in section 1491,''.

(6) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1057.

(7) The table of chapters for subtitle A is amended by striking ''Tax on'' in the item relating to chapter 5 and inserting ''Treatment of''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after December 31, 1995.

**SEC. 14424. MODIFICATION OF SECTION 367(b).**

(a) GENERAL RULE.—Paragraph (1) of section 367(b) is amended to read as follows:

''(1) IN GENERAL.—In the case of any transaction described in section 332, 351, 354, 355, 356, or 361 in which the status of a foreign corporation as a corporation is a general condition for nonrecognition by 1 or more of the parties to the transaction, income shall be required to be recognized to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes. This subsection shall not apply to a transaction in which the foreign corporation is not treated as a corporation under subsection (a)(1).''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transfers after December 31, 1995.

**SEC. 14425. INCREASE IN FILING THRESHOLDS FOR RETURNS AS TO ORGANIZATION OF FOREIGN CORPORATIONS AND ACQUISITIONS OF STOCK IN SUCH CORPORATIONS.**

(a) IN GENERAL.—Subsection (a) of section 6046 (relating to returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock) is amended to read as follows:

''(a) REQUIREMENT OF RETURN.—

''(1) IN GENERAL.—A return complying with the requirements of subsection (b) shall be made by—

''(A) each United States citizen or resident who becomes an officer or director of a foreign corporation if a United States person (as defined in section 7701(a)(30)) meets the stock ownership requirements of paragraph (2) with respect to such corporation,

''(B) each United States person—

''(i) who acquires stock which, when added to any stock owned on the date of such acquisition, meets the stock ownership requirements of paragraph (2) with respect to a foreign corporation, or

''(ii) who acquires stock which, without regard to stock owned on the date of

such acquisition, meets the stock ownership requirements of paragraph (2) with respect to a foreign corporation,

''(C) each person (not described in subparagraph (B)) who is treated as a United States shareholder under section 953(c) with respect to a foreign corporation, and

''(D) each person who becomes a United States person while meeting the stock ownership requirements of paragraph (2) with respect to stock of a foreign corporation.

In the case of a foreign corporation with respect to which any person is treated as a United States shareholder under section 953(c), subparagraph (A) shall be treated as including a reference to each United States person who is an officer or director of such corporation.

''(2) STOCK OWNERSHIP REQUIREMENTS.—A person meets the stock ownership requirements of this paragraph with respect to any corporation if such person owns 10 percent or more of—

''(A) the total combined voting power of all classes of stock of such corporation entitled to vote, or

''(B) the total value of the stock of such corporation.''

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 1996.

**SEC. 14426. APPLICATION OF UNIFORM CAPITALIZATION RULES TO FOREIGN PERSONS.**

(a) IN GENERAL.—Section 263A(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(7) FOREIGN PERSONS.—This section shall apply to any taxpayer who is not a United States person only for purposes of—

''(A) tax liability with respect to income which is effectively connected with the conduct of a trade or business in the United States, and

''(B) tax liability of a United States shareholder (as defined in section 951(b)) with respect to amounts includible in gross income under section 951(a).''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995. Section 481 of the Internal Revenue Code of 1986 shall not apply to any change in a method of accounting by reason of such amendment.

**SEC. 14427. CERTAIN PRIZES AND AWARDS.**

(a) IN GENERAL.—Section 863 (relating to special rules for determining source) is amended by adding at the end the following new subsection:

''(f) CERTAIN PRIZES AND AWARDS ASSOCIATED WITH AMATEUR SPORTS COMPETITIONS.—

''(1) IN GENERAL.—A prize or award received by a nonresident alien by reason of participating in an amateur sports competition in the United States shall not be treated as derived from sources within the United States if such alien performs no services for such prize or award.

''(2) AMATEUR SPORTS COMPETITION.—For purposes of paragraph (1), the term 'amateur sports competition' means any competition in which the only prizes awarded by the sponsors of the competition are of nominal value.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to prizes and awards granted after the date of the enactment of this Act.

**SEC. 14428. TREATMENT FOR ESTATE TAX PURPOSES OF SHORT-TERM OBLIGATIONS HELD BY NONRESIDENT ALIENS.**

(a) IN GENERAL.—Subsection (b) of section 2105 is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and

inserting ‘‘, and’’, and by inserting after paragraph (3) the following new paragraph:

‘‘(4) obligations which would be original issue discount obligations as defined in section 871(g)(1) but for subparagraph (B)(i) thereof, if any interest thereon (were such interest received by the decedent at the time of his death) would not be effectively connected with the conduct of a trade or business within the United States.’’

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

# Subtitle E—Other Income Tax Provisions

## PART I—PROVISIONS RELATING TO S CORPORATIONS

### SEC. 14501. S CORPORATIONS PERMITTED TO HAVE 75 SHAREHOLDERS.

Subparagraph (A) of section 1361(b)(1) (defining small business corporation) is amended by striking ‘‘35 shareholders’’ and inserting ‘‘75 shareholders’’.

### SEC. 14502. ELECTING SMALL BUSINESS TRUSTS.

(a) GENERAL RULE.—Subparagraph (A) of section 1361(c)(2) (relating to certain trusts permitted as share-

holders) is amended by inserting after clause (iv) the following new clause:

''(v) An electing small business trust.''

(b) CURRENT BENEFICIARIES TREATED AS SHAREHOLDERS.—Subparagraph (B) of section 1361(c)(2) is amended by adding at the end the following new clause:

''(v) In the case of a trust described in clause (v) of subparagraph (A), each potential current beneficiary of such trust shall be treated as a shareholder; except that, if for any period there is no potential current beneficiary of such trust, such trust shall be treated as the shareholder during such period.''

(c) ELECTING SMALL BUSINESS TRUST DEFINED.—Section 1361 (defining S corporation) is amended by adding at the end the following new subsection:

''(e) ELECTING SMALL BUSINESS TRUST DEFINED.—

''(1) ELECTING SMALL BUSINESS TRUST.—For purposes of this section—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'electing small business trust' means any trust if—

''(i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, or (III) an organization described in paragraph (2), (3), (4), or (5) of section 170(c) which holds a contingent interest and is not a potential current beneficiary,

''(ii) no interest in such trust was acquired by purchase, and

''(iii) an election under this subsection applies to such trust.

''(B) CERTAIN TRUSTS NOT ELIGIBLE.—The term 'electing small business trust' shall not include—

''(i) any qualified subchapter S trust (as defined in subsection (d)(3)) if an election under subsection (d)(2) applies to any corporation the stock of which is held by such trust, and

''(ii) any trust exempt from tax under this subtitle.

''(C) PURCHASE.—For purposes of subparagraph (A), the term 'purchase' means any acquisition if the basis of the property acquired is determined under section 1012.

"(2) POTENTIAL CURRENT BENEFICIARY.—For purposes of this section, the term 'potential current beneficiary' means, with respect to any period, any person who at any time during such period is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust. If a trust disposes of all of the stock which it holds in an S corporation, then, with respect to such corporation, the term 'potential current beneficiary' does not include any person who first met the requirements of the preceding sentence during the 60-day period ending on the date of such disposition.

"(3) ELECTION.—An election under this subsection shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

"(4) CROSS REFERENCE.—

**"For special treatment of electing small business trusts, see section 641(d)."**

(d) TAXATION OF ELECTING SMALL BUSINESS TRUSTS.—Section 641 (relating to imposition of tax on trusts) is amended by adding at the end the following new subsection:

"(d) SPECIAL RULES FOR TAXATION OF ELECTING SMALL BUSINESS TRUSTS.—

"(1) IN GENERAL.—For purposes of this chapter—

"(A) the portion of any electing small business trust which consists of stock in 1 or more S corporations shall be treated as a separate trust, and

"(B) the amount of the tax imposed by this chapter on such separate trust shall be determined with the modifications of paragraph (2).

"(2) MODIFICATIONS.—For purposes of paragraph (1), the modifications of this paragraph are the following:

"(A) Except as provided in section 1(h), the amount of the tax imposed by section 1(e) shall be determined by using the highest rate of tax set forth in section 1(e).

"(B) The exemption amount under section 55(d) shall be zero.

"(C) The only items of income, loss, deduction, or credit to be taken into account are the following:

"(i) The items required to be taken into account under section 1366.

"(ii) Any gain or loss from the disposition of stock in an S corporation.

"(iii) To the extent provided in regulations, State or local income taxes or administrative expenses to the extent allocable to items described in clauses (i) and (ii).

No deduction or credit shall be allowed for any amount not described in this paragraph, and no item described in this paragraph shall be apportioned to any beneficiary.

"(D) No amount shall be allowed under paragraph (1) or (2) of section 1211(b).

"(3) TREATMENT OF REMAINDER OF TRUST AND DISTRIBUTIONS.—For purposes of determining—

"(A) the amount of the tax imposed by this chapter on the portion of any electing small business trust not treated as a separate trust under paragraph (1), and

"(B) the distributable net income of the entire trust,

the items referred to in paragraph (2)(C) shall be excluded. Except as provided in the preceding sentence, this subsection shall not affect the taxation of any distribution from the trust.

''(4) TREATMENT OF UNUSED DEDUCTIONS WHERE TERMINATION OF SEPARATE TRUST.—If a portion of an electing small business trust ceases to be treated as a separate trust under paragraph (1), any carryover or excess deduction of the separate trust which is referred to in section 642(h) shall be taken into account by the entire trust.

''(5) ELECTING SMALL BUSINESS TRUST.—For purposes of this subsection, the term 'electing small business trust' has the meaning given such term by section 1361(e)(1).''

(e) TECHNICAL AMENDMENT.—Paragraph (1) of section 1366(a) is amended by inserting '', or of a trust or estate which terminates,'' after ''who dies''.

**SEC. 14503. EXPANSION OF POST-DEATH QUALIFICATION FOR CERTAIN TRUSTS.**

Subparagraph (A) of section 1361(c)(2) (relating to certain trusts permitted as shareholders) is amended—

(1) by striking ''60-day period'' each place it appears in clauses (ii) and (iii) and inserting ''2-year period'', and

(2) by striking the last sentence in clause (ii).

**SEC. 14504. FINANCIAL INSTITUTIONS PERMITTED TO HOLD SAFE HARBOR DEBT.**

Clause (iii) of section 1361(c)(5)(B) (defining straight debt) is amended by striking ''or a trust described in paragraph (2)'' and inserting ''a trust described in paragraph (2), or a person which is actively and regularly engaged in the business of lending money.''

**SEC. 14505. RULES RELATING TO INADVERTENT TERMINATIONS AND INVALID ELECTIONS.**

(a) GENERAL RULE.—Subsection (f) of section 1362 (relating to inadvertent terminations) is amended to read as follows:

''(f) INADVERTENT INVALID ELECTIONS OR TERMINATIONS.—If—

''(1) an election under subsection (a) by any corporation—

''(A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or

''(B) was terminated under paragraph (2) of subsection (d),

''(2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent,

''(3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken—

''(A) so that the corporation is a small business corporation, or

''(B) to acquire the required shareholder consents, and

''(4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.''

(b) LATE ELECTIONS.—Subsection (b) of section 1362 is amended by adding at the end the following new paragraph:

"(5) AUTHORITY TO TREAT LATE ELECTIONS AS TIMELY.—If—

"(A) an election under subsection (a) is made for any taxable year (determined without regard to paragraph (3)) after the date prescribed by this subsection for making such election for such taxable year, and

"(B) the Secretary determines that there was reasonable cause for the failure to timely make such election,

the Secretary may treat such election as timely made for such taxable year (and paragraph (3) shall not apply)."

(c) EFFECTIVE DATE.—The amendments made by subsection (a) and (b) shall apply with respect to elections for taxable years beginning after December 31, 1982.

**SEC. 14506. AGREEMENT TO TERMINATE YEAR.**

Paragraph (2) of section 1377(a) (relating to pro rata share) is amended to read as follows:

"(2) ELECTION TO TERMINATE YEAR.—

"(A) IN GENERAL.—Under regulations prescribed by the Secretary, if any shareholder terminates the shareholder's interest in the corporation during the taxable year and all affected shareholders and the corporation agree

to the application of this paragraph, paragraph (1) shall be applied to the affected shareholders as if the taxable year consisted of 2 taxable years the first of which ends on the date of the termination.

''(B) AFFECTED SHAREHOLDERS.—For purposes of subparagraph (A), the term 'affected shareholders' means the shareholder whose interest is terminated and all shareholders to whom such shareholder has transferred shares during the taxable year. If such shareholder has transferred shares to the corporation, the term 'affected shareholders' shall include all persons who are shareholders during the taxable year.''

**SEC. 14507. EXPANSION OF POST-TERMINATION TRANSITION PERIOD.**

(a) IN GENERAL.—Paragraph (1) of section 1377(b) (relating to post-termination transition period) is amended by striking ''and'' at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

''(B) the 120-day period beginning on the date of any determination pursuant to an audit

of the taxpayer which follows the termination of the corporation's election and which adjusts a subchapter S item of income, loss, or deduction of the corporation arising during the S period (as defined in section 1368(e)(2)), and''.

(b) DETERMINATION DEFINED.—Paragraph (2) of section 1377(b) is amended by striking subparagraphs (A) and (B), by redesignating subparagraph (C) as subparagraph (B), and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

''(A) a determination as defined in section 1313(a), or''.

(c) REPEAL OF SPECIAL AUDIT PROVISIONS FOR SUBCHAPTER S ITEMS.—

(1) GENERAL RULE.—Subchapter D of chapter 63 (relating to tax treatment of subchapter S items) is hereby repealed.

(2) CONSISTENT TREATMENT REQUIRED.—Section 6037 (relating to return of S corporation) is amended by adding at the end the following new subsection:

''(c) SHAREHOLDER'S RETURN MUST BE CONSISTENT WITH CORPORATE RETURN OR SECRETARY NOTIFIED OF INCONSISTENCY.—

"(1) IN GENERAL.—A shareholder of an S corporation shall, on such shareholder's return, treat a subchapter S item in a manner which is consistent with the treatment of such item on the corporate return.

"(2) NOTIFICATION OF INCONSISTENT TREATMENT.—

"(A) IN GENERAL.—In the case of any subchapter S item, if—

"(i)(I) the corporation has filed a return but the shareholder's treatment on his return is (or may be) inconsistent with the treatment of the item on the corporate return, or

"(II) the corporation has not filed a return, and

"(ii) the shareholder files with the Secretary a statement identifying the inconsistency,

paragraph (1) shall not apply to such item.

"(B) SHAREHOLDER RECEIVING INCORRECT INFORMATION.—A shareholder shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a subchapter S item if the shareholder—

"(i) demonstrates to the satisfaction of the Secretary that the treatment of the subchapter S item on the shareholder's return is consistent with the treatment of the item on the schedule furnished to the shareholder by the corporation, and

"(ii) elects to have this paragraph apply with respect to that item.

"(3) EFFECT OF FAILURE TO NOTIFY.—In any case—

"(A) described in subparagraph (A)(i)(I) of paragraph (2), and

"(B) in which the shareholder does not comply with subparagraph (A)(ii) of paragraph (2),

any adjustment required to make the treatment of the items by such shareholder consistent with the treatment of the items on the corporate return shall be treated as arising out of mathematical or clerical errors and assessed according to section 6213(b)(1). Paragraph (2) of section 6213(b) shall not apply to any assessment referred to in the preceding sentence.

"(4) SUBCHAPTER S ITEM.—For purposes of this subsection, the term 'subchapter S item' means

any item of an S corporation to the extent that regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more appropriately determined at the corporation level than at the shareholder level.

''(5) ADDITION TO TAX FOR FAILURE TO COMPLY WITH SECTION.—

**"For addition to tax in the case of a shareholder's negligence in connection with, or disregard of, the requirements of this section, see part II of subchapter A of chapter 68."**

(3) CONFORMING AMENDMENTS.—

(A) Section 1366 is amended by striking subsection (g).

(B) Subsection (b) of section 6233 is amended to read as follows:

''(b) SIMILAR RULES IN CERTAIN CASES.—If a partnership return is filed for any taxable year but it is determined that there is no entity for such taxable year, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply.''

(C) The table of subchapters for chapter 63 is amended by striking the item relating to subchapter D.

**SEC. 14508. S CORPORATIONS PERMITTED TO HOLD SUBSIDIARIES.**

(a) IN GENERAL.—Paragraph (2) of section 1361(b) (defining ineligible corporation) is amended by striking subparagraph (A) and by redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (A), (B), (C), and (D), respectively.

(b) TREATMENT OF CERTAIN WHOLLY OWNED S CORPORATION SUBSIDIARIES.—Section 1361(b) (defining small business corporation) is amended by adding at the end the following new paragraph:

''(3) TREATMENT OF CERTAIN WHOLLY OWNED SUBSIDIARIES.—

''(A) IN GENERAL.—For purposes of this title—

''(i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and

''(ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

''(B) QUALIFIED SUBCHAPTER S SUBSIDIARY.—For purposes of this paragraph, the term 'qualified subchapter S subsidiary' means any

domestic corporation which is not an ineligible corporation (as defined in paragraph (2)), if—

''(i) 100 percent of the stock of such corporation is held by the S corporation, and

''(ii) the S corporation elects to treat such corporation as a qualified subchapter S subsidiary.

''(C) TREATMENT OF TERMINATIONS OF QUALIFIED SUBCHAPTER S SUBSIDIARY STATUS.—For purposes of this title, if any corporation which was a qualified subchapter S subsidiary ceases to meet the requirements of subparagraph (B), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the S corporation in exchange for its stock.''

(c) CERTAIN DIVIDENDS NOT TREATED AS PASSIVE INVESTMENT INCOME.—Paragraph (3) of section 1362(d) is amended by adding at the end the following new subparagraph:

''(F) TREATMENT OF CERTAIN DIVIDENDS.—If an S corporation holds stock in a C corporation meeting the requirements of sec-

tion 1504(a)(2), the term 'passive investment income' shall not include dividends from such C corporation to the extent such dividends are attributable to the earnings and profits of such C corporation derived from the active conduct of a trade or business.''

(d) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 1361 is amended by striking paragraph (6).

(2) Subsection (b) of section 1504 (defining includible corporation) is amended by adding at the end the following new paragraph:

''(8) An S corporation.''

**SEC. 14509. TREATMENT OF DISTRIBUTIONS DURING LOSS YEARS.**

(a) ADJUSTMENTS FOR DISTRIBUTIONS TAKEN INTO ACCOUNT BEFORE LOSSES.—

(1) Subparagraph (A) of section 1366(d)(1) (relating to losses and deductions cannot exceed shareholder's basis in stock and debt) is amended by striking ''paragraph (1)'' and inserting ''paragraphs (1) and (2)(A)''.

(2) Subsection (d) of section 1368 (relating to certain adjustments taken into account) is amended by adding at the end the following new sentence:

''In the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in paragraph (1) of section 1367(a) for the taxable year.''

(b) ACCUMULATED ADJUSTMENTS ACCOUNT.—Paragraph (1) of section 1368(e) (relating to accumulated adjustments account) is amended by adding at the end the following new subparagraph:

''(C) NET LOSS FOR YEAR DISREGARDED.—

''(i) IN GENERAL.—In applying this section to distributions made during any taxable year, the amount in the accumulated adjustments account as of the close of such taxable year shall be determined without regard to any net negative adjustment for such taxable year.

''(ii) NET NEGATIVE ADJUSTMENT.—For purposes of clause (i), the term 'net negative adjustment' means, with respect to any taxable year, the excess (if any) of—

''(I) the reductions in the account for the taxable year (other than for distributions), over

''(II) the increases in such account for such taxable year.''

(c) CONFORMING AMENDMENTS.—Subparagraph (A) of section 1368(e)(1) is amended—

(1) by striking ''as provided in subparagraph (B)'' and inserting ''as otherwise provided in this paragraph'', and

(2) by striking ''section 1367(b)(2)(A)'' and inserting ''section 1367(a)(2)''.

**SEC. 14510. TREATMENT OF S CORPORATIONS UNDER SUBCHAPTER C.**

Subsection (a) of section 1371 (relating to application of subchapter C rules) is amended to read as follows:

''(a) APPLICATION OF SUBCHAPTER C RULES.—Except as otherwise provided in this title, and except to the extent inconsistent with this subchapter, subchapter C shall apply to an S corporation and its shareholders.''

**SEC. 14511. ELIMINATION OF CERTAIN EARNINGS AND PROFITS.**

(a) IN GENERAL.—If—

(1) a corporation was an electing small business corporation under subchapter S of chapter 1 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1983, and

(2) such corporation is an S corporation under subchapter S of chapter 1 of such Code for its first taxable year beginning after December 31, 1995,

the amount of such corporation's accumulated earnings and profits (as of the beginning of such first taxable year) shall be reduced by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, for which such corporation was an electing small business corporation under such subchapter S.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 1362(d) is amended—

(A) by striking ''SUBCHAPTER C'' in the paragraph heading and inserting ''ACCUMULATED'',

(B) by striking ''subchapter C'' in subparagraph (A)(i)(I) and inserting ''accumulated'', and

(C) by striking subparagraph (B) and redesignating the following subparagraphs accordingly.

(2)(A) Subsection (a) of section 1375 is amended by striking ''subchapter C'' in paragraph (1) and inserting ''accumulated''.

(B) Paragraph (3) of section 1375(b) is amended to read as follows:

"(3) PASSIVE INVESTMENT INCOME, ETC.—The terms 'passive investment income' and 'gross receipts' have the same respective meanings as when used in paragraph (3) of section 1362(d)."

(C) The section heading for section 1375 is amended by striking "**SUBCHAPTER C**" and inserting "**ACCUMULATED**".

(D) The table of sections for part III of subchapter S of chapter 1 is amended by striking "subchapter C" in the item relating to section 1375 and inserting "accumulated".

(3) Clause (i) of section 1042(c)(4)(A) is amended by striking "section 1362(d)(3)(D)" and inserting "section 1362(d)(3)(C)".

**SEC. 14512. CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS UNDER AT-RISK RULES ALLOWED.**

Paragraph (3) of section 1366(d) (relating to carryover of disallowed losses and deductions to post-termination transition period) is amended by adding at the end the following new subparagraph:

"(D) AT-RISK LIMITATIONS.—To the extent that any increase in adjusted basis described in subparagraph (B) would have increased the shareholder's amount at risk under section 465 if such increase had occurred on

the day preceding the commencement of the post-termination transition period, rules similar to the rules described in subparagraphs (A) through (C) shall apply to any losses disallowed by reason of section 465(a).''

**SEC. 14513. ADJUSTMENTS TO BASIS OF INHERITED S STOCK TO REFLECT CERTAIN ITEMS OF INCOME.**

(a) IN GENERAL.—Subsection (b) of section 1367 (relating to adjustments to basis of stock of shareholders, etc.) is amended by adding at the end the following new paragraph:

''(4) ADJUSTMENTS IN CASE OF INHERITED STOCK.—

''(A) IN GENERAL.—If any person acquires stock in an S corporation by reason of the death of a decedent or by bequest, devise, or inheritance, section 691 shall be applied with respect to any item of income of the S corporation in the same manner as if the decedent had held directly his pro rata share of such item.

''(B) ADJUSTMENTS TO BASIS.—The basis determined under section 1014 of any stock in an S corporation shall be reduced by the portion of the value of the stock which is attrib-

utable to items constituting income in respect of the decedent.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply in the case of decedents dying after the date of the enactment of this Act.

**SEC. 14514. S CORPORATIONS ELIGIBLE FOR RULES APPLICABLE TO REAL PROPERTY SUBDIVIDED FOR SALE BY NONCORPORATE TAXPAYERS.**

(a) IN GENERAL.—Subsection (a) of section 1237 (relating to real property subdivided for sale) is amended by striking ''other than a corporation'' in the material preceding paragraph (1) and inserting ''other than a C corporation''.

(b) CONFORMING AMENDMENT.—Subparagraph (A) of section 1237(a)(2) is amended by inserting ''an S corporation which included the taxpayer as a shareholder,'' after ''controlled by the taxpayer,''.

**SEC. 14515. EFFECTIVE DATE.**

(a) IN GENERAL.—Except as otherwise provided in this part, the amendments made by this part shall apply to taxable years beginning after December 31, 1995.

(b) TREATMENT OF CERTAIN ELECTIONS UNDER PRIOR LAW.—For purposes of section 1362(g) of the Internal Revenue Code of 1986 (relating to election after termination), any termination under section 1362(d) of

such Code in a taxable year beginning before January 1, 1996, shall not be taken into account.

## PART II—PROVISIONS RELATING TO REGULATED INVESTMENT COMPANIES

### SEC. 14521. REPEAL OF 30-PERCENT GROSS INCOME LIMITATION.

(a) GENERAL RULE.—Subsection (b) of section 851 (relating to limitations) is amended by striking paragraph (3), by adding ''and'' at the end of paragraph (2), and by redesignating paragraph (4) as paragraph (3).

(b) TECHNICAL AMENDMENTS.—

(1) The material following paragraph (3) of section 851(b) (as redesignated by subsection (a)) is amended—

(A) by striking out ''paragraphs (2) and (3)'' and inserting ''paragraph (2)'', and

(B) by striking out the last sentence thereof.

(2) Subsection (c) of section 851 is amended by striking ''subsection (b)(4)'' each place it appears (including the heading) and inserting ''subsection (b)(3)''.

(3) Subsection (d) of section 851 is amended by striking ''subsections (b)(4)'' and inserting ''subsections (b)(3)''.

(4) Paragraph (1) of section 851(e) is amended by striking ''subsection (b)(4)'' and inserting ''subsection (b)(3)''.

(5) Paragraph (4) of section 851(e) is amended by striking ''subsections (b)(4)'' and inserting ''subsections (b)(3)''.

(6) Section 851 is amended by striking subsection (g) and redesignating subsection (h) as subsection (g).

(7) Subsection (g) of section 851 (as redesignated by paragraph (6)) is amended by striking paragraph (3).

(8) Section 817(h)(2) is amended—

(A) by striking ''851(b)(4)'' in subparagraph (A) and inserting ''851(b)(3)'', and

(B) by striking ''851(b)(4)(A)(i)'' in subparagraph (B) and inserting ''851(b)(3)(A)(i)''.

(9) Section 1092(f)(2) is amended by striking ''Except for purposes of section 851(b)(3), the'' and inserting ''The''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

## PART III—PROVISIONS RELATING TO REAL ESTATE INVESTMENT TRUSTS

### SEC. 14531. CLARIFICATION OF LIMITATION ON MAXIMUM NUMBER OF SHAREHOLDERS.

(a) RULES RELATING TO DETERMINATION OF OWNERSHIP.—

(1) FAILURE TO ISSUE SHAREHOLDER DEMAND LETTER NOT TO DISQUALIFY REIT.—Section 857(a) (relating to requirements applicable to real estate investment trusts) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(2) SHAREHOLDER DEMAND LETTER REQUIREMENT; PENALTY.—Section 857 (relating to taxation of real estate investment trusts and their beneficiaries) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) REAL ESTATE INVESTMENT TRUSTS TO ASCERTAIN OWNERSHIP.—

''(1) IN GENERAL.—Each real estate investment trust shall each taxable year comply with regulations prescribed by the Secretary for the purposes of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust.

"(2) FAILURE TO COMPLY.—

"(A) IN GENERAL.—If a real estate investment trust fails to comply with the requirements of paragraph (1) for a taxable year, such trust shall pay (on notice and demand by the Secretary and in the same manner as tax) a penalty of $25,000.

"(B) INTENTIONAL DISREGARD.—If any failure under paragraph (1) is due to intentional disregard of the requirement under paragraph (1), the penalty under subparagraph (A) shall be $50,000.

"(C) FAILURE TO COMPLY AFTER NOTICE.—The Secretary may require a real estate investment trust to take such actions as the Secretary determines appropriate to ascertain actual ownership if the trust fails to meet the requirements of paragraph (1). If the trust fails to take such actions, the trust shall pay (on notice and demand by the Secretary and in the same manner as tax) an additional penalty equal to the penalty determined under subparagraph (A) or (B), whichever is applicable.

"(D) REASONABLE CAUSE.—No penalty shall be imposed under this paragraph with re-

spect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.''

(b) COMPLIANCE WITH CLOSELY HELD PROHIBITION.—

(1) IN GENERAL.—Section 856 (defining real estate investment trust) is amended by adding at the end the following new subsection:

''(k) REQUIREMENT THAT ENTITY NOT BE CLOSELY HELD TREATED AS MET IN CERTAIN CASES.—A corporation, trust, or association—

''(1) which for a taxable year meets the requirements of section 857(f)(1), and

''(2) which does not know, or exercising reasonable diligence would not have known, whether the entity failed to meet the requirement of subsection (a)(6),

shall be treated as having met the requirement of subsection (a)(6) for the taxable year.''

(2) CONFORMING AMENDMENT.—Paragraph (6) of section 856(a) is amended by inserting ''subject to the provisions of subsection (k),'' before ''which is not''.

**SEC. 14532. DE MINIMIS RULE FOR TENANT SERVICES INCOME.**

(a) IN GENERAL.—Paragraph (2) of section 856(d) (defining rents from real property) is amended by striking subparagraph (C) and the last sentence and inserting:

''(C) any impermissible tenant service income (as defined in paragraph (7)).''

(b) IMPERMISSIBLE TENANT SERVICE INCOME.—Section 856(d) is amended by adding at the end the following new paragraph:

''(7) IMPERMISSIBLE TENANT SERVICE INCOME.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—The term 'impermissible tenant service income' means, with respect to any real or personal property, any amount received or accrued directly or indirectly by the real estate investment trust for—

''(i) services furnished or rendered by the trust to the tenants of such property, or

''(ii) managing or operating such property.

''(B) DISQUALIFICATION OF ALL AMOUNTS WHERE MORE THAN DE MINIMIS AMOUNT.—If the amount described in subparagraph (A) with respect to a property for any taxable year ex-

ceeds 1 percent of all amounts received or accrued during such taxable year directly or indirectly by the real estate investment trust with respect to such property, the impermissible tenant service income of the trust with respect to the property shall include all such amounts.

''(C) EXCEPTIONS.—For purposes of subparagraph (A)—

''(i) services furnished or rendered, or management or operation provided, through an independent contractor from whom the trust itself does not derive or receive any income shall not be treated as furnished, rendered, or provided by the trust, and

''(ii) there shall not be taken into account any amount which would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).

''(D) AMOUNT ATTRIBUTABLE TO IMPERMISSIBLE SERVICES.—For purposes of subparagraph (A), the amount treated as received for any service (or management or operation) shall

not be less than 150 percent of the direct cost of the trust in furnishing or rendering the service (or providing the management or operation).

''(E) COORDINATION WITH LIMITATIONS.—For purposes of paragraphs (2) and (3) of subsection (c), amounts described in subparagraph (A) shall be included in the gross income of the corporation, trust, or association.''

**SEC. 14533. ATTRIBUTION RULES APPLICABLE TO TENANT OWNERSHIP.**

Section 856(d)(5) (relating to constructive ownership of stock) is amended by adding at the end the following: ''For purposes of paragraph (2)(B), section 318(a)(3)(A) shall be applied under the preceding sentence in the case of a partnership by taking into account only partners who own (directly or indirectly) 25 percent or more of the capital interest, or the profits interest, in the partnership.''

**SEC. 14534. CREDIT FOR TAX PAID BY REIT ON RETAINED CAPITAL GAINS.**

(a) GENERAL RULE.—Paragraph (3) of section 857(b) (relating to capital gains) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

''(D) TREATMENT BY SHAREHOLDERS OF UNDISTRIBUTED CAPITAL GAINS.—

''(i) Every shareholder of a real estate investment trust at the close of the trust's taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the trust's taxable year falls, such amount as the trust shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of 60 days after the close of its taxable year (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year), but the amount so includible by any shareholder shall not exceed that part of the amount subjected to tax in subparagraph (A)(ii) which he would have received if all of such amount had been distributed as capital gain dividends by the trust to the holders of such shares at the close of its taxable year.

''(ii) For purposes of this title, every such shareholder shall be deemed to have

paid, for his taxable year under clause (i), the tax imposed by subparagraph (A)(ii) on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholders shall be allowed credit or refund as the case may be, for the tax so deemed to have been paid by him.

''(iii) The adjusted basis of such shares in the hands of the holder shall be increased with respect to the amounts required by this subparagraph to be included in computing his long-term capital gains, by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii).

''(iv) In the event of such designation, the tax imposed by subparagraph (A)(ii) shall be paid by the real estate investment trust within 30 days after the close of its taxable year.

''(v) The earnings and profits of such real estate investment trust, and the earn-

ings and profits of any such shareholder which is a corporation, shall be appropriately adjusted in accordance with regulations prescribed by the Secretary.

''(vi) As used in this subparagraph, the terms 'shares' and 'shareholders' shall include beneficial interests and holders of beneficial interests, respectively.''

(b) CONFORMING AMENDMENTS.—

(1) Clause (i) of section 857(b)(7)(A) is amended by striking ''subparagraph (B)'' and inserting ''subparagraph (B) or (D)''.

(2) Clause (iii) of section 852(b)(3)(D) is amended by striking ''by 65 percent'' and all that follows and inserting ''by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii).''

**SEC. 14535. REPEAL OF 30-PERCENT GROSS INCOME REQUIREMENT.**

(a) GENERAL RULE.—Subsection (c) of section 856 (relating to limitations) is amended—

(1) by adding ''and'' at the end of paragraph (3),

(2) by striking paragraphs (4) and (8), and

(3) by redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6), respectively.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (G) of section 856(c)(5), as redesignated by subsection (a), is amended by striking ''and such agreement shall be treated as a security for purposes of paragraph (4)(A)''.

(2) Paragraph (5) of section 857(b) is amended by striking ''section 856(c)(7)'' and inserting ''section 856(c)(6)''.

(3) Subparagraph (C) of section 857(b)(6) is amended by striking ''section 856(c)(6)(B)'' and inserting ''section 856(c)(5)(B)''.

**SEC. 14536. MODIFICATION OF EARNINGS AND PROFITS RULES FOR DETERMINING WHETHER REIT HAS EARNINGS AND PROFITS FROM NON-REIT YEAR.**

Subsection (d) of section 857 is amended by adding at the end the following new paragraph:

''(3) DISTRIBUTIONS TO MEET REQUIREMENTS OF SUBSECTION (a)(2)(B).—Any distribution which is made in order to comply with the requirements of subsection (a)(2)(B)—

''(A) shall be treated for purposes of this subsection and subsection (a)(2)(B) as made

from the earliest accumulated earnings and profits (other than earnings and profits to which subsection (a)(2)(A) applies) rather than the most recently accumulated earnings and profits, and

''(B) to the extent treated under subparagraph (A) as made from accumulated earnings and profits, shall not be treated as a distribution for purposes of subsection (b)(2)(B).''

**SEC. 14537. TREATMENT OF FORECLOSURE PROPERTY.**

(a) GRACE PERIODS.—

(1) INITIAL PERIOD.—Paragraph (2) of section 856(e) (relating to special rules for foreclosure property) is amended by striking ''on the date which is 2 years after the date the trust acquired such property'' and inserting ''as of the close of the 3d taxable year following the taxable year in which the trust acquired such property''.

(2) EXTENSION.—Paragraph (3) of section 856(e) is amended—

(A) by striking ''or more extensions'' and inserting ''extension'', and

(B) by striking the last sentence and inserting: ''Any such extension shall not extend the grace period beyond the close of the 3d tax-

able year following the last taxable year in the period under paragraph (2).''

(b) REVOCATION OF ELECTION.—Paragraph (5) of section 856(e) is amended by striking the last sentence and inserting: ''A real estate investment trust may revoke any such election for a taxable year by filing the revocation (in the manner provided by the Secretary) on or before the due date (including any extension of time) for filing its return of tax under this chapter for the taxable year. If a trust revokes an election for any property, no election may be made by the trust under this paragraph with respect to the property for any subsequent taxable year.''

(c) CERTAIN ACTIVITIES NOT TO DISQUALIFY PROPERTY.—Paragraph (4) of section 856(e) is amended by adding at the end the following new flush sentence:

''For purposes of subparagraph (C), property shall not be treated as used in a trade or business by reason of any activities of the real estate investment trust with respect to such property to the extent that such activities would not result in amounts received or accrued, directly or indirectly, with respect to such property being treated as other than rents from real property.''

**SEC. 14538. PAYMENTS UNDER HEDGING INSTRUMENTS.**

Section 856(c)(5)(G) (relating to treatment of certain interest rate agreements), as redesignated by section 14535, is amended to read as follows:

"(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent provided by regulations, any—

"(i) payment to a real estate investment trust under an interest rate swap or cap agreement, option, futures contract, forward rate agreement, or any similar financial instrument, entered into by the trust in a transaction to reduce the interest rate risks with respect to any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets, and

"(ii) gain from the sale or other disposition of any such investment,

shall be treated as income qualifying under paragraph (2)."

**SEC. 14539. EXCESS NONCASH INCOME.**

Section 857(e)(2) (relating to determination of amount of excess noncash income) is amended—

(1) by striking subparagraph (B),

(2) by striking the period at the end of subparagraph (C) and inserting a comma,

(3) by redesignating subparagraph (C) (as amended by paragraph (2)) as subparagraph (B), and

(4) by adding at the end the following new subparagraphs:

''(C) the amount (if any) by which—

''(i) the amounts includible in gross income with respect to instruments to which section 860E(a) or 1272 applies, exceed

''(ii) the amount of money and the fair market value of other property received during the taxable year under such instruments, and

''(D) amounts includible in income by reason of cancellation of indebtedness.''

**SEC. 14540. PROHIBITED TRANSACTION SAFE HARBOR.**

Clause (iii) of section 857(b)(6)(C) (relating to certain sales not to constitute prohibited transactions) is amended by striking ''(other than foreclosure property)'' in subclauses (I) and (II) and inserting ''(other than sales of foreclosure property or sales to which section 1033 applies)''.

**SEC. 14541. SHARED APPRECIATION MORTGAGES.**

(a) BANKRUPTCY SAFE HARBOR.—Section 856(j) (relating to treatment of shared appreciation mortgages) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

''(4) COORDINATION WITH 4-YEAR HOLDING PERIOD.—

''(A) IN GENERAL.—For purposes of section 857(b)(6)(C), if a real estate investment trust is treated as having sold secured property under paragraph (3)(A), the trust shall be treated as having held such property for at least 4 years if—

''(i) the secured property is sold or otherwise disposed of pursuant to a case under title 11 of the United States Code,

''(ii) the seller is under the jurisdiction of the court in such case, and

''(iii) the disposition is required by the court or is pursuant to a plan approved by the court.

''(B) EXCEPTION.—Subparagraph (A) shall not apply if—

''(i) the secured property was acquired by the trust with the intent to evict or foreclose, or

''(ii) the trust knew or had reason to know that default on the obligation described in paragraph (5)(A) would occur.''

(b) CLARIFICATION OF DEFINITION OF SHARED APPRECIATION PROVISION.—Clause (ii) of section 856(j)(5)(A) is amended by inserting before the period ''or appreciation in value as of any specified date''.

**SEC. 14542. WHOLLY OWNED SUBSIDIARIES.**

Section 856(i)(2) (defining qualified REIT subsidiary) is amended by striking ''at all times during the period such corporation was in existence''.

**SEC. 14543. EFFECTIVE DATE.**

The amendments made by this part shall apply to taxable years beginning after the date of the enactment of this Act.

## PART IV—ACCOUNTING PROVISIONS

**SEC. 14551. MODIFICATIONS TO LOOK-BACK METHOD FOR LONG-TERM CONTRACTS.**

(a) LOOK-BACK METHOD NOT TO APPLY IN CERTAIN CASES.—Subsection (b) of section 460 (relating to percentage of completion method) is amended by adding at the end the following new paragraph:

"(6) ELECTION TO HAVE LOOK-BACK METHOD NOT APPLY IN DE MINIMIS CASES.—

"(A) AMOUNTS TAKEN INTO ACCOUNT AFTER COMPLETION OF CONTRACT.—Paragraph (1)(B) shall not apply with respect to any taxable year (beginning after the taxable year in which the contract is completed) if—

"(i) the cumulative taxable income (or loss) under the contract as of the close of such taxable year, is within

"(ii) 10 percent of the cumulative look-back taxable income (or loss) under the contract as of the close of the most recent taxable year to which paragraph (1)(B) applied (or would have applied but for subparagraph (B)).

"(B) DE MINIMIS DISCREPANCIES.—Paragraph (1)(B) shall not apply in any case to which it would otherwise apply if—

"(i) the cumulative taxable income (or loss) under the contract as of the close of each prior contract year, is within

"(ii) 10 percent of the cumulative look-back income (or loss) under the con-

tract as of the close of such prior contract year.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) CONTRACT YEAR.—The term 'contract year' means any taxable year for which income is taken into account under the contract.

''(ii) LOOK-BACK INCOME OR LOSS.—The look-back income (or loss) is the amount which would be the taxable income (or loss) under the contract if the allocation method set forth in paragraph (2)(A) were used in determining taxable income.

''(iii) DISCOUNTING NOT APPLICABLE.—The amounts taken into account after the completion of the contract shall be determined without regard to any discounting under the 2nd sentence of paragraph (2).

''(D) CONTRACTS TO WHICH PARAGRAPH APPLIES.—This paragraph shall only apply if the taxpayer makes an election under this subparagraph. Unless revoked with the consent of the Secretary, such an election shall apply to all

long-term contracts completed during the taxable year for which election is made or during any subsequent taxable year.''

(b) MODIFICATION OF INTEREST RATE.—

(1) IN GENERAL.—Subparagraph (C) of section 460(b)(2) is amended by striking ''the overpayment rate established by section 6621'' and inserting ''the adjusted overpayment rate (as defined in paragraph (7))''.

(2) ADJUSTED OVERPAYMENT RATE.—Subsection (b) of section 460 is amended by adding at the end the following new paragraph:

''(7) ADJUSTED OVERPAYMENT RATE.—

''(A) IN GENERAL.—The adjusted overpayment rate for any interest accrual period is the overpayment rate in effect under section 6621 for the calendar quarter in which such interest accrual period begins.

''(B) INTEREST ACCRUAL PERIOD.—For purposes of subparagraph (A), the term 'interest accrual period' means the period—

''(i) beginning on the day after the return due date for any taxable year of the taxpayer, and

''(ii) ending on the return due date for the following taxable year.

For purposes of the preceding sentence, the term 'return due date' means the date prescribed for filing the return of the tax imposed by this chapter (determined without regard to extensions).''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contracts completed in taxable years ending after the date of the enactment of this Act.

**SEC. 14552. APPLICATION OF MARK TO MARKET ACCOUNTING METHOD TO TRADERS IN SECURITIES.**

(a) IN GENERAL.—Section 475 (relating to mark to market accounting method for dealers in securities) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e) AUTHORITY TO EXTEND METHOD TO TRADERS IN SECURITIES.—

''(1) IN GENERAL.—A trader in securities may elect to have the provisions of this section (other than subsection (d)(3)) apply to securities held by the trader. Such election may be made only with the consent of the Secretary.

"(2) TRADER IN SECURITIES.—For purposes of this subsection, the term 'trader in securities' means a taxpayer who is regularly engaged in trading securities."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on and after December 31, 1995.

**SEC. 14553. MODIFICATION OF RULING AMOUNTS FOR NUCLEAR DECOMMISSIONING COSTS.**

(a) IN GENERAL.—Section 468A(d) (relating to ruling amount) is amended by adding at the end the following new paragraph:

"(4) NONSUBSTANTIAL MODIFICATIONS.—A taxpayer may modify a schedule of ruling amounts under paragraph (1) without a review under paragraph (3) if such modification does not substantially modify the ruling amount. The taxpayer shall notify the Secretary of any such modification."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to modifications after the date of the enactment of this Act.

**SEC. 14554. ELECTION OF ALTERNATIVE TAXABLE YEARS BY PARTNERSHIPS AND S CORPORATIONS.**

(a) REPEAL OF LIMITATION ON WHAT TAXABLE YEAR MAY BE ELECTED.—

(1) IN GENERAL.—Section 444(b) (relating to limitations on taxable years which may be elected) is amended by adding at the end the following new paragraph:

''(5) LIMITATIONS NOT TO APPLY TO CERTAIN PARTNERSHIPS AND S CORPORATIONS.—

''(A) IN GENERAL.—In the case of a partnership or an S corporation, this subsection shall not apply to an election under subsection (a) for a taxable year beginning after December 31, 1996.

''(B) SPECIAL RULE FOR EXISTING ELECTIONS.—

''(i) IN GENERAL.—If a partnership or S corporation has an election in effect for its last taxable year beginning before January 1, 1997, the partnership or S corporation may elect to have this paragraph apply beginning with any taxable year beginning after December 31, 1996. Such an election may be made without the consent of the Secretary and shall not be treated

as a termination of an election for purposes of subsection (d).

''(ii) TREATMENT OF REQUIRED PAYMENTS.—A partnership or S corporation making an election under clause (i) may elect to have its net required payment balance (within the meaning of section 7519(e)(4))—

''(I) credited against its first estimated tax payment under section 6654A for its first full taxable year for which such section applies, or

''(II) refunded to it at the time provided in section 7519(c)(3).''

(2) EFFECT OF ELECTION.—Paragraph (1) of section 444(c) (relating to effect of election) is amended to read as follows:

''(1) in the case of a partnership or S corporation, such entity shall—

''(A) make the payments required by section 7519, or

''(B) if subsection (b)(5) applies to the election, make the estimated tax payments described in section 6654A, and''.

(b) ESTIMATED TAX FOR PARTNERSHIPS AND S CORPORATIONS MAKING TAXABLE YEAR ELECTIONS.—Part I of subchapter A of chapter 68 (relating to additions to tax and additional amounts) is amended by inserting after section 6654 the following new section:

**"SEC. 6654A. FAILURE BY ELECTING PARTNERSHIP OR S CORPORATION TO PAY ESTIMATED TAX.**

''(a) PENALTY.—Except as otherwise provided in this section, in the case of a partnership or S corporation with respect to which an election to which section 444(b)(5) applies is in effect (hereafter referred to as 'the entity'), there is hereby imposed a penalty for each quarter for which there is an underpayment in an amount determined by applying—

''(1) the underpayment rate established under section 6621,

''(2) to the amount of the underpayment,

''(3) for the period of the underpayment.

''(b) AMOUNT OF UNDERPAYMENT; PERIOD OF UNDERPAYMENT.—For purposes of subsection (a)—

''(1) AMOUNT.—The amount of the underpayment shall be the excess of—

''(A) the required installment, over

"(B) the amount (if any) of the installment paid on or before the due date for the installment.

"(2) PERIOD OF UNDERPAYMENT.—The period of the underpayment shall run from the due date for the installment to the earlier of—

"(A) the first April 15 more than 3 months after the close of the taxable year, or

"(B) with respect to any portion of the underpayment, the date on which such portion is paid.

"(3) ORDER OF CREDITING PAYMENTS.—For purposes of paragraph (2)(B), a payment of estimated tax shall be credited against unpaid required installments in the order in which the installments are required to be paid.

"(c) REQUIRED INSTALLMENTS.—For purposes of this section—

"(1) NUMBER AND DATES.—An entity shall make 4 required installments which shall be due on the 15th day of the 3d, 5th, 8th, and 12th months of the taxable year.

"(2) NO REQUIRED PAYMENTS WHERE ENTITY'S LIABILITY IS LESS THAN $5,000.—An entity shall not be required to make estimated payments

under this section for any taxable year for which (but for this paragraph) its aggregate liability under this section would be less than $5,000.

''(3) AMOUNT.—The amount of each required installment shall be 25 percent of the product of—

''(A) the entity's applicable income determined under its applicable method for the quarter for which the installment is being made, and

''(B) the applicable rate.

''(4) APPLICABLE RATE.—

''(A) IN GENERAL.—The term 'applicable rate' means 34 percent (39.6 percent in the case of an entity described in subparagraph (B)).

''(B) HIGH AVERAGE INCOME ENTITY.—

''(i) IN GENERAL.—An entity is described in this subparagraph if—

''(I) the average applicable income of 2-percent owners of the entity for its base year is $250,000 or more, or

''(II) in the case of a partnership, its applicable income for the base year is $10,000,000 or more.

An entity shall not be treated as so described if it has no base year.

''(ii) 2-PERCENT OWNER.—The term '2-percent owner' means—

''(I) in the case of a partnership, any person who owns (or is considered as owning within the meaning of section 318) on any day during the base year more than 2 percent of the capital interests of the partnerships, and

''(II) in the case of an S corporation, a 2-percent shareholder (as defined in section 1372(b)).

''(5) ADJUSTMENTS UNDER ANNUALIZED INCOME METHOD.—An entity using the annualized income method shall adjust its required installment for any quarter to reflect any change in its required installment for any prior quarter in the taxable year which would have been required if the annualized applicable income for the current quarter had been used for the prior quarter.

''(d) APPLICABLE METHOD.—For purposes of this section—

"(1) IN GENERAL.—An entity shall determine its applicable income on the basis of the 100-percent method.

"(2) EXCEPTIONS.—

"(A) ELECTIONS.—An entity may determine its applicable income—

"(i) for all quarters in a taxable year on the basis of the 110-percent method if it elects such method on or before the due date for the first quarterly installment, or

"(ii) for any quarter in a taxable year on the basis of the annualized income method if it elects such method on or before the due date for the quarterly installment for such quarter.

An election under clause (ii) shall apply for the quarter for which made and all subsequent quarters during the taxable year.

"(B) LARGE INCREASE IN INCOME.—If an entity's applicable income for the taxable year exceeds its applicable income for the base year by more than $750,000, the entity may not use the 110-percent method for the taxable year.

"(3) METHODS.—

"(A) 100-PERCENT METHOD.—Under the 100-percent method, an entity's applicable income shall be its applicable income for the taxable year.

"(B) 110-PERCENT METHOD.—Under the 110-percent method, an entity's applicable income shall be 110 percent of its applicable income for the base year.

"(C) ANNUALIZED INCOME METHOD.—Under the annualized income method, the entity's applicable income for purposes of determining the required installment for any quarter shall be an amount equal to the product of—

"(i) its applicable income for the period consisting of the months in the taxable year ending before the due date for the quarter, and

"(ii) a percentage equal to 12 divided by the number of such months.

"(e) APPLICABLE INCOME.—

"(1) IN GENERAL.—For purposes of this section, the applicable income for any taxable year shall be the net amount (not less than zero) determined—

"(A) by taking into account the entity's items in the manner and with the exceptions

provided in section 703(a) or 1363(b), as the case may be, and

''(B) by making the further adjustments provided in paragraphs (2), (3), (4), and (5) of this subsection.

''(2) CERTAIN DEDUCTIONS ALLOWED.—In determining applicable income, the following amounts shall be allowed as deductions:

''(A) The deduction allowable under section 170 for charitable contributions of the entity.

''(B) The deduction allowable under section 901 for taxes described in section 901(c) paid or accrued to foreign countries or possessions of the United States.

''(3) CERTAIN LIMITATIONS DISREGARDED.—For purposes of paragraphs (1) and (2), any limitation on the amount of any item which may be taken into account for purposes of computing the taxable income of a partner or shareholder shall be disregarded.

''(4) GUARANTEED PAYMENTS TO PARTNERS NOT DEDUCTED.—In determining applicable income, a guaranteed payment to a partner shall not be treated as an item of deduction.

"(5) DISPROPORTIONATE APPLICABLE PAYMENTS DURING DEFERRAL PERIOD.—

"(A) DEDUCTION NOT ALLOWED.—In determining applicable income, no deduction shall be allowed for disproportionate deferral period applicable payments.

"(B) DISPROPORTIONATE DEFERRAL PERIOD APPLICABLE PAYMENTS.—For purposes of subparagraph (A), the term 'disproportionate deferral period applicable payments' means the excess (if any) of—

"(i) the product of the deferral ratio and the aggregate applicable payments made to owners during the entity's entire taxable year, over

"(ii) the aggregate applicable payments made to owners during the deferral period.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'applicable payments' has the meaning given to such term by section 7519(d)(3), except that in the case of an S corporation only payments to 2-per-

cent shareholders (as defined in section 1372(b)) shall be taken into account,

''(ii) the term 'deferral period' means the months in the period beginning with the first day of the entity's taxable year and ending on December 31, and

''(iii) the term 'deferral ratio' means the ratio which the number of months in the deferral period bears to the total number of months in the taxable year.

''(6) SPECIAL RULE WHERE C CORPORATION FOR BASE YEAR.—In applying the 110-percent method, if an S corporation was a C corporation for the base year, the S corporation's applicable income shall be the taxable income of the C corporation for the base year.

''(f) COORDINATION BETWEEN ENTITY AND OWNERS.—

''(1) TREATMENT OF PAYMENTS OF REQUIRED INSTALLMENTS.—

''(A) IN GENERAL.—For purposes of this title, an owner in an entity shall be treated as having paid, for the owner's first taxable year ending with or after the close of the entity's taxable year, an amount of tax imposed by sec-

tion 1 equal to the owner's allocable share of the entity's payments of required installments under this section (determined without regard to excess payments described in subparagraph (C)(ii)(II) or amounts the entity is treated as paying under paragraph (2)).

''(B) COORDINATION WITH OWNER'S ESTIMATED TAX.—For purposes of section 6654, an individual shall be treated as having paid on the due date for the estimated tax installment for each quarter of the individual's taxable year described in subparagraph (A)—

''(i) except as provided in clause (ii), 25 percent of the tax deemed paid under subparagraph (A), or

''(ii) if the annualized income method was used by the entity for any quarter of the entity's taxable year described in subparagraph (A), an amount for the corresponding quarter in the individuals's taxable year equal to the portion of such tax attributable to the individual's allocable share of the entity's applicable income for the entity's quarter.

In no event shall the aggregate estimated tax payments treated as paid under this subparagraph exceed the amount of tax determined under subparagraph (A).

''(C) AMOUNTS DETERMINED ON BASIS OF RETURN.—

''(i) IN GENERAL.—The determination of the amount of tax payments under subparagraph (A) shall be made on the basis of amounts shown on the entity's return for the taxable year.

''(ii) RECONCILIATION OF DIFFERENCES.—If, as of the first April 15 more than 3 months after the close of the entity's taxable year, the aggregate amounts paid as required installments under this section are less or more than the aggregate amounts described in clause (i) shown on the entity's return of tax for the taxable year, then—

''(I) subject to paragraph (2), there is hereby imposed on the entity under chapter 1 an additional tax equal to the amount of the shortfall,

the due date for which is such April 15, or

''(II) the entity shall be treated as having made a payment of tax under chapter 1 on such April 15 in an amount equal to the excess.

''(2) TREATMENT OF PAYMENTS BY OWNERS.—For purposes of subsection (b)(2)(B) and paragraph (1)(C), an entity shall be treated as paying any portion of an underpayment attributable to an owner's allocable share of applicable income at the time the tax imposed by chapter 1 on the owner with respect to such income is paid.

''(3) ALLOCABLE SHARE.—For purposes of this subsection—

''(A) IN GENERAL.—An owner's allocable share of an item for a taxable year shall be an amount which bears the same ratio to the amount of such item as the owner's applicable income for the taxable year bears to the sum of the applicable incomes of all owners. For purposes of this subparagraph, applicable income of an owner shall be determined in the same manner as subsection (e).

"(B) APPLICATION OTHER THAN ON TAXABLE YEAR BASIS.—If—

"(i) the entity elects the annualized income method for any quarter, subparagraph (A) shall be applied on a quarter-by-quarter basis, or

"(ii) there is an interim closing of the books of an entity under this title, subparagraph (A) shall be applied separately for the periods before and after the closing.

"(g) SPECIAL RULES FOR SHORT YEAR CREATED BY ELECTION.—

"(1) ADDITIONAL REQUIRED INSTALLMENT.—If, by reason of an election under this section, an entity has a taxable year of less than 12 months, the entity shall make a required installment under this section for such taxable year—

"(A) which shall be in an amount equal to the applicable rate multiplied by the lesser of—

"(i) the entity's applicable income for such taxable year as determined under subsection (e), or

"(ii) 110 percent of the entity's applicable income for the base year (as so de-

termined but ratably reduced to reflect the period of such taxable year), and

''(B) the due date for which shall be the last day for which an election under this section could be made for the taxable year.

''(2) TREATMENT OF LOSSES.—Any net operating loss arising in the taxable year described in paragraph (1) shall be treated as arising one-third in such taxable year and each of the 2 following taxable years. This paragraph shall not apply to an entity not in existence before such taxable year unless more than one-half of the equity interests in the entity are held by persons who owned another entity carrying on the same business before such taxable year.

''(h) OTHER DEFINITIONS AND SPECIAL RULES.—For purpose of this section—

''(1) BASE YEAR.—The term 'base year' means the most recent preceding taxable year containing 12 months.

''(2) EQUITY INTEREST.—The term 'equity interest' means—

''(A) in the case of a partnership, the capital interests, and

''(B) in the case of an S corporation, the shares of stock in the corporation (whether voting or nonvoting).

''(3) OWNER.—The term 'owner' means a partner in a partnership or a shareholder in an S corporation, whichever is applicable.

''(4) COMMON CONTROL.—

''(A) IN GENERAL.—For purposes of subsections (c)(2), (c)(4)(B), and (d)(2)(B), entities under common control shall be treated as 1 entity.

''(B) COMMON CONTROL.—Entities shall be treated as under common control under subparagraph (A) if they are treated as a single employee under subsection (a) or (b) of section 52.

''(5) WAIVER.—No penalty shall be imposed under subsection (a) with respect to any underpayment to the extent the Secretary determines that by reason of casualty, disaster, or other unusual circumstances the imposition of the penalty would be against equity and good conscience.''

(c) MODIFICATION OF ELECTIONS.—

(1) TIME FOR MAKING.—Paragraph (1) of section 444(d) is amended by adding at the end the fol-

lowing new sentence: ''Such election may be made at any time on or before the 15th day of the 3d month of the first taxable year of 12 months under the election.''

(2) TERMINATIONS.—Paragraph (2) of section 444(d) is amended by striking subparagraph (B) and inserting:

''(B) TERMINATIONS.—

''(i) REVOCATION.—An election under subsection (a) may be terminated by revocation but only if owners of more than one-half of the equity interests in the entity on the date of the revocation consent to it.

''(ii) ENTITY TERMINATIONS.—In the case of a partnership or S corporation, an election under subsection (a) terminates when the partnership terminates under section 708(b)(1) or the corporation ceases to be an S corporation.

''(C) SUBSEQUENT ELECTIONS.—If an election under subsection (a) has been terminated, no such election may be made with respect to such entity or any successor entity for any taxable year before its 5th taxable year be-

ginning after the 1st taxable year for which the termination was effective, unless the Secretary consents to the election.''

(d) CONFORMING AMENDMENTS.—

(1) Section 6665(b) is amended—

(A) by inserting ''6654A,'' after ''6654,'', and

(B) by striking ''6654 or'' and inserting ''6654, 6654A, or''.

(2) The table of sections for part I of subchapter A of chapter 68 is amended by inserting after the item relating to section 6654 the following new item:

''Sec. 6654A. Failure by electing partnership or S corporation to pay estimated tax.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

**SEC. 14555. SPECIAL RULE FOR CROP INSURANCE PROCEEDS AND DISASTER PAYMENTS.**

(a) IN GENERAL.—Section 451(d) of the Internal Revenue Code of 1986 (relating to special rule for crop insurance proceeds and disaster payments) is amended to read as follows:

''(d) SPECIAL RULE FOR CROP INSURANCE PROCEEDS AND DISASTER PAYMENTS.—

"(1) GENERAL RULE.—In the case of any payment described in paragraph (2), a taxpayer reporting on the cash receipts and disbursements method of accounting—

"(A) may elect to treat any such payment received in the taxable year of destruction or damage of crops as having been received in the following taxable year if the taxpayer establishes that, under the taxpayer's practice, income from such crops involved would have been reported in a following taxable year, or

"(B) may elect to treat any such payment received in a taxable year following the taxable year of the destruction or damage of crops as having been received in the taxable year of destruction or damage, if the taxpayer establishes that, under the taxpayer's practice, income from such crops involved would have been reported in the taxable year of destruction or damage.

"(2) PAYMENTS DESCRIBED.—For purposes of this subsection, a payment is described in this paragraph if such payment—

"(A) is insurance proceeds received on account of destruction or damage to crops, or

''(B) is disaster assistance received under any Federal law as a result of—

''(i) destruction or damage to crops caused by drought, flood, or other natural disaster, or

''(ii) inability to plant crops because of such a disaster.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to payments received after December 31, 1995, as a result of destruction or damage occurring after such date.

## PART V—TAX-EXEMPT BOND PROVISIONS

### SEC. 14561. REPEAL OF $100,000 LIMITATION ON UNSPENT PROCEEDS UNDER 1-YEAR EXCEPTION FROM REBATE.

Subclause (I) of section 148(f)(4)(B)(ii) (relating to additional period for certain bonds) is amended by striking ''the lesser of 5 percent of the proceeds of the issue or $100,000'' and inserting ''5 percent of the proceeds of the issue''.

### SEC. 14562. EXCEPTION FROM REBATE FOR EARNINGS ON BONA FIDE DEBT SERVICE FUND UNDER CONSTRUCTION BOND RULES.

Subparagraph (C) of section 148(f)(4) is amended by adding at the end the following new clause:

"(xvii) TREATMENT OF BONA FIDE DEBT SERVICE FUNDS.—If the spending requirements of clause (ii) are met with respect to the available construction proceeds of a construction issue, then paragraph (2) shall not apply to earnings on a bona fide debt service fund for such issue."

**SEC. 14563. REPEAL OF DEBT SERVICE-BASED LIMITATION ON INVESTMENT IN CERTAIN NONPURPOSE INVESTMENTS.**

Subsection (d) of section 148 (relating to special rules for reasonably required reserve or replacement fund) is amended by striking paragraph (3).

**SEC. 14564. REPEAL OF EXPIRED PROVISIONS.**

(a) Paragraph (2) of section 148(c) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(b) Paragraph (4) of section 148(f) is amended by striking subparagraph (E).

**SEC. 14565. EFFECTIVE DATES.**

The amendments made by this part shall apply to bonds issued after the date of the enactment of this Act.

## PART VI—INSURANCE PROVISIONS

### SEC. 14571. TREATMENT OF CERTAIN INSURANCE CONTRACTS ON RETIRED LIVES.

(a) GENERAL RULE.—

(1) Paragraph (2) of section 817(d) (defining variable contract) is amended by striking ''or'' at the end of subparagraph (A), by striking ''and'' at the end of subparagraph (B) and inserting ''or'', and by inserting after subparagraph (B) the following new subparagraph:

''(C) provides for funding of insurance on retired lives as described in section 807(c)(6), and''.

(2) Paragraph (3) of section 817(d) is amended by striking ''or'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', or'', and by inserting after subparagraph (B) the following new subparagraph:

''(C) in the case of funds held under a contract described in paragraph (2)(C), the amounts paid in, or the amounts paid out, reflect the investment return and the market value of the segregated asset account.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

**SEC. 14572. TREATMENT OF MODIFIED GUARANTEED CONTRACTS.**

(a) GENERAL RULE.—Subpart E of part I of subchapter L of chapter 1 (relating to definitions and special rules) is amended by inserting after section 817 the following new section:

**"SEC. 817A. SPECIAL RULES FOR MODIFIED GUARANTEED CONTRACTS.**

''(a) COMPUTATION OF RESERVES.—In the case of a modified guaranteed contract, clause (ii) of section 807(e)(1)(A) shall not apply.

''(b) SEGREGATED ASSETS UNDER MODIFIED GUARANTEED CONTRACTS MARKED TO MARKET.—

''(1) IN GENERAL.—In the case of any life insurance company, for purposes of this subtitle—

''(A) Any gain or loss with respect to a segregated asset shall be treated as ordinary income or loss, as the case may be.

''(B) If any segregated asset is held by such company as of the close of any taxable year—

''(i) such company shall recognize gain or loss as if such asset were sold for its fair market value on the last business day of such taxable year, and

"(ii) any such gain or loss shall be taken into account for such taxable year. Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this subparagraph at times other than the times provided in this subparagraph.

"(2) SEGREGATED ASSET.—For purposes of paragraph (1), the term 'segregated asset' means any asset held as part of a segregated account referred to in subsection (d)(1) under a modified guaranteed contract.

"(c) SPECIAL RULE IN COMPUTING LIFE INSURANCE RESERVES.—For purposes of applying section 816(b)(1)(A) to any modified guaranteed contract, an assumed rate of interest shall include a rate of interest determined, from time to time, with reference to a market rate of interest.

"(d) MODIFIED GUARANTEED CONTRACT DEFINED.—For purposes of this section, the term 'modified guaranteed contract' means a contract not described in section 817—

"(1) all or part of the amounts received under which are allocated to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company and is valued from time to time with reference to market values,

"(2) which—

"(A) provides for the payment of annuities,

"(B) is a life insurance contract, or

"(C) is a pension plan contract which is not a life, accident, or health, property, casualty, or liability contract,

"(3) for which reserves are valued at market for annual statement purposes, and

"(4) which provides for a net surrender value or a policyholder's fund (as defined in section 807(e)(1)).

If only a portion of a contract is not described in section 817, such portion shall be treated for purposes of this section as a separate contract.

"(e) REGULATIONS.—The Secretary may prescribe regulations—

"(1) to provide for the treatment of market value adjustments under sections 72, 7702, 7702A, and 807(e)(1)(B),

''(2) to determine the interest rates applicable under sections 807(c)(3), 807(d)(2)(B), and 812 with respect to a modified guaranteed contract annually, in a manner appropriate for modified guaranteed contracts and, to the extent appropriate for such a contract, to modify or waive the applicability of section 811(d),

''(3) to provide rules to limit ordinary gain or loss treatment to assets constituting reserves for modified guaranteed contracts (and not other assets) of the company,

''(4) to provide appropriate treatment of transfers of assets to and from the segregated account, and

''(5) as may be necessary or appropriate to carry out the purposes of this section.''

(b) CLERICAL AMENDMENT.—The table of sections for subpart E of part I of subchapter L of chapter 1 is amended by inserting after the item relating to section 817 the following new item:

''Sec. 817A. Special rules for modified guaranteed contracts.''

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

(2) TREATMENT OF NET ADJUSTMENTS.—In the case of any taxpayer required by the amendments made by this section to change its calculation of reserves to take into account market value adjustments and to mark segregated assets to market for any taxable year—

(A) such changes shall be treated as a change in method of accounting initiated by the taxpayer,

(B) such changes shall be treated as made with the consent of the Secretary, and

(C) the adjustments required by reason of section 481 of the Internal Revenue Code of 1986 shall be taken into account as ordinary income or loss by the taxpayer for the taxpayer's first taxable year beginning after December 31, 1995.

**SEC. 14573. MINIMUM TAX TREATMENT OF CERTAIN PROPERTY AND CASUALTY INSURANCE COMPANIES.**

(a) IN GENERAL.—Clause (i) of section 56(g)(4)(B) (relating to inclusion of items included for purposes of computing earnings and profits) is amended by adding at the end the following new sentence: ''In the case of any insurance company taxable under section 831(b), this

clause shall not apply to any amount not described in section 834(b).''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

## PART VII—OTHER PROVISIONS

### SEC. 14581. CLOSING OF PARTNERSHIP TAXABLE YEAR WITH RESPECT TO DECEASED PARTNER, ETC.

(a) GENERAL RULE.—Subparagraph (A) of section 706(c)(2) (relating to disposition of entire interest) is amended to read as follows:

''(A) DISPOSITION OF ENTIRE INTEREST.—The taxable year of a partnership shall close with respect to a partner whose entire interest in the partnership terminates (whether by reason of death, liquidation, or otherwise).''

(b) CLERICAL AMENDMENT.—The paragraph heading for paragraph (2) of section 706(c) is amended to read as follows:

''(2) TREATMENT OF DISPOSITIONS.—''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years beginning after December 31, 1995.

**SEC. 14582. CREDIT FOR SOCIAL SECURITY TAXES PAID WITH RESPECT TO EMPLOYEE CASH TIPS.**

(a) REPORTING REQUIREMENT NOT CONSIDERED.—Subparagraph (A) of section 45B(b)(1) (relating to excess employer social security tax) is amended by inserting ''(without regard to whether such tips are reported under section 6053)'' after ''section 3121(q)''.

(b) TAXES PAID.—Subsection (d) of section 13443 of the Revenue Reconciliation Act of 1993 is amended by inserting '', with respect to services performed before, on, or after such date'' after ''1993''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by, and the provisions of, section 13443 of the Revenue Reconciliation Act of 1993.

**SEC. 14583. DUE DATE FOR FIRST QUARTER ESTIMATED TAX PAYMENTS BY PRIVATE FOUNDATIONS.**

(a) IN GENERAL.—Paragraph (3) of section 6655(g) is amended by inserting after subparagraph (C) the following new subparagraph:

''(D) In the case of any private foundation, subsection (c)(2) shall be applied by substituting 'May 15' for 'April 15' ''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

**SEC. 14584. TREATMENT OF DUES PAID TO AGRICULTURAL OR HORTICULTURAL ORGANIZATIONS.**

(a) GENERAL RULE.—Section 512 (defining unrelated business taxable income) is amended by adding at the end thereof the following new subsection:

''(d) TREATMENT OF DUES OF AGRICULTURAL OR HORTICULTURAL ORGANIZATIONS.—

''(1) IN GENERAL.—If—

''(A) an agricultural or horticultural organization described in section 501(c)(5) requires annual dues to be paid in order to be a member of such organization, and

''(B) the amount of such required annual dues does not exceed $100,

in no event shall any portion of such dues be treated as derived by such organization from an unrelated trade or business by reason of any benefits or privileges to which members of such organization are entitled.

''(2) INDEXATION OF $100 AMOUNT.—In the case of any taxable year beginning in a calendar year after 1995, the $100 amount in paragraph (1) shall be increased by an amount equal to—

''(A) $100, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar

year in which the taxable year begins, by substituting 'calendar year 1994' for 'calendar year 1992' in subparagraph (B) thereof.

''(3) DUES.—For purposes of this subsection, the term 'dues' includes any payment required to be made in order to be recognized by the organization as a member of the organization.''

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

# Subtitle F—Estates and Trusts

## PART I—INCOME TAX PROVISIONS

### SEC. 14601. CERTAIN REVOCABLE TRUSTS TREATED AS PART OF ESTATE.

(a) IN GENERAL.—Subpart A of part I of subchapter J (relating to estates, trusts, beneficiaries, and decedents) is amended by adding at the end the following new section:

### ''SEC. 646. CERTAIN REVOCABLE TRUSTS TREATED AS PART OF ESTATE.

''(a) GENERAL RULE.—For purposes of this subtitle, if both the executor of an estate and the trustee of a qualified revocable trust elect the treatment provided in this section, such trust shall be treated and taxed as part of such estate (and not as a separate trust) for all taxable

years of the estate ending after the date of the decedent's death and before the applicable date.

''(b) DEFINITIONS.—For purposes of subsection (a)—

''(1) QUALIFIED REVOCABLE TRUST.—The term 'qualified revocable trust' means any trust all of which was treated under section 676 as owned by the decedent of the estate referred to in subsection (a).

''(2) APPLICABLE DATE.—The term 'applicable date' means—

''(A) if no return of tax imposed by chapter 11 is required to be filed, the date which is 2 years after the date of the decedent's death, and

''(B) if such a return is required to be filed, the date which is 6 months after the date of the final determination of the liability for tax imposed by chapter 11.

''(c) ELECTION.—The election under subsection (a) shall be made not later than the time prescribed for filing the return of tax imposed by this chapter for the first taxable year of the estate (determined with regard to extensions) and, once made, shall be irrevocable.''

(b) COMPARABLE TREATMENT UNDER GENERATION-SKIPPING TAX.—Paragraph (1) of section 2652(b) is amended by adding at the end the following new sentence: ''Such term shall not include any trust during any period the trust is treated as part of an estate under section 646.''

(c) CLERICAL AMENDMENT.—The table of sections for such subpart A is amended by adding at the end the following new item:

''Sec. 646. Certain revocable trusts treated as part of estate.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to estates of decedents dying after the date of the enactment of this Act.

**SEC. 14602. DISTRIBUTIONS DURING FIRST 65 DAYS OF TAXABLE YEAR OF ESTATE.**

(a) IN GENERAL.—Subsection (b) of section 663 (relating to distributions in first 65 days of taxable year) is amended by inserting ''an estate or'' before ''a trust'' each place it appears.

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 663(b) is amended by striking ''the fiduciary of such trust'' and inserting ''the executor of such estate or the fiduciary of such trust (as the case may be)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 14603. SEPARATE SHARE RULES AVAILABLE TO ESTATES.**

(a) IN GENERAL.—Subsection (c) of section 663 (relating to separate shares treated as separate trusts) is amended—

(1) by inserting before the last sentence the following new sentence: ''Rules similar to the rules of the preceding provisions of this subsection shall apply to treat substantially separate and independent shares of different beneficiaries in an estate having more than 1 beneficiary as separate estates.'', and

(2) by inserting ''or estates'' after ''trusts'' in the last sentence.

(b) CONFORMING AMENDMENT.—The subsection heading of section 663(c) is amended by inserting ''ESTATES OR'' before ''TRUSTS''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

**SEC. 14604. EXECUTOR OF ESTATE AND BENEFICIARIES TREATED AS RELATED PERSONS FOR DISALLOWANCE OF LOSSES, ETC.**

(a) DISALLOWANCE OF LOSSES.—Subsection (b) of section 267 (relating to losses, expenses, and interest with respect to transactions between related taxpayers) is

amended by striking ''or'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting ''; or'', and by adding at the end the following new paragraph:

''(13) Except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.''

(b) ORDINARY INCOME FROM GAIN FROM SALE OF DEPRECIABLE PROPERTY.—Subsection (b) of section 1239 is amended by striking the period at the end of paragraph (2) and inserting '', and'' and by adding at the end the following new paragraph:

''(3) except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 14605. LIMITATION ON TAXABLE YEAR OF ESTATES.**

(a) IN GENERAL.—Section 645 (relating to taxable year of trusts) is amended to read as follows:

**''SEC. 645. TAXABLE YEAR OF ESTATES AND TRUSTS.**

''(a) ESTATES.—For purposes of this subtitle, the taxable year of an estate shall be a year ending on October 31, November 30, or December 31.

"(b) TRUSTS.—

"(1) IN GENERAL.—For purposes of this subtitle, the taxable year of any trust shall be the calendar year.

"(2) EXCEPTION FOR TRUSTS EXEMPT FROM TAX AND CHARITABLE TRUSTS.—Paragraph (1) shall not apply to a trust exempt from taxation under section 501(a) or to a trust described in section 4947(a)(1)."

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part I of subchapter J of chapter 1 is amended by striking the item relating to section 645 and inserting the following new item:

"Sec. 645. Taxable year of estates and trusts."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

**SEC. 14606. REPEAL OF CERTAIN THROWBACK RULES APPLICABLE TO DOMESTIC TRUSTS.**

(a) ACCUMULATION DISTRIBUTIONS.—

(1) IN GENERAL.—Section 665 is amended by adding at the end the following new subsection:

"(f) ACCUMULATION DISTRIBUTIONS AFTER 1995.—For purposes of this subpart, in the case of a trust other than a foreign trust, any distribution in any taxable year

beginning after December 31, 1995, shall be computed without regard to any undistributed net income.''

(2) CONFORMING AMENDMENT.—Subsection (b) of section 665 is amended by inserting ''except as provided in subsection (f),'' after ''subpart,''

(b) PROPERTY TRANSFERRED TO TRUSTS.—Subsection (e) of section 644 is amended by striking ''or'' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting '', or '', and by adding at the end the following new paragraph:

''(5) in the case of a trust other than a foreign trust, any sale or exchange of property after December 31, 1995.''

(c) EFFECTIVE DATES.—

(1) ACCUMULATION DISTRIBUTION.—The amendments made by subsection (a) shall apply to distributions in taxable years beginning after December 31, 1995.

(2) TRANSFERRED PROPERTY.—The amendments made by subsection (b) shall apply to sales or exchanges after December 31, 1995.

**SEC. 14607. TREATMENT OF FUNERAL TRUSTS.**

(a) IN GENERAL.—Subpart F of part I of subchapter J of chapter 1 is amended by adding at the end the following new section:

**"SEC. 684. TREATMENT OF FUNERAL TRUSTS.**

''(a) IN GENERAL.—In the case of a qualified funeral trust—

''(1) subparts B, C, D, and E shall not apply, and

''(2) no deduction shall be allowed by section 642(b).

''(b) QUALIFIED FUNERAL TRUST.—For purposes of this subsection, the term 'qualified funeral trust' means any trust (other than a foreign trust) if—

''(1) the trust arises as a result of a contract with a person engaged in the trade or business of providing funeral or burial services or property necessary to provide such services,

''(2) the sole purpose of the trust is to hold, invest, and reinvest funds in the trust and to use such funds solely to make payments for such services or property for the benefit of the beneficiaries of the trust,

''(3) the only beneficiaries of such trust are individuals who have entered into contracts described in paragraph (1) to have such services or property provided at their death,

''(4) the only contributions to the trust are contributions by or for the benefit of such beneficiaries,

''(5) the trustee elects the application of this subsection, and

''(6) the trust would (but for the election described in paragraph (5)) be treated as owned by the beneficiaries under subpart E.

''(c) DOLLAR LIMITATION ON CONTRIBUTIONS.—

''(1) IN GENERAL.—The term 'qualified funeral trust' shall not include any trust which accepts contributions by or for the benefit of an individual in excess of $5,000.

''(2) RELATED TRUSTS.—For purposes of paragraph (1), all trusts having trustees which are related persons shall be treated as 1 trust. For purposes of the preceding sentence, persons are related if—

''(A) the relationship between such persons would result in the disallowance of losses under section 267 or 707(b),

''(B) such persons are treated as a single employer under subsection (a) or (b) of section 52, or

''(C) the Secretary determines that treating such persons as related is necessary to prevent avoidance of the purposes of this section.

''(3) INFLATION ADJUSTMENT.—In the case of any contract referred to in subsection (b)(1) which

is entered into during any calendar year after 1996, the dollar amount referred to paragraph (1) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof.

If any dollar amount after being increased under the preceding sentence is not a multiple of $100, such dollar amount shall be rounded to the nearest multiple of $100.

''(d) APPLICATION OF RATE SCHEDULE.—Section 1(e) shall be applied to each qualified funeral trust by treating each beneficiary's interest in each such trust as a separate trust.

''(e) TREATMENT OF AMOUNTS REFUNDED TO BENEFICIARY ON CANCELLATION.—No gain or loss shall be recognized to a beneficiary described in subsection (b)(3) of any qualified funeral trust by reason of any payment from such trust to such beneficiary by reason of cancellation of a contract referred to in subsection (b)(1). If any payment referred to in the preceding sentence consists of property other than money, the basis of such property in

the hands of such beneficiary shall be the same as the trust's basis in such property immediately before the payment.

''(f) SIMPLIFIED REPORTING.—The Secretary may prescribe rules for simplified reporting of all trusts having a single trustee.''

(b) CLERICAL AMENDMENT.—The table of sections for subpart F of part I of subchapter J of chapter 1 is amended by adding at the end the following new item:

''Sec. 684. Treatment of funeral trusts.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

## PART II—ESTATE AND GIFT TAX PROVISIONS

### SEC. 14611. CLARIFICATION OF WAIVER OF CERTAIN RIGHTS OF RECOVERY.

(a) AMENDMENT TO SECTION 2207A.—Paragraph (2) of section 2207A(a) (relating to right of recovery in the case of certain marital deduction property) is amended to read as follows:

''(2) DECEDENT MAY OTHERWISE DIRECT.—Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property.''

(b) AMENDMENT TO SECTION 2207B.—Paragraph (2) of section 2207B(a) (relating to right of recovery where decedent retained interest) is amended to read as follows:

"(2) DECEDENT MAY OTHERWISE DIRECT.—Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to the estates of decedents dying after the date of the enactment of this Act.

**SEC. 14612. ADJUSTMENTS FOR GIFTS WITHIN 3 YEARS OF DECEDENT'S DEATH.**

(a) GENERAL RULE.—Section 2035 is amended to read as follows:

**"SEC. 2035. ADJUSTMENTS FOR CERTAIN GIFTS MADE WITHIN 3 YEARS OF DECEDENT'S DEATH.**

"(a) INCLUSION OF CERTAIN PROPERTY IN GROSS ESTATE.—If—

"(1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during

the 3-year period ending on the date of the decedent's death, and

''(2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,

the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

''(b) INCLUSION OF GIFT TAX ON GIFTS MADE DURING 3 YEARS BEFORE DECEDENT'S DEATH.—The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

''(c) OTHER RULES RELATING TO TRANSFERS WITHIN 3 YEARS OF DEATH.—

''(1) IN GENERAL.—For purposes of—

''(A) section 303(b) (relating to distributions in redemption of stock to pay death taxes),

"(B) section 2032A (relating to special valuation of certain farms, etc., real property), and

"(C) subchapter C of chapter 64 (relating to lien for taxes),

the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the 3-year period ending on the date of the decedent's death.

"(2) COORDINATION WITH SECTION 6166.—An estate shall be treated as meeting the 35 percent of adjusted gross estate requirement of section 6166(a)(1) only if the estate meets such requirement both with and without the application of paragraph (1).

"(3) MARITAL AND SMALL TRANSFERS.—Paragraph (1) shall not apply to any transfer (other than a transfer with respect to a life insurance policy) made during a calendar year to any donee if the decedent was not required by section 6019 (other than by reason of section 6019(2)) to file any gift tax return for such year with respect to transfers to such donee.

''(d) EXCEPTION.—Subsection (a) shall not apply to any bona fide sale for an adequate and full consideration in money or money's worth.

''(e) TREATMENT OF CERTAIN TRANSFERS FROM REVOCABLE TRUSTS.—For purposes of this section and section 2038, any transfer from any portion of a trust during any period that such portion was treated under section 676 as owned by the decedent shall be treated as a transfer made directly by the decedent.''

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter A of chapter 11 is amended by striking ''gifts'' in the item relating to section 2035 and inserting ''certain gifts''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying after the date of the enactment of this Act.

**SEC. 14613. CLARIFICATION OF QUALIFIED TERMINABLE INTEREST RULES.**

(a) GENERAL RULE.—

(1) ESTATE TAX.—Subparagraph (B) of section 2056(b)(7) (defining qualified terminable interest property) is amended by adding at the end the following new clause:

''(vi) TREATMENT OF CERTAIN INCOME DISTRIBUTIONS.—An income inter-

est shall not fail to qualify as a qualified income interest for life solely because income for the period after the last distribution date and on or before the date of the surviving spouse's death is not required to be distributed to the surviving spouse or to the estate of the surviving spouse.''

(2) GIFT TAX.—Paragraph (3) of section 2523(f) is amended by striking ''and (iv)'' and inserting ''(iv), and (vi)''.

(b) CLARIFICATION OF SUBSEQUENT INCLUSIONS.—Section 2044 is amended by adding at the end the following new subsection:

''(d) CLARIFICATION OF INCLUSION OF CERTAIN INCOME.—The amount included in the gross estate under subsection (a) shall include the amount of any income from the property to which this section applies for the period after the last distribution date and on or before the date of the decedent's death if such income is not otherwise included in the decedent's gross estate.''

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to the estates of decedents dying, and gifts made, after the date of the enactment of this Act.

(2) APPLICATION OF SECTION 2044 TO TRANSFERS BEFORE DATE OF ENACTMENT.—In the case of the estate of any decedent dying after the date of the enactment of this Act, if there was a transfer of property on or before such date—

(A) such property shall not be included in the gross estate of the decedent under section 2044 of the Internal Revenue Code of 1986 if no prior marital deduction was allowed with respect to such a transfer of such property to the decedent, but

(B) such property shall be so included if such a deduction was allowed.

**SEC. 14614. TRANSITIONAL RULE UNDER SECTION 2056A.**

(a) GENERAL RULE.—In the case of any trust created under an instrument executed before the date of the enactment of the Revenue Reconciliation Act of 1990, such trust shall be treated as meeting the requirements of paragraph (1) of section 2056A(a) of the Internal Revenue Code of 1986 if the trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall take effect as if included in the provisions of section 11702(g) of the Revenue Reconciliation Act of 1990.

**SEC. 14615. OPPORTUNITY TO CORRECT CERTAIN FAILURES UNDER SECTION 2032A.**

(a) GENERAL RULE.—Paragraph (3) of section 2032A(d) (relating to modification of election and agreement to be permitted) is amended to read as follows:

''(3) MODIFICATION OF ELECTION AND AGREEMENT TO BE PERMITTED.—The Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under paragraph (1) (and submits the agreement referred to in paragraph (2)) within the time prescribed therefor, but—

''(A) the notice of election, as filed, does not contain all required information, or

''(B) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or signatures.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to the estates of decedents dying after the date of the enactment of this Act.

**SEC. 14616. UNIFIED CREDIT OF DECEDENT INCREASED BY UNIFIED CREDIT OF SPOUSE USED ON SPLIT GIFT INCLUDED IN DECEDENT'S GROSS ESTATE.**

(a) IN GENERAL.—Section 2010 (relating to unified credit against estate tax) is amended by adding at the end the following new subsection:

''(d) TREATMENT OF UNIFIED CREDIT USED BY SPOUSE ON SPLIT-GIFT INCLUDED IN DECEDENT'S GROSS ESTATE.—If—

''(1) the decedent was the donor of any gift one-half of which was considered under section 2513 as made by the decedent's spouse, and

''(2) the amount of such gift is includible in the gross estate of the decedent by reason of section 2035, 2036, 2037, or 2038,

the amount of the credit allowable by subsection (a) to the estate of the decedent shall be increased by the amount of the unified credit allowed against the tax imposed by section 2501 on the amount of such gift considered under section 2513 as made by such spouse.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to gifts made after the date of the enactment of this Act.

**SEC. 14617. REFORMATION OF DEFECTIVE BEQUESTS, ETC., TO SPOUSE OF DECEDENT.**

(a) IN GENERAL.—Subsection (b) of section 2056 (relating to bequests, etc., to surviving spouse) is amended by adding at the end the following new paragraph:

''(11) REFORMATIONS PERMITTED.—

''(A) IN GENERAL.—In the case of any interest in property with respect to which a deduction would be allowable under subsection (a) but for a provision of this subsection, if—

''(i) the surviving spouse is entitled to all of the income from the property for life,

''(ii) no person other than such spouse is entitled to any distribution of such property during such spouse's life, and

''(iii) there is a change of a governing instrument (by reformation, amendment, construction, or otherwise) as of the applicable date which results in the satisfaction of the requirements of such provision as of the date of the decedent's death,

the determination of whether such deduction is allowable shall be made as of the applicable date.

''(B) SPECIAL RULE WHERE TIMELY COMMENCEMENT OF REFORMATION.—Clauses (i)

and (ii) of subparagraph (A) shall not apply to any interest if, not later than the date described in subparagraph (C)(i), a judicial proceeding is commenced to change such interest into an interest which satisfies the requirements of the provision by reason of which (but for this paragraph) a deduction would not be allowable under subsection (a) for such interest.

''(C) APPLICABLE DATE.—For purposes of subparagraph (A), the term 'applicable date' means—

''(i) the last date (including extensions) for filing the return of tax imposed by this chapter, or

''(ii) if a judicial proceeding is commenced to comply with such provision, the time when the changes pursuant to such proceeding are made.

''(D) SPECIAL RULE.—If the change referred to in subparagraph (A)(iii) is to qualify the passage of the interest under paragraph (7), subparagraph (A) shall apply only if the election under subparagraph (B) thereof is made.

"(E) STATUTE OF LIMITATIONS.—If a judicial proceeding described in subparagraph (C)(ii) is commenced with respect to any interest, the period for assessing any deficiency of tax attributable to such interest shall not expire before the date 1 year after the date on which the Secretary is notified that such provision has been complied with or that such proceeding has been terminated."

(b) COMPARABLE RULE FOR GIFT TAX.—Section 2523 (relating to gift to spouse) is amended by adding at the end the following new subsection:

"(j) REFORMATIONS PERMITTED.—Rules similar to the rules of section 2056(b)(11) shall apply for purposes of this section."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying, and gifts made, after the date of the enactment of this Act.

**SEC. 14618. GIFTS MAY NOT BE REVALUED FOR ESTATE TAX PURPOSES AFTER EXPIRATION OF STATUTE OF LIMITATIONS.**

(a) IN GENERAL.—Section 2001 (relating to imposition and rate of estate tax) is amended by adding at the end the following new subsection:

"(f) VALUATION OF GIFTS.—If—

"(1) the time has expired within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)), and

"(2) the value of such gift is shown on the return for such preceding calendar period or is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such gift,

the value of such gift shall, for purposes of computing the tax under this chapter, be the value of such gift as finally determined for purposes of chapter 12."

(b) MODIFICATION OF APPLICATION OF STATUTE OF LIMITATIONS.—Paragraph (9) of section 6501(c) is amended to read as follows:

"(9) GIFT TAX ON CERTAIN GIFTS NOT SHOWN ON RETURN.—If any gift of property the value of which (or any increase in taxable gifts required under section 2701(d)) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assess-

ment, at any time. The preceding sentence shall not apply to any item which is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item. The value of any item which is so disclosed may not be redetermined by the Secretary after the expiration of the period under subsection (a).''

(c) DECLARATORY JUDGMENT PROCEDURE FOR DETERMINING VALUE OF GIFT.—

(1) IN GENERAL.—Part IV of subchapter C of chapter 76 is amended by inserting after section 7476 the following new section:

**''SEC. 7477. DECLARATORY JUDGMENTS RELATING TO VALUE OF CERTAIN GIFTS.**

''(a) CREATION OF REMEDY.—In a case of an actual controversy involving a determination by the Secretary of the value of any gift shown on the return of tax imposed by chapter 12 or disclosed on such return or in any statement attached to such return, upon the filing of an appropriate pleading, the Tax Court may make a declaration of the value of such gift. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

''(b) LIMITATIONS.—

"(1) PETITIONER.—A pleading may be filed under this section only by the donor.

"(2) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—The court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted all available administrative remedies within the Internal Revenue Service.

"(3) TIME FOR BRINGING ACTION.—If the Secretary sends by certified or registered mail notice of his determination as described in subsection (a) to the petitioner, no proceeding may be initiated under this section unless the pleading is filed before the 91st day after the date of such mailing."

(2) CLERICAL AMENDMENT.—The table of sections for such part IV is amended by inserting after the item relating to section 7476 the following new item:

"Sec. 7477. Declaratory judgments relating to value of certain gifts."

(d) CONFORMING AMENDMENT.—Subsection (c) of section 2504 is amended by striking ", and if a tax under this chapter or under corresponding provisions of prior laws has been assessed or paid for such preceding calendar period".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a) and (c) shall apply to gifts made after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to gifts made in calendar years ending after the date of the enactment of this Act.

**SEC. 14619. CLARIFICATIONS RELATING TO DISCLAIMERS.**

(a) PARTIAL TRANSFER-TYPE DISCLAIMERS PERMITTED.—Paragraph (3) of section 2518(c) (relating to certain transfers treated as disclaimers) is amended by inserting ''(or an undivided portion of such interest)'' after ''entire interest in the property''.

(b) RETENTION OF INTEREST BY DECEDENT'S SPOUSE PERMITTED IN TRANSFER-TYPE DISCLAIMERS.—Paragraph (3) of section 2518(c) is amended by adding at the end the following new flush sentence:

''For purposes of the preceding sentence, a written transfer by the spouse of the decedent of property to a trust shall not fail to be treated as a transfer of such spouse's interest in such property by reason of such spouse having an interest in such trust.''

(c) DISCLAIMERS ARE EFFECTIVE FOR INCOME TAX PURPOSES.—Subsection (a) of section 2518 is amended

by inserting ''and subtitle A'' after ''this subtitle'' each place it appears.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers creating an interest in the person disclaiming, and disclaimers, made after the date of the enactment of this Act.

**SEC. 14620. CLARIFICATION OF TREATMENT OF SURVIVOR ANNUITIES UNDER QUALIFIED TERMINABLE INTEREST RULES.**

(a) IN GENERAL.—Subparagraph (C) of section 2056(b)(7) is amended by inserting ''(or, in the case of an interest in an annuity arising under the community property laws of a State, included in the gross estate of the decedent under section 2033)'' after ''section 2039''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

**SEC. 14621. TREATMENT UNDER QUALIFIED DOMESTIC TRUST RULES OF FORMS OF OWNERSHIP WHICH ARE NOT TRUSTS.**

(a) IN GENERAL.—Subsection (c) of section 2056A (defining qualified domestic trust) is amended by adding at the end the following new paragraph:

''(3) TRUST.—To the extent provided in regulations prescribed by the Secretary, the term 'trust'

includes other arrangements which have substantially the same effect as a trust.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

**SEC. 14622. AUTHORITY TO WAIVE REQUIREMENT OF UNITED STATES TRUSTEE FOR QUALIFIED DOMESTIC TRUSTS.**

(a) IN GENERAL.—Subparagraph (A) of section 2056A(a)(1) is amended by inserting ''except as provided in regulations prescribed by the Secretary,'' before ''requires''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

## PART III—GENERATION-SKIPPING TAX PROVISIONS

**SEC. 14631. SEVERING OF TRUSTS HOLDING PROPERTY HAVING AN INCLUSION RATIO OF GREATER THAN ZERO.**

(a) IN GENERAL.—Subsection (a) of section 2642 (relating to inclusion ratio) is amended by adding at the end the following new paragraph:

"(3) SEVERING OF TRUSTS HOLDING PROPERTY HAVING AN INCLUSION RATIO OF GREATER THAN ZERO.—

"(A) IN GENERAL.—If a trust holding property having an inclusion ratio of greater than zero is severed in a qualified severance, at the election of the trustee of such trust, the trusts resulting from such severance shall be treated as separate trusts for purposes of this chapter.

"(B) QUALIFIED SEVERANCE.—For purposes of subparagraph (A), the term 'qualified severance' means the creation of 2 trusts from a single trust if each property held by the single trust was divided between the 2 created trusts such that one trust received an interest in each such property equal to the applicable fraction of the single trust. Such term includes any other severance permitted under regulations prescribed by the Secretary.

"(C) ELECTION.—The election under this paragraph shall be made at the time prescribed by the Secretary. Such an election, once made, shall be irrevocable."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to severances after the date of the enactment of this Act.

**SEC. 14632. CLARIFICATION OF WHO IS TRANSFEROR WHERE SUBSEQUENT GIFT BY REASON OF POWER OF APPOINTMENT.**

(a) IN GENERAL.—Paragraph (1) of section 2652(a) (defining transferor) is amended by adding at the end the following new sentence: ''A transferor described in subparagraph (A) shall not be treated as the transferor of any property if another individual is treated as the transferor of such property under subparagraph (B) by reason of the exercise, release, or lapse of a general power of appointment with respect to such property.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to the exercise, release, or lapse of a general power of appointment after the date of the enactment of this Act.

**SEC. 14633. TAXABLE TERMINATION NOT TO INCLUDE DIRECT SKIPS.**

(a) IN GENERAL.—Paragraph (1) of section 2612(a) (defining taxable termination) is amended by adding at the end the following new flush sentence:

''Such term shall not include a direct skip.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to generation-skipping transfers (as defined in section 2611 of the Internal Revenue Code of 1986) after the date of the enactment of this Act.

**SEC. 14634. EXPANSION OF EXCEPTION FROM GENERATION-SKIPPING TRANSFER TAX FOR TRANSFERS TO INDIVIDUALS WITH DECEASED PARENTS.**

(a) IN GENERAL.—Section 2651 (relating to generation assignment) is amended by redesignating subsection (e) as subsection (f), and by inserting after subsection (d) the following new subsection:

''(e) SPECIAL RULE FOR PERSONS WITH A DECEASED PARENT.—

''(1) IN GENERAL.—For purposes of determining whether any transfer is a generation-skipping transfer, if—

''(A) an individual is a descendant of a parent of the transferor (or the transferor's spouse or former spouse), and

''(B) such individual's parent who is a lineal descendant of the parent of the transferor (or the transferor's spouse or former spouse) is dead at the time the transfer (from which an interest of such individual is established or de-

rived) is subject to a tax imposed by chapter 11 or 12 upon the transferor (and if there shall be more than 1 such time, then at the earliest such time),

such individual shall be treated as if such individual were a member of the generation which is 1 generation below the lower of the transferor's generation or the generation assignment of the youngest living ancestor of such individual who is also a descendant of the parent of the transferor (or the transferor's spouse or former spouse), and the generation assignment of any descendant of such individual shall be adjusted accordingly.

''(2) LIMITED APPLICATION OF SUBSECTION TO COLLATERAL HEIRS.—This subsection shall not apply with respect to a transfer to any individual who is not a lineal descendant of the transferor (or the transferor's spouse or former spouse) if, at the time of the transfer, such transferor has any living lineal descendant.''

(b) CONFORMING AMENDMENTS.—

(1) Section 2612(c) (defining direct skip) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(2) Section 2612(c)(2) (as so redesignated) is amended by striking ''section 2651(e)(2)'' and inserting ''section 2651(f)(2)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to terminations, distributions, and transfers occurring after the date of the enactment of this Act.

# Subtitle G—Excise Tax Simplification

## PART I—PROVISIONS RELATED TO DISTILLED SPIRITS, WINES, AND BEER

### SEC. 14701. CREDIT OR REFUND FOR IMPORTED BOTTLED DISTILLED SPIRITS RETURNED TO DISTILLED SPIRITS PLANT.

(a) IN GENERAL.—Paragraph (1) of section 5008(c) (relating to distilled spirits returned to bonded premises) is amended by striking ''withdrawn from bonded premises on payment or determination of tax'' and inserting ''on which tax has been determined or paid''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

**SEC. 14702. AUTHORITY TO CANCEL OR CREDIT EXPORT BONDS WITHOUT SUBMISSION OF RECORDS.**

(a) IN GENERAL.—Subsection (c) of section 5175 (relating to export bonds) is amended by striking ''on the submission of'' and all that follows and inserting ''if there is such proof of exportation as the Secretary may by regulations require.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

**SEC. 14703. REPEAL OF REQUIRED MAINTENANCE OF RECORDS ON PREMISES OF DISTILLED SPIRITS PLANT.**

(a) IN GENERAL.—Subsection (c) of section 5207 (relating to records and reports) is amended by striking ''shall be kept on the premises where the operations covered by the record are carried on and''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

**SEC. 14704. FERMENTED MATERIAL FROM ANY BREWERY MAY BE RECEIVED AT A DISTILLED SPIRITS PLANT.**

(a) IN GENERAL.—Paragraph (2) of section 5222(b) (relating to production, receipt, removal, and use of distilling materials) is amended to read as follows:

''(2) beer conveyed without payment of tax from brewery premises, beer which has been lawfully removed from brewery premises upon determination of tax, or''.

(b) CLARIFICATION OF AUTHORITY TO PERMIT REMOVAL OF BEER WITHOUT PAYMENT OF TAX FOR USE AS DISTILLING MATERIAL.—Section 5053 (relating to exemptions) is amended by redesignating subsection (f) as subsection (i) and by inserting after subsection (e) the following new subsection:

''(f) REMOVAL FOR USE AS DISTILLING MATERIAL.—Subject to such regulations as the Secretary may prescribe, beer may be removed from a brewery without payment of tax to any distilled spirits plant for use as distilling material.''

(c) CLARIFICATION OF REFUND AND CREDIT OF TAX.—Section 5056 (relating to refund and credit of tax, or relief from liability) is amended—

(1) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) BEER RECEIVED AT A DISTILLED SPIRITS PLANT.—Any tax paid by any brewer on beer produced in the United States may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, under regulations as the Secretary may prescribe, if such beer is received on the bonded premises of a distilled spirits plant pursuant to the provisions of section 5222(b)(2), for use in the production of distilled spirits.'', and

(2) by striking ''or rendering unmerchantable'' in subsection (d) (as so redesignated) and inserting ''rendering unmerchantable, or receipt on the bonded premises of a distilled spirits plant''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

**SEC. 14705. REPEAL OF REQUIREMENT FOR WHOLESALE DEALERS IN LIQUORS TO POST SIGN.**

(a) IN GENERAL.—Section 5115 (relating to sign required on premises) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 5681 is amended by striking ‘‘, and every wholesale dealer in liquors,’’ and by striking ‘‘section 5115(a) or’’.

(2) Subsection (c) of section 5681 is amended—

(A) by striking ‘‘or wholesale liquor establishment, on which no sign required by section 5115(a) or’’ and inserting ‘‘on which no sign required by’’, and

(B) by striking ‘‘or wholesale liquor establishment, or who’’ and inserting ‘‘or who’’.

(3) The table of sections for subpart D of part II of subchapter A of chapter 51 is amended by striking the item relating to section 5115.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

**SEC. 14706. REFUND OF TAX ON WINE RETURNED TO BOND NOT LIMITED TO UNMERCHANTABLE WINE.**

(a) IN GENERAL.—Subsection (a) of section 5044 (relating to refund of tax on unmerchantable wine) is amended by striking ‘‘as unmerchantable’’.

(b) CONFORMING AMENDMENTS.—

(1) Section 5361 is amended by striking ‘‘unmerchantable’’.

(2) The section heading for section 5044 is amended by striking ''**UNMERCHANTABLE**''.

(3) The item relating to section 5044 in the table of sections for subpart C of part I of subchapter A of chapter 51 is amended by striking ''unmerchantable''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

**SEC. 14707. USE OF ADDITIONAL AMELIORATING MATERIAL IN CERTAIN WINES.**

(a) IN GENERAL.—Subparagraph (D) of section 5384(b)(2) (relating to ameliorated fruit and berry wines) is amended by striking ''loganberries, currants, or gooseberries,'' and inserting ''any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry)''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

**SEC. 14708. DOMESTICALLY PRODUCED BEER MAY BE WITHDRAWN FREE OF TAX FOR USE OF FOREIGN EMBASSIES, LEGATIONS, ETC.**

(a) IN GENERAL.—Section 5053 (relating to exemptions) is amended by inserting after subsection (f) the following new subsection:

''(g) REMOVALS FOR USE OF FOREIGN EMBASSIES, LEGATIONS, ETC.—

''(1) IN GENERAL.—Subject to such regulations as the Secretary may prescribe—

''(A) beer may be withdrawn from the brewery without payment of tax for transfer to any customs bonded warehouse for entry pending withdrawal therefrom as provided in subparagraph (B), and

''(B) beer entered into any customs bonded warehouse under subparagraph (A) may be withdrawn for consumption in the United States by, and for the official and family use of, such foreign governments, organizations, and individuals as are entitled to withdraw imported beer from such warehouses free of tax.

Beer transferred to any customs bonded warehouse under subparagraph (A) shall be entered, stored, and accounted for in such warehouse under such regulations and bonds as the Secretary may pre-

scribe, and may be withdrawn therefrom by such governments, organizations, and individuals free of tax under the same conditions and procedures as imported beer.

''(2) OTHER RULES TO APPLY.—Rules similar to the rules of paragraphs (2) and (3) of section 5362(e) of such section shall apply for purposes of this subsection.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

**SEC. 14709. BEER MAY BE WITHDRAWN FREE OF TAX FOR DESTRUCTION.**

(a) IN GENERAL.—Section 5053 is amended by inserting after subsection (g) the following new subsection:

''(h) REMOVALS FOR DESTRUCTION.—Subject to such regulations as the Secretary may prescribe, beer may be removed from the brewery without payment of tax for destruction.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

**SEC. 14710. AUTHORITY TO ALLOW DRAWBACK ON EXPORTED BEER WITHOUT SUBMISSION OF RECORDS.**

(a) IN GENERAL.—The first sentence of section 5055 (relating to drawback of tax on beer) is amended by striking ''found to have been paid'' and all that follows and inserting ''paid on such beer if there is such proof of exportation as the Secretary may by regulations require.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

**SEC. 14711. TRANSFER TO BREWERY OF BEER IMPORTED IN BULK WITHOUT PAYMENT OF TAX.**

(a) IN GENERAL.—Part II of subchapter G of chapter 51 is amended by adding at the end the following new section:

**''SEC. 5418. BEER IMPORTED IN BULK.**

''Beer imported or brought into the United States in bulk containers may, under such regulations as the Secretary may prescribe, be withdrawn from customs custody and transferred in such bulk containers to the premises of a brewery without payment of the internal revenue tax imposed on such beer. The proprietor of a brewery to which such beer is transferred shall become liable for the tax on the beer withdrawn from customs custody under

this section upon release of the beer from customs custody, and the importer, or the person bringing such beer into the United States, shall thereupon be relieved of the liability for such tax.''

(b) CLERICAL AMENDMENT.—The table of sections for such part II is amended by adding at the end the following new item:

''Sec. 5418. Beer imported in bulk.''

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

## PART II—CONSOLIDATION OF TAXES ON AVIATION GASOLINE

### SEC. 14721. CONSOLIDATION OF TAXES ON AVIATION GASOLINE.

(a) IN GENERAL.—Subparagraph (A) of section 4081(a)(2) (relating to imposition of tax on gasoline and diesel fuel) is amended by redesignating clause (ii) as clause (iii) and by striking clause (i) and inserting the following:

''(i) in the case of gasoline other than aviation gasoline, 18.3 cents per gallon,

''(ii) in the case of aviation gasoline, 19.3 cents per gallon, and''.

(b) TERMINATION.—Subsection (d) of section 4081 is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

''(2) AVIATION GASOLINE.—On and after January 1, 1996, the rate specified in subsection (a)(2)(A)(ii) shall be 4.3 cents per gallon.''

(c) REPEAL OF RETAIL LEVEL TAX.—

(1) Subsection (c) of section 4041 is amended by striking paragraphs (2) and (3) and by redesignating paragraphs (4) and (5) as paragraphs (2) and (3), respectively.

(2) Paragraph (3) of section 4041(c), as redesignated by paragraph (1), is amended by striking ''paragraphs (1) and (2)'' and inserting ''paragraph (1)''.

(d) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 4041(k) is amended by adding ''and'' at the end of subparagraph (A), by striking '', and'' at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(2) Paragraph (1) of section 4081(d) is amended by striking ''each rate of tax specified in subsection (a)(2)(A)'' and inserting ''the rates of tax

specified in clauses (i) and (iii) of subsection (a)(2)(A)''.

(3) Sections 6421(f)(2)(A) and 9502(f)(1)(A) are each amended by striking ''section 4041(c)(4)'' and inserting ''section 4041(c)(2)''.

(4) Paragraph (2) of section 9502(b) is amended by striking ''14 cents'' and inserting ''15 cents''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996.

(f) FLOOR STOCKS TAX.—

(1) IMPOSITION OF TAX.—In the case of aviation gasoline on which tax was imposed under section 4081 of the Internal Revenue Code of 1986 before January 1, 1996, and which is held on such date by any person, there is hereby imposed a floor stocks tax of 1 cent per gallon of such gasoline.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding aviation gasoline on January 1, 1996, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before June 30, 1996.

(3) DEFINITIONS.—For purposes of this subsection:

(A) HELD BY A PERSON.—Gasoline shall be considered as ''held by a person'' if title thereto has passed to such person (whether or not delivery to the person has been made).

(B) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury or his delegate.

(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to gasoline held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 of such Code is allowable for such use.

(5) EXCEPTION FOR FUEL HELD IN AIRCRAFT TANK.—No tax shall be imposed by paragraph (1) on aviation gasoline held in the tank of an aircraft.

(6) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on aviation gasoline held on January 1, 1996, by any person if the

aggregate amount of aviation gasoline held by such person on such date does not exceed 6,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4) or (5).

(C) CONTROLLED GROUPS.—

(i) CORPORATIONS.—In the case of a controlled group, the 6,000 gallon amount in subparagraph (A) shall be apportioned among the component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term ''controlled group'' has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase ''more than 50 percent'' shall be substituted for the phrase

''at least 80 percent'' each place it appears in such subsection.

(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group under common control where 1 or more of the members is not a corporation.

(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081.

## PART III—OTHER EXCISE TAX PROVISIONS

### SEC. 14731. AUTHORITY TO GRANT EXEMPTIONS FROM REGISTRATION REQUIREMENTS.

(a) IN GENERAL.—The first sentence of section 4222 (relating to registration) is amended to read as follows: ''Except as provided in subsection (b), section 4221 shall not apply with respect to the sale of any article by or to

any person who is required by the Secretary to be registered under this section and who is not so registered.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales after the 180th day after the date of the enactment of this Act.

**SEC. 14732. CERTAIN COMBINATIONS NOT TREATED AS MANUFACTURE UNDER RETAIL SALES TAX ON HEAVY TRUCKS.**

(a) IN GENERAL.—Paragraph (2) of section 4052(c) (relating to certain combinations not treated as manufacture) is amended by striking ''or wood or metal floor'' and inserting ''wood or metal floor, or a power take-off and dump body''.

(b) REMOVAL OF FIFTH WHEEL.—Paragraph (1) of section 4052(c) is amended by inserting before the period ''or the removal of any coupling device (including any fifth wheel)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

**SEC. 14733. EXEMPTION FROM DIESEL FUEL DYEING REQUIREMENTS WITH RESPECT TO CERTAIN STATES.**

(a) IN GENERAL.—Section 4082 (relating to exemptions for diesel fuel) is amended by redesignating sub-

sections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

''(c) EXCEPTION TO DYEING REQUIREMENTS.—Paragraph (2) of subsection (a) shall not apply with respect to any diesel fuel—

''(1) removed, entered, or sold in a State for ultimate sale or use in an area of such State which is exempted from the fuel dyeing requirements under subsection (i) of section 211 of the Clean Air Act (as in effect on the date of the enactment of this subsection) by the Administrator of the Environmental Protection Agency under paragraph (4) of such subsection, and

''(2) the use of which is certified pursuant to regulations issued by the Secretary.''

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first calendar quarter beginning after the date of the enactment of this Act.

**SEC. 14734. REPEAL OF EXPIRED PROVISIONS.**

(a) PIGGY-BACK TRAILERS.—Section 4051 is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(b) DEEP SEABED MINING.—

(1) Subchapter F of chapter 36 (relating to tax on removal of hard mineral resources from deep seabed) is hereby repealed.

(2) The table of subchapters for chapter 36 is amended by striking the item relating to subchapter F.

# Subtitle H—Administrative Provisions

## PART I—GENERAL PROVISIONS

### SEC. 14801. REPEAL OF AUTHORITY TO DISCLOSE WHETHER PROSPECTIVE JUROR HAS BEEN AUDITED.

(a) IN GENERAL.—Subsection (h) of section 6103 (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by striking paragraph (5) and by redesignating paragraph (6) as paragraph (5).

(b) CONFORMING AMENDMENT.—Paragraph (4) of section 6103(p) is amended by striking ''(h)(6)'' each place it appears and inserting ''(h)(5)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to judicial proceedings pending on, or commenced after, the date of the enactment of this Act.

**SEC. 14802. CLARIFICATION OF STATUTE OF LIMITATIONS.**

(a) IN GENERAL.—Subsection (a) of section 6501 (relating to limitations on assessment and collection) is amended by adding at the end the following new sentence: ''For purposes of this chapter, the term 'return' means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 14803. CERTAIN NOTICES DISREGARDED UNDER PROVISION INCREASING INTEREST RATE ON LARGE CORPORATE UNDERPAYMENTS.**

(a) GENERAL RULE.—Subparagraph (B) of section 6621(c)(2) (defining applicable date) is amended by adding at the end the following new clause:

''(iii) EXCEPTION FOR LETTERS OR NOTICES INVOLVING SMALL AMOUNTS.—For purposes of this paragraph, any letter or notice shall be disregarded if the amount of the deficiency or proposed deficiency (or the assessment or proposed assessment) set forth in such letter or notice is not greater than $100,000 (determined

by not taking into account any interest, penalties, or additions to tax).''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of determining interest for periods after December 31, 1995.

**SEC. 14804. CLARIFICATION OF AUTHORITY TO WITHHOLD PUERTO RICO INCOME TAXES FROM SALARIES OF FEDERAL EMPLOYEES.**

(a) IN GENERAL.—Subsection (c) of section 5517 of title 5, United States Code, is amended by striking ''or territory or possession'' and inserting '', territory, possession, or commonwealth''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

## PART II—TAX COURT PROCEDURES

**SEC. 14811. OVERPAYMENT DETERMINATIONS OF TAX COURT.**

(a) APPEAL OF ORDER.—Paragraph (2) of section 6512(b) (relating to jurisdiction to enforce) is amended by adding at the end the following new sentence: ''An order of the Tax Court disposing of a motion under this paragraph shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.''

(b) DENIAL OF JURISDICTION REGARDING CERTAIN CREDITS AND REDUCTIONS.—Subsection (b) of section 6512 (relating to overpayment determined by Tax Court) is amended by adding at the end the following new paragraph:

"(4) DENIAL OF JURISDICTION REGARDING CERTAIN CREDITS AND REDUCTIONS.—The Tax Court shall have no jurisdiction under this subsection to restrain or review any credit or reduction made by the Secretary under section 6402."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

**SEC. 14812. AWARDING OF ADMINISTRATIVE COSTS.**

(a) RIGHT TO APPEAL TAX COURT DECISION.—Subsection (f) of section 7430 (relating to right of appeal) is amended by adding at the end the following new paragraph:

"(3) APPEAL OF TAX COURT DECISION.—An order of the Tax Court disposing of a petition under paragraph (2) shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order."

(b) PERIOD FOR APPLYING TO IRS FOR COSTS.—Subsection (b) of section 7430 (relating to limitations) is

amended by adding at the end the following new paragraph:

"(5) PERIOD FOR APPLYING TO IRS FOR ADMINISTRATIVE COSTS.—An award may be made under subsection (a) by the Internal Revenue Service for reasonable administrative costs only if the prevailing party files an application with the Internal Revenue Service for such costs before the 91st day after the date on which the final decision of the Internal Revenue Service as to the determination of the tax, interest, or penalty is mailed to such party."

(c) PERIOD FOR PETITIONING OF TAX COURT FOR REVIEW OF DENIAL OF COSTS.—Paragraph (2) of section 7430(f) (relating to right of appeal) is amended—

(1) by striking "appeal to" and inserting "the filing of a petition for review with", and

(2) by adding at the end the following new sentence: "If the Secretary sends by certified or registered mail a notice of such decision to the petitioner, no proceeding in the Tax Court may be initiated under this paragraph unless such petition is filed before the 91st day after the date of such mailing."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to civil actions or proceedings commenced after the date of the enactment of this Act.

**SEC. 14813. REDETERMINATION OF INTEREST PURSUANT TO MOTION.**

(a) IN GENERAL.—Paragraph (3) of section 7481(c) (relating to jurisdiction over interest determinations) is amended by striking ''petition'' and inserting ''motion''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

**SEC. 14814. APPLICATION OF NET WORTH REQUIREMENT FOR AWARDS OF LITIGATION COSTS.**

(a) IN GENERAL.—Paragraph (4) of section 7430(c) (defining prevailing party) is amended by adding at the end the following new subparagraph:

''(C) SPECIAL RULES FOR APPLYING NET WORTH REQUIREMENT.—In applying the requirements of section 2412(d)(2)(B) of title 28, United States Code, for purposes of subparagraph (A)(iii) of this paragraph—

''(i) the net worth limitation in clause (i) of such section shall apply to—

''(I) an estate but shall be determined as of the date of the decedent's death, and

''(II) a trust but shall be determined as of the last day of the taxable year involved in the proceeding, and

''(ii) individuals filing a joint return shall be treated as 1 individual for purposes of clause (i) of such section, except in the case of a spouse relieved of liability under section 6013(e).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to proceedings commenced after the date of the enactment of this Act.

## PART III—AUTHORITY FOR CERTAIN COOPERATIVE AGREEMENTS

### SEC. 14821. COOPERATIVE AGREEMENTS WITH STATE TAX AUTHORITIES.

(a) GENERAL RULE.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

### ''SEC. 7524. COOPERATIVE AGREEMENTS WITH STATE TAX AUTHORITIES.

''(a) AUTHORIZATION OF AGREEMENTS.—The Secretary is hereby authorized to enter into cooperative agree-

ments with State tax authorities for purposes of enhancing joint tax administration. Such agreements may provide for—

''(1) joint filing of Federal and State income tax returns,

''(2) single processing of such returns,

''(3) joint collection of taxes (other than Federal income taxes), and

''(4) such other provisions as may enhance joint tax administration.

''(b) SERVICES ON REIMBURSABLE BASIS.—Any agreement under subsection (a) may require reimbursement for services provided by either party to the agreement.

''(c) AVAILABILITY OF FUNDS.—Any funds appropriated for purposes of the administration of this title shall be available for purposes of carrying out the Secretary's responsibility under an agreement entered into under subsection (a). Any reimbursement received pursuant to such an agreement shall be credited to the amount so appropriated.

''(d) STATE TAX AUTHORITY.—For purposes of this section, the term 'State tax authority' means agency, body, or commission referred to in section 6103(d)(1).''

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

"Sec. 7524. Cooperative agreements with State tax authorities."

# TITLE XV—PRESERVING, PROTECTING, AND STRENGTHENING MEDICARE

H.R. 2425 as passed the House of Representatives is hereby enacted into law.

# TITLE XVI—TRANSFORMATION OF THE MEDICAID PROGRAM

**SEC. 16000. SHORT TITLE.**

This title may be cited as the "Medicaid Transformation Act of 1995".

**SEC. 16001. TRANSFORMATION OF MEDICAID PROGRAM.**

The Social Security Act is amended by adding at the end the following new title:

"TITLE XXI—MEDIGRANT PROGRAM FOR LOW-INCOME INDIVIDUALS AND FAMILIES

"TABLE OF CONTENTS OF TITLE

"Sec. 2100. Purpose; State MediGrant plans.

"PART A—OBJECTIVES, GOALS, AND PERFORMANCE UNDER STATE PLANS

"Sec. 2101. Description of strategic objectives and performance goals.
"Sec. 2102. Annual reports.
"Sec. 2103. Periodic, independent evaluations.
"Sec. 2104. Description of process for MediGrant plan development.
"Sec. 2105. Consultation in MediGrant plan development.
"Sec. 2106. MediGrant Task Force.

"PART B—ELIGIBILITY, BENEFITS, AND SET-ASIDES

''Sec. 2111. General description of eligibility and benefits.
''Sec. 2112. Set-asides of funds for population groups.
''Sec. 2113. Premiums and cost-sharing.
''Sec. 2114. Description of process for developing capitation payment rates.
''Sec. 2115. Preventing spousal impoverishment.
''Sec. 2116. Construction.
''Sec. 2117. Limitations on causes of action.

''PART C—PAYMENTS TO STATES

''Sec. 2121. Allotment of funds among States.
''Sec. 2122. Payments to States.
''Sec. 2123. Limitation on use of funds; disallowance.

''PART D—PROGRAM INTEGRITY AND QUALITY

''Sec. 2131. Use of audits to achieve fiscal integrity.
''Sec. 2132. Fraud prevention program.
''Sec. 2133. Information concerning sanctions taken by State licensing authorities against health care practitioners and providers.
''Sec. 2134. State MediGrant fraud control units.
''Sec. 2135. Recoveries from third parties and others.
''Sec. 2136. Assignment of rights of payment.
''Sec. 2137. Quality assurance standards for nursing facilities.
''Sec. 2138. Other provisions promoting program integrity.

''PART E—ESTABLISHMENT AND AMENDMENT OF STATE MEDIGRANT PLANS

''Sec. 2151. Submittal and approval of MediGrant plans.
''Sec. 2152. Submittal and approval of plan amendments.
''Sec. 2153. Process for State withdrawal from program.
''Sec. 2154. Sanctions for substantial noncompliance.
''Sec. 2155. Secretarial authority.

''PART F—GENERAL PROVISIONS

''Sec. 2171. Definitions.
''Sec. 2172. Treatment of territories.
''Sec. 2173. Description of treatment of Indian Health Service facilities.
''Sec. 2174. Application of certain general provisions.
''Sec. 2175. MediGrant master drug rebate agreements.

1 **''SEC. 2100. PURPOSE; STATE MEDIGRANT PLANS.**

2 ''(a) PURPOSE.—The purpose of this title is to pro-
3 vide block grants to States to enable them to provide medi-
4 cal assistance to low-income individuals and families in a
5 more effective, efficient, and responsive manner.

6 ''(b) STATE PLAN REQUIRED.—A State is not eligible
7 for payment under section 2122 of this title unless the

State has submitted to the Secretary under part E a plan (in this title referred to as a 'MediGrant plan') that—

''(1) sets forth how the State intends to use the funds provided under this title to provide medical assistance to needy individuals and families consistent with the provisions of this title, and

''(2) is approved under such part.

''(c) CONTINUED APPROVAL.—An approved MediGrant plan shall continue in effect unless and until—

''(1) the State amends the plan under section 2152,

''(2) the State terminates participation under this title under section 2153, or

''(3) the Secretary finds substantial noncompliance of the plan with the requirements of this title under section 2154.

''(d) STATE ENTITLEMENT.—This title constitutes budget authority in advance of appropriations Acts, and represents the obligation of the Federal Government to provide for the payment to States of amounts provided under part C.

## ''PART A—OBJECTIVES, GOALS, AND PERFORMANCE UNDER STATE PLANS

### "SEC. 2101. DESCRIPTION OF STRATEGIC OBJECTIVES AND PERFORMANCE GOALS.

''(a) DESCRIPTION.—A MediGrant plan shall include a description of the strategic objectives and performance goals the State has established for providing health care services to low-income populations under this title, including a general description of the manner in which the plan is designed to meet these objectives and goals.

''(b) CERTAIN OBJECTIVES AND GOALS REQUIRED.—A MediGrant plan shall include strategic objectives and performance goals relating to rates of childhood immunizations and reductions in infant mortality and morbidity.

''(c) CONSIDERATIONS.—In specifying these objectives and goals the State may consider factors such as the following:

''(1) The State's priorities with respect to such areas as providing assistance to low-income populations.

''(2) The State's priorities with respect to the general public health and the health status of individuals eligible for assistance under the MediGrant plan.

''(3) The State's financial resources, the particular economic conditions in the State, and relative adequacy of the health care infrastructure in different regions of the State.

''(d) PERFORMANCE MEASURES.—To the extent practicable—

''(1) one or more performance goals shall be established by the State for each strategic objective identified in the MediGrant plan; and

''(2) the MediGrant plan shall describe, how program performance will be—

''(A) measured through objective, independently verifiable means, and

''(B) compared against performance goals, in order to determine the State's performance under this title.

''(e) PERIOD COVERED.—

''(1) STRATEGIC OBJECTIVES.—The strategic objectives shall cover a period of not less than 5 years and shall be updated and revised at least every 3 years.

''(2) PERFORMANCE GOALS.—The performance goals shall be established for dates that are not more than 3 years apart.

**"SEC. 2102. ANNUAL REPORTS.**

''(a) IN GENERAL.—In the case of a State with a MediGrant plan that is in effect for part or all of a fiscal year, no later than March 31 following such fiscal year (or March 31, 1998, in the case of fiscal year 1996) the State shall prepare and submit to the Secretary and the Congress a report on program activities and performance under this title for such fiscal year.

''(b) CONTENTS.—Each annual report under this section for a fiscal year shall include the following:

''(1) EXPENDITURE AND BENEFICIARY SUMMARY.—

''(A) INITIAL SUMMARY.—For the report for fiscal year 1997 (and, if applicable, fiscal year 1996), a summary of all expenditures under the MediGrant plan during the fiscal year (and during any portions of fiscal year 1996 during which the MediGrant plan was in effect under this title) as follows:

''(i) Aggregate medical assistance expenditures, disaggregated to the extent required to determine compliance with the set-aside requirements of subsections (a) through (c) section 2112 and to compute the case mix index under section 2121(d)(3).

"(ii) For each general category of eligible individuals (specified in subsection (c)(1), aggregate medical assistance expenditures and the total and average number of eligible individuals under the MediGrant plan.

"(iii) By each general category of eligible individuals, total expenditures for each of the categories of health care items and services (specified in subsection (c)(2)) which are covered under the MediGrant plan and provided on a fee-for-service basis.

"(iv) By each general category of eligible individuals, total expenditures for payments to capitated health care organizations (as defined in section 2114(c)(1)).

"(v) Total administrative expenditures.

"(B) SUBSEQUENT SUMMARIES.—For reports for each succeeding fiscal year, a summary of—

"(i) all expenditures under the MediGrant plan consistent with the report-

ing format specified by the MediGrant Task Force under section 2106(d)(1), and

''(ii) the total and average number of eligible individuals under the MediGrant plan for each general category of eligible individuals.

''(2) UTILIZATION SUMMARY.—

''(A) INITIAL SUMMARY.—For the report for fiscal year 1997 (and, if applicable, fiscal year 1996), summary statistics on the utilization of health care services under the MediGrant plan during the year (and during any portions of fiscal year 1996 during which the MediGrant plan was in effect under this title) as follows:

''(i) For each general category of eligible individuals and for each of the categories of health care items and services which are covered under the MediGrant plan and provided on a fee-for-service basis, the number and percentage of persons who received such a type of service or item during the period covered by the report.

''(ii) Summary of health care utilization data reported to the State by capitated health care organizations.

''(B) SUBSEQUENT SUMMARIES.—For reports for each succeeding fiscal year, summary statistics on the utilization of health care services under the MediGrant plan consistent with the reporting format specified by the MediGrant Task Force under section 2106(d)(1).

''(3) ACHIEVEMENT OF PERFORMANCE GOALS.—With respect to each performance goal established under section 2101 and applicable to the year involved—

''(A) a brief description of the goal;

''(B) data on the actual performance with respect to the goal;

''(C) a review of the extent to which the goal was achieved, based on such data; and

''(D) where a performance goal has not been met—

''(i) why the goal was not met, and

''(ii) actions to be taken in response to such performance (including adjust-

ments in performance goals or program activities for subsequent years).

''(4) PROGRAM EVALUATIONS.—A summary of the findings of evaluations under section 2103 completed during the fiscal year covered by the report.

''(5) FRAUD AND ABUSE AND QUALITY CONTROL ACTIVITIES.—A general description of the State's activities under part D to detect and deter fraud and abuse and to assure quality of services provided under the program.

''(6) PLAN ADMINISTRATION.—

''(A) A description of the administrative roles and responsibilities of entities in the State responsible for administration of this title.

''(B) Organizational charts for each entity in the State primarily responsible for activities under this title.

''(C) A brief description of each interstate compact (if any) the State has entered into with other States with respect to activities under this title.

''(D) General citations to the State statutes and administrative rules governing the State's activities under this title.

''(7) INPATIENT HOSPITAL PAYMENTS.—With respect to inpatient hospital services provided under the MediGrant plan on a fee-for-service basis, a description of the average amount paid per discharge in the fiscal year compared either to the average charge for such services or to the State's estimate of the average amount paid per discharge by commercial health insurers in the State.

''(c) DEFINITIONS.—In this section:

''(1) Each of the following is a general category of eligible individuals:

''(A) Children.

''(B) Blind or disabled adults under 65 years of age.

''(C) Persons 65 years of age or older.

''(D) Other adults.

''(2) The health care items and services described in each subparagraph of section 2171(a)(1) shall be considered a separate category of health care items and services.

**"SEC. 2103. PERIODIC, INDEPENDENT EVALUATIONS.**

''(a) IN GENERAL.—During fiscal year 1998 and every third fiscal year thereafter, each State shall provide for an evaluation of the operation of its MediGrant plan under this title.

''(b) INDEPENDENT.—Each such evaluation with respect to an activity under the MediGrant plan shall be conducted by an entity that is neither responsible under State law for the submission of the State plan (or part thereof) nor responsible for administering (or supervising the administration of) the activity. If consistent with the previous sentence, such an entity may be a college or university, a State agency, a legislative branch agency in a State, or an independent contractor.

''(c) RESEARCH DESIGN.—Each such evaluation shall be conducted in accordance with a research design that is based on generally accepted models of survey design and sampling and statistical analysis.

**"SEC. 2104. DESCRIPTION OF PROCESS FOR MEDIGRANT PLAN DEVELOPMENT.**

''Each MediGrant plan shall include a description of the process under which the plan shall be developed and implemented in the State (consistent with section 2105).

**"SEC. 2105. CONSULTATION IN MEDIGRANT PLAN DEVELOPMENT.**

''(a) PUBLIC NOTICE PROCESS.—

''(1) IN GENERAL.—Before submitting a MediGrant plan or a plan amendment described in paragraph (3) to the Secretary under part E, a State shall provide—

''(A) public notice respecting the submittal of the proposed plan or amendment, including a general description of the plan or amendment;

''(B) a means for the public to inspect or obtain a copy (at reasonable charge) of the proposed plan or amendment; and

''(C) an opportunity for submittal and consideration of public comments on the proposed plan or amendment.

The previous sentence shall not apply to a revision of a MediGrant plan (or revision of an amendment to a plan) made by a State under section 2154(c)(1) or to a plan amendment withdrawal described in section 2152(c)(4).

''(2) CONTENTS OF NOTICE.—A notice under paragraph (1)(A) for a proposed plan or amendment shall include a description of—

''(A) the general purpose of the proposed plan or amendment (including applicable effective dates),

''(B) where the public may inspect the proposed plan or amendment,

''(C) how the public may obtain a copy of the proposed plan or amendment and the applicable charge (if any) for the copy, and

"(D) how the public may submit comments on the proposed plan or amendment, including any deadlines applicable to consideration of such comments.

"(3) AMENDMENTS DESCRIBED.—An amendment to a MediGrant plan described in this paragraph is an amendment which makes a material and substantial change in eligibility under the MediGrant plan or the benefits provided under the plan.

"(4) PUBLICATION.—Notices under this subsection may be published (as selected by the State) in one or more daily newspapers of general circulation in the State or in any publication used by the State to publish State statutes or rules.

"(5) COMPARABLE PROCESS.—A separate notice, or notices, shall not be required under this subsection for a State if notice of the MediGrant plan or an amendment to the plan will be provided under a process specified in State law that is substantially equivalent to the notice process specified in this subsection.

"(b) ADVISORY COMMITTEE.—

"(1) IN GENERAL.—Each State with a MediGrant plan shall establish and maintain an advisory committee.

''(2) CONSULTATION.—The State shall periodically consult with the advisory committee in the development, revision, and monitoring the performance of the MediGrant plan, including—

''(A) the development of strategic objectives and performance goals under section 2101,

''(B) the annual report under section 2102, and

''(C) the research design under section 2103(c).

''(3) GEOGRAPHIC DIVERSITY.—The composition of the advisory committee shall be chosen in a manner that assures some representation on the advisory committee of the different general geographic regions of the State. Nothing in the previous sentence shall be construed as requiring proportional representation of geographic areas in a State.

''(4) CONSTRUCTION.—Nothing in this title shall be construed as preventing a State from establishing more than one advisory committee, including specialized advisory committees that represent the interests of specific population groups, provider groups, or geographic areas.

**"SEC. 2106. MEDIGRANT TASK FORCE.**

''(a) IN GENERAL.—The Secretary shall provide for the establishment of a MediGrant Task Force (in this section referred to as the 'Task Force').

''(b) COMPOSITION.—The Task Force shall consist of 6 members appointed by the chair of the National Governors Association and 6 members appointed by the vice chair of the National Governors Association.

''(c) ADVISORY GROUP FOR TASK FORCE.—The Secretary shall provide for the establishment of an advisory group to assist the Task Force in carrying out its duties under this section, consisting of one representative appointed by each of the following associations:

''(1) National Committee for Quality Assurance.

''(2) Joint Commission for the Accreditation of Healthcare Organizations.

''(3) Group Health Association of America.

''(4) American Managed Care and Review Association.

''(5) Association of State and Territorial Health Officers.

''(6) American Medical Association.

''(7) American Hospital Association.

''(8) American Dental Association.

''(9) American College of Gerontology.

''(10) American Health Care Association.

''(11) An association identified by the Secretary as representing the interests of disabled individuals.

''(12) An association identified by the Secretary as representing the interests of children.

''(13) An association identified by the Secretary as representing the interests of the elderly.

''(14) An association identified by the Secretary as representing the interests of mentally ill individuals.

Any reference in this subsection to a particular group shall be deemed a reference to any successor to such group.

''(d) DUTIES.—

''(1) FORMAT FOR EXPENDITURE AND UTILIZATION SUMMARIES.—The Task Force shall specify, by not later than December 31, 1996, the format of expenditure summaries and utilization summaries required under section 2102. Such format may provide for the reporting of different information from that required under section 2102(a), but shall include the reporting of at least the information described in section 2102(b)(1)(A)(i).

''(2) MODELS AND SUGGESTIONS.—The Task Force shall study and report to Congress and the

States, by not later than April 1, 1997, recommendations on the following:

''(A) Recommended models for strategic objectives and performance goals for consideration by States in the development of such objectives and goals under section 2102, including alternative models for each of the objectives and goals described in section 2101(b).

''(B) For each suggested model for a strategic objective or performance goal suggested methodologies for States to consider in measuring and verifying the objective or goal.

''(C) An assessment of the potential usefulness to States of quality assurance safeguards, utilization data sets, and accreditation programs that are used or under development in the private sector.

''(D) Recommended designs and evaluation methodologies for consideration by States in providing for independent evaluations under section 2103.

''(3) CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a State to adopt any of the strategic objectives or performance goals suggested under paragraph (2).

''(e) ADMINISTRATIVE ASSISTANCE.—Administrative support for the Task Force shall be provided by the Agency for Health Care Policy and Research (or, in the absence of such Agency, the Secretary).

''PART B—ELIGIBILITY, BENEFITS, AND SET-ASIDES

**"SEC. 2111. GENERAL DESCRIPTION OF ELIGIBILITY AND BENEFITS.**

''(a) IN GENERAL.—Each MediGrant plan shall include a description (consistent with this title) of the following:

''(1) ELIGIBLE POPULATION.—The population eligible for medical assistance under the plan, including—

''(A) any limitations on categories of such individuals;

''(B) any limitations as to the duration of eligibility;

''(C) any eligibility standards relating to age, income (including any standards relating to spenddowns), residency, resources, disability status, immigration status, or employment status of individuals;

''(D) methods of establishing (and continuing) eligibility and enrollment (including the methodology for computing family income);

1 ''(E) the eligibility standards in the plan
2 that protect the income and resources of a mar-
3 ried individual who is living in the community
4 and whose spouse is residing in an institution
5 in order to prevent the impoverishment of the
6 community spouse; and
7 ''(F) any other standards relating to eligi-
8 bility for medical assistance under the plan.
9 ''(2) SCOPE OF ASSISTANCE.—The amount, du-
10 ration, and scope of health care services and items
11 covered under the plan, including differences among
12 different eligible population groups.
13 ''(3) DELIVERY METHOD.—The State's ap-
14 proach to delivery of medical assistance, including a
15 general description of—
16 ''(A) the use (or intended use) of vouchers,
17 fee-for-service, or managed care arrangements
18 (such as capitated health care plans, case man-
19 agement, and case coordination), and
20 ''(B) utilization control systems.
21 ''(4) FEE-FOR-SERVICE BENEFITS.—To the ex-
22 tent that medical assistance is furnished on a fee-
23 for-service basis—

''(A) how the State determines the qualifications of health care providers eligible to provide such assistance, and

''(B) how the State determines rates of reimbursement for providing such assistance.

''(5) COST-SHARING.—Beneficiary cost-sharing (if any), including variations in such cost-sharing by population group or type of service and financial responsibilities of parents of recipients under 21 years of age and the spouses of recipients.

''(6) UTILIZATION INCENTIVES.—Incentives or requirements (if any) to encourage the appropriate utilization of services.

''(7) TREATMENT OF HEALTH CENTERS.—

''(A) IN GENERAL.—In the case of a State in which one or more health centers is located, the MediGrant plan shall include a description of—

''(i) what provision (if any) has been made for payment for items and services furnished by health centers, and

''(ii) the manner in which medical assistance for low-income eligible individuals who received health care services at health centers on or before the date of the enact-

ment of this title may be provided, as determined by the State in consultation with the health centers in the State.

''(B) HEALTH CENTER DEFINED.—For purposes of subparagraph (A), the term 'health center' means an entity that—

''(i) is receiving a grant under section 329, 330, 340, or 340A of the Public Health Service Act; or

''(ii) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, was determined by the Secretary to meet the requirements to receive such a grant.

''(8) SUPPORT FOR CERTAIN HOSPITALS.—

''(A) IN GENERAL.—With respect to hospitals described in subparagraph (B) located in the State, the MediGrant plan shall includes a description—

''(i) of the extent to which provisions have been made for expenditures for items and services furnished by such hospitals and covered under the plan, and

''(ii) for individuals who (I) are enrolled for benefits for covered services

under the MediGrant plan and (II) were previously receiving benefits for such services under the medicaid program by or through such hospitals, where or how they will receive benefits for such services under the MediGrant plan if the MediGrant plan does not permit such individuals to obtain benefits for those services by or through such hospitals.

''(B) HOSPITALS DESCRIBED.—For purposes of subparagraph (A), a hospital described in this subparagraph is a subsection (d) hospital (as defined in section 1886(d)(1)(B)) that is described in clauses (i) and (ii) of section 340B(a)(4)(L) of the Public Health Service Act.

''(b) IMMUNIZATIONS FOR CHILDREN.—The MediGrant plan shall provide medical assistance for immunizations for children eligible for any medical assistance under the MediGrant plan, in accordance with a schedule for immunizations established by the Health Department of the State in consultation with the individuals and entities in the State responsible for the administration of the plan.

"(c) EQUAL PAYMENT RATES FOR RURAL PROVIDERS.—A State with a MediGrant plan shall establish payment rates for all services of rural providers that are comparable to the payment rates established for like services of such type of providers not in rural areas; except that a State may provide for incentive payments to attract and retain providers to medically underserved areas.

"(d) PREEXISTING CONDITION EXCLUSIONS.—Notwithstanding any other provision of this title—

"(1) a MediGrant plan may not deny or exclude coverage of any item or service for an eligible individual for benefits under the MediGrant plan for such item or service on the basis of a preexisting condition; and

"(2) if a State contracts or makes other arrangements (through the eligible individual or through another entity) with a capitated health care organization, insurer, or other entity, for the provision of items or services to eligible individuals under the MediGrant plan and the State permits such organization, insurer, or other entity to exclude coverage of a covered item or service on the basis of a preexisting condition, the State shall provide, through its MediGrant plan, for such coverage (through direct payment or otherwise) for any such

covered item or service denied or excluded on the basis of a preexisting condition.

''(e) FAMILY RESPONSIBILITY.—A MediGrant plan may not require an adult child of moderate means (as determined by the Secretary) to contribute to the cost of covered nursing facility services and other long-term care services for the child's parent under the plan.

**"SEC. 2112. SET-ASIDES OF FUNDS FOR POPULATION GROUPS.**

''(a) FOR TARGETED LOW-INCOME FAMILIES.—

''(1) IN GENERAL.—Subject to subsection (e), a MediGrant plan shall provide that the amount of funds expended under the plan for medical assistance for targeted low-income families (as defined in paragraph (3)) for a fiscal year shall be not less than the minimum low-income-family percentage specified in paragraph (2) of the total funds expended under the plan for all medical assistance for the fiscal year.

''(2) MINIMUM LOW-INCOME-FAMILY PERCENTAGE.—The minimum low-income-family percentage specified in this paragraph for a State is equal to 85 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994

which were attributable to expenditures for medical assistance for mandated benefits (as defined in subsection (h)) furnished to individuals—

''(A) who (at the time of furnishing the assistance) were under 65 years of age,

''(B) whose coverage (at such time) under a State plan under title XIX was required under Federal law, and

''(C) whose eligibility for such coverage (at such time) was not on a basis directly related to disability status (including being blind).

''(3) TARGETED LOW-INCOME FAMILY DEFINED.—In this subsection, the term 'targeted low-income family' means a family (which may be an individual)—

''(A) which includes a child or a pregnant woman, and

''(B) the income of which does not exceed 185 percent of the poverty line applicable to a family of the size involved.

''(b) FOR LOW-INCOME ELDERLY.—

''(1) SET-ASIDES.—Subject to subsection (e)—

''(A) GENERAL SET-ASIDE.—A MediGrant plan shall provide that the amount of funds expended under the plan for medical assistance

for eligible low-income individuals 65 years of age or older for a fiscal year shall be not less than the minimum low-income-elderly percentage specified in paragraph (2)(A) of the total funds expended under the plan for all medical assistance for the fiscal year.

''(B) SET-ASIDE FOR MEDICARE PREMIUM ASSISTANCE.—A MediGrant plan shall provide that the amount of funds expended under the plan for medical assistance for medicare cost-sharing described in section 2171(c)(1) for a fiscal year shall be not less than the minimum medicare premium assistance percentage specified in paragraph (2)(B) of the total funds expended under the plan for all medical assistance for the fiscal year. The MediGrant plan shall provide priority for such making such assistance available for targeted low-income elderly individuals (as defined in paragraph (3)).

''(2) MINIMUM PERCENTAGES.—

''(A) FOR GENERAL SET-ASIDE.—The minimum low-income-elderly percentage specified in this subparagraph for a State is equal to 85 percent of the average percentage of the expenditures under title XIX for medical assist-

ance in the State during Federal fiscal years 1992 through 1994 which was attributable to expenditures for medical assistance for mandated benefits furnished to individuals—

''(i) whose eligibility for such assistance was based on their being 65 years of age or older; and

''(ii)(I) whose coverage (at such time) under a State plan under title XIX was required under Federal law, or (II) who (at such time) were residents of a nursing facility.

''(B) FOR SET-ASIDE FOR MEDICARE PREMIUM ASSISTANCE.—The minimum medicare premium assistance percentage specified in this subparagraph for a State is equal to 90 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1993 through 1995 which was attributable to expenditures for medical assistance for medicare premiums described in section 1905(p)(3)(A) for individuals whose coverage (at such time) for such assistance for such premiums under a State plan

under title XIX was required under Federal law.

''(3) TARGETED LOW-INCOME ELDERLY INDIVIDUAL DEFINED.—In this subsection, the term 'targeted low-income elderly individual' means an individual who is 65 years of age or older and whose income does not exceed 100 percent of the poverty line applicable to a family of the size involved.

''(c) FOR LOW-INCOME DISABLED PERSONS.—

''(1) IN GENERAL.—Subject to subsection (e), a MediGrant plan shall provide that the percentage of funds expended under the plan for medical assistance for eligible low-income individuals who are under 65 years of age and are eligible for such assistance on the basis of a disability (including being blind) for a fiscal year is not less than the minimum low-income-disabled percentage specified in paragraph (2) of the total funds expended under the plan for medical assistance for the fiscal year.

''(2) MINIMUM LOW-INCOME-DISABLED PERCENTAGE.—The minimum low-income-disabled percentage specified in this paragraph for a State is equal to 85 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992

through 1994 which was attributable to expenditures for medical assistance for mandated benefits furnished to individuals—

''(A) whose coverage (at such time) under a State plan under title XIX was required under Federal law, and

''(B) whose coverage (at such time) was on a basis directly related to disability status (including being blind).

''(d) USE OF RESIDUAL FUNDS.—

''(1) IN GENERAL.—Subject to limitations on payment under section 2123, any funds not required to be expended under the set-asides under the previous subsections may be expended under the MediGrant plan for any of the following:

''(A) ADDITIONAL MEDICAL ASSISTANCE.—Medical assistance for eligible low-income individuals (as defined in section 2171(b)), in addition to any medical assistance made available under a previous subsection.

''(B) MEDICALLY-RELATED SERVICES.—Payment for medically-related services (as defined in paragraph (2)).

''(C) ADMINISTRATION.—Payment for the administration of the MediGrant plan.

"(2) MEDICALLY-RELATED SERVICES DEFINED.—In this title, the term 'medically-related services' means services reasonably related to, or in direct support of, the State's attainment of one or more of the strategic objectives and performance goals established under section 2101, but does not include items and services included on the list under section 2171(a)(1) (relating to the definition of medical assistance).

"(e) EXCEPTIONS TO MINIMUM SET-ASIDES.—

"(1) ALTERNATIVE MINIMUM SET-ASIDES.—

"(A) IN GENERAL.—A State may provide in its MediGrant plan (through an amendment to the plan) for a lower dollar amount of expenditures than the minimum amounts specified in any (or all) of paragraphs (2) of subsections (a), (b), and (c) if State determines (and certifies to the Secretary) that—

"(i) the health care needs of the low-income populations described in paragraph (1) of the respective subsection who are eligible for medical assistance under the plan during the previous fiscal year (or medicare premium assistance needs described in subsection (b)(1)(B)) can be reasonably

met without the expenditure of the amounts otherwise required to be expended, and

''(ii) the performance goals established under section 2101 relating to the respective population can reasonably be met with such lower amount of funds expended.

''(B) PERIOD OF APPLICATION.—The determination and certification under subparagraph (A) shall be made for such period as a State may request, but may not be made for a period of more than 3 consecutive Federal fiscal years (beginning with the first fiscal year for which the lower amount is sought). A new determination and certification must be made under such paragraph for any subsequent period.

''(C) NO EXCEPTION PERMITTED BEFORE FISCAL YEAR 1998.—This paragraph may not apply with respect to a State for a fiscal year before fiscal year 1998.

''(2) INDEPENDENT CERTIFICATION OF COMPLIANCE WITH GOALS.—

"(A) IN GENERAL.—For purposes of section 2151(c), a MediGrant plan shall not be considered to be in substantial violation of the requirements of this section if the amount of actual State expenditures specified in any (or all) of paragraphs (1) of subsections (a), (b), and (c) is lower than the minimum amounts specified in any (or all) of paragraphs (2) of subsections (a), (b), and (c) if an independent actuary determines and certifies to the State that the MediGrant plan is reasonably designed to result in a level of expenditures which is consistent with the requirements of such subsections.

"(B) LIMIT ON VARIATION.—Subparagraph (A) shall not apply in the case of a MediGrant plan for which the actual State expenditures described in any (or all) of paragraphs (1) of subsections (a), (b), and (c) are less than 95 percent of the expenditures which would be made if the amount of State expenditures specified in any (or all) of such paragraphs was equal to the applicable minimum amount specified in any (or all) of paragraphs (2) of subsections (a), (b), and (c).

"(3) TREATMENT OF STATES WITH NO OPTIONAL BENEFITS.—In the case of a State for which all expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 were expenditures for medical assistance for mandated benefits, '75 percent' shall be substituted for '85 percent' each place it appears in paragraphs (2) of subsections (a), (b), and (c).

"(f) COMPUTATIONS.—

"(1) MINIMUM PERCENTAGES.—States shall calculate the minimum percentages under subsections (a)(2), (b)(2), and (c)(2) in a reasonable manner consistent with reports submitted to the Secretary for the fiscal years involved.

"(2) EXCLUSION OF PAYMENTS FOR CERTAIN ALIENS.—For purposes of this section, medical assistance attributable to the exception provided under section 1903(v)(2) shall not be considered to be expenditures for medical assistance.

"(g) BENEFITS INCLUDED FOR PURPOSES OF COMPUTING SET-ASIDES.—In this section, the term 'mandated benefits'—

"(1) means medical assistance for items and services described in section 1905(a) to the extent

such assistance with respect to such items and services was required to be provided under title XIX,

''(2) includes medical assistance for medicare cost-sharing only to the extent such assistance was required to be provided under section 1902(a)(10)(E), and

''(3) does not include medical assistance attributable to disproportionate share payment adjustments described in section 1923.

**"SEC. 2113. PREMIUMS AND COST-SHARING.**

''(a) IN GENERAL.—Subject to subsection (b), if any charges are imposed under the MediGrant plan for cost-sharing (as defined in subsection (d)), such cost-sharing shall be pursuant to a public cost-sharing schedule.

''(b) LIMITATION ON PREMIUM AND CERTAIN COST-SHARING FOR LOW-INCOME FAMILIES INCLUDING CHILDREN OR PREGNANT WOMEN.—

''(1) IN GENERAL.—In the case of a family described in paragraph (2)—

''(A) the plan shall not impose any premium, and

''(B) the plan shall not (except as provided in subsection (c)(1)) impose any cost-sharing with respect to primary and preventive care services (as defined by the State) covered under

the MediGrant plan for children or pregnant women unless such cost-sharing is nominal in nature.

''(2) FAMILY DESCRIBED.—A family described in this paragraph is a family (which may be an individual) which—

''(A) includes a child or a pregnant woman,

''(B) is made eligible for medical assistance under the MediGrant plan, and

''(C) the income of which does not exceed 100 percent of the poverty line applicable to a family of the size involved.

''(c) CERTAIN COST-SHARING PERMITTED.—Nothing in this section shall be construed as preventing a MediGrant plan (consistent with subsection (b))—

''(1) from imposing cost-sharing to discourage the inappropriate use of emergency medical services (delivered through a hospital emergency room, a medical transportation provider, or otherwise);

''(2) from imposing premiums and cost-sharing differentially in order to encourage the use of primary and preventive care and discourage unnecessary or less economical care;

''(3) from scaling cost-sharing in a manner that reflects economic factors, employment status, and family size;

''(4) from scaling cost-sharing based on the availability to the individual or family of other health insurance coverage; or

''(5) from scaling cost-sharing based on participation in employment training program, drug or alcohol abuse treatment, counseling programs, or other programs promoting personal responsibility.

''(d) COST-SHARING DEFINED.—In this section, the term 'cost-sharing' includes copayments, deductibles, coinsurance, and other charges for the provision of health care services.

**"SEC. 2114. DESCRIPTION OF PROCESS FOR DEVELOPING CAPITATION PAYMENT RATES.**

''(a) IN GENERAL.—If a State contracts (or intends to contract) with a capitated health care organization (as defined in subsection (c)(1)) under which the State makes a capitation payment (as defined in subsection (c)(2)) to the organization for providing or arranging for the provision of medical assistance under the MediGrant plan for a group of services (including at least inpatient hospital services and physicians' services), the plan shall include a description of the following:

"(1) USE OF ACTUARIAL SCIENCE.—The extent and manner in which the State uses actuarial science—

"(A) to analyze and project health care expenditures and utilization for individuals enrolled (or to be enrolled) in such an organization under the MediGrant plan, and

"(B) to develop capitation payment rates, including a brief description of the general methodologies used by actuaries.

"(2) QUALIFICATIONS OF ORGANIZATIONS.—The general qualifications (including any accreditation, State licensure or certification, or provider network standards) required by the State for participation of capitated health care organizations under the MediGrant plan.

"(3) DISSEMINATION PROCESS.—The process used by the State under subsection (b) and otherwise to disseminate, before entering into contracts with capitated health care organizations, actuarial information to such organizations on the historical fee-for-service costs (or, if not available, other recent financial data associated with providing covered services) and utilization associated with individuals described in paragraph (1)(A).

1 ''(b) PUBLIC NOTICE AND COMMENT.—Under the
2 MediGrant plan the State shall provide a process for pro-
3 viding, before the beginning of each contract year—
4 ''(1) public notice of—
5 ''(A) the amounts of the capitation pay-
6 ments (if any) made under the plan for the con-
7 tract year preceding the public notice, and
8 ''(B)(i) the information described under
9 subsection (a)(1) with respect to capitation pay-
10 ments for the contract year involved or (ii) the
11 amounts of the capitation payments the State
12 expects to make for the contract year involved,
13 unless such information is designated as proprietary
14 and not subject to public disclosure under State law;
15 and
16 ''(2) an opportunity for receiving public com-
17 ment on the amounts and information for which no-
18 tice is provided under paragraph (1).
19 ''(c) DEFINITIONS.—In this title:
20 ''(1) CAPITATED HEALTH CARE ORGANIZA-
21 TION.—The term 'capitated health care organiza-
22 tion' means a health maintenance organization or
23 any other entity (including a health insuring organi-
24 zation, managed care organization, prepaid health
25 plan, integrated service network, or similar entity)

which under State law is permitted to accept capitation payments for providing (or arranging for the provision of) a group of items and services including at least inpatient hospital services and physicians' services.

''(2) CAPITATION PAYMENT.—The term 'capitation payment' means, with respect to payment, payment on a prepaid capitation basis or any other risk basis to an entity for the entity's provision (or arranging for the provision) of a group of items and services (including at least inpatient hospital services and physicians' services).

**"SEC. 2115. PREVENTING SPOUSAL IMPOVERISHMENT.**

''(a) SPECIAL TREATMENT FOR INSTITUTIONALIZED SPOUSES.—

''(1) SUPERSEDES OTHER PROVISIONS.—In determining the eligibility for medical assistance of an institutionalized spouse (as defined in subsection (h)(1)), the provisions of this section supersede any other provision of this title which is inconsistent with them.

''(2) DOES NOT AFFECT CERTAIN DETERMINATIONS.—Except as this section specifically provides, this section does not apply to—

"(A) the determination of what constitutes income or resources, or

"(B) the methodology and standards for determining and evaluating income and resources.

"(3) NO APPLICATION IN COMMONWEALTHS AND TERRITORIES.—This section shall only apply to a State that is one of the 50 States or the District of Columbia.

"(b) RULES FOR TREATMENT OF INCOME.—

"(1) SEPARATE TREATMENT OF INCOME.—During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (2), no income of the community spouse shall be deemed available to the institutionalized spouse.

"(2) ATTRIBUTION OF INCOME.—In determining the income of an institutionalized spouse or community spouse for purposes of the post-eligibility income determination described in subsection (d), except as otherwise provided in this section and regardless of any State laws relating to community property or the division of marital property, the following rules apply:

"(A) NON-TRUST PROPERTY.—Subject to subparagraphs (C) and (D), in the case of in-

come not from a trust, unless the instrument providing the income otherwise specifically provides—

''(i) if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

''(ii) if payment of income is made in the names of the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

''(iii) if payment of income is made in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

''(B) TRUST PROPERTY.—In the case of a trust—

''(i) except as provided in clause (ii), income shall be attributed in accordance with the provisions of this title, and

''(ii) income shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust—

''(I) if payment of income is made solely to the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

''(II) if payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

''(III) if payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses

and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

''(C) PROPERTY WITH NO INSTRUMENT.—In the case of income not from a trust in which there is no instrument establishing ownership, subject to subparagraph (D), one-half of the income shall be considered to be available to the institutionalized spouse and one-half to the community spouse.

''(D) REBUTTING OWNERSHIP.—The rules of subparagraphs (A) and (C) are superseded to the extent that an institutionalized spouse can establish, by a preponderance of the evidence, that the ownership interests in income are other than as provided under such subparagraphs.

''(c) RULES FOR TREATMENT OF RESOURCES.—

''(1) COMPUTATION OF SPOUSAL SHARE AT TIME OF INSTITUTIONALIZATION.—

''(A) TOTAL JOINT RESOURCES.—There shall be computed (as of the beginning of the first continuous period of institutionalization of the institutionalized spouse)—

''(i) the total value of the resources to the extent either the institutionalized

spouse or the community spouse has an ownership interest, and

''(ii) a spousal share which is equal to ½ of such total value.

''(B) ASSESSMENT.—At the request of an institutionalized spouse or community spouse, at the beginning of the first continuous period of institutionalization of the institutionalized spouse and upon the receipt of relevant documentation of resources, the State shall promptly assess and document the total value described in subparagraph (A)(i) and shall provide a copy of such assessment and documentation to each spouse and shall retain a copy of the assessment for use under this section. If the request is not part of an application for medical assistance under this title, the State may, at its option as a condition of providing the assessment, require payment of a fee not exceeding the reasonable expenses of providing and documenting the assessment. At the time of providing the copy of the assessment, the State shall include a notice indicating that the spouse will have a right to a fair hearing under subsection (e)(2).

''(2) ATTRIBUTION OF RESOURCES AT TIME OF INITIAL ELIGIBILITY DETERMINATION.—In determining the resources of an institutionalized spouse at the time of application for medical assistance under this title, regardless of any State laws relating to community property or the division of marital property—

''(A) except as provided in subparagraph (B), all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse, and

''(B) resources shall be considered to be available to an institutionalized spouse, but only to the extent that the amount of such resources exceeds the amount computed under subsection (f)(2)(A) (as of the time of application for medical assistance).

''(3) ASSIGNMENT OF SUPPORT RIGHTS.—The institutionalized spouse shall not be ineligible by reason of resources determined under paragraph (2) to be available for the cost of care where—

''(A) the institutionalized spouse has assigned to the State any rights to support from the community spouse;

"(B) the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the State has the right to bring a support proceeding against a community spouse without such assignment; or

"(C) the State determines that denial of eligibility would work an undue hardship.

"(4) SEPARATE TREATMENT OF RESOURCES AFTER ELIGIBILITY FOR MEDICAL ASSISTANCE ESTABLISHED.—During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for medical assistance under this title, no resources of the community spouse shall be deemed available to the institutionalized spouse.

"(5) RESOURCES DEFINED.—In this section, the term 'resources' does not include—

"(A) resources excluded under subsection (a) or (d) of section 1613, and

"(B) resources that would be excluded under section 1613(a)(2)(A) but for the limitation on total value described in such section.

"(d) PROTECTING INCOME FOR COMMUNITY SPOUSE.—

"(1) ALLOWANCES TO BE OFFSET FROM INCOME OF INSTITUTIONALIZED SPOUSE.—After an institutionalized spouse is determined or redetermined to be eligible for medical assistance, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

"(A) A personal needs allowance (described in paragraph (6)(A)), in an amount not less than the amount specified in paragraph (6)(C).

"(B) A community spouse monthly income allowance (as defined in paragraph (2)), but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse.

"(C) A family allowance, for each family member, equal to at least ⅓ of the amount by which the amount described in paragraph (3)(A)(i) exceeds the amount of the monthly income of that family member.

"(D) Amounts for incurred expenses for medical or remedial care for the institutionalized spouse (as provided under paragraph (7)).

In subparagraph (C), the term 'family member' only includes minor or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse.

''(2) COMMUNITY SPOUSE MONTHLY INCOME ALLOWANCE DEFINED.—In this section (except as provided in paragraph (5)), the 'community spouse monthly income allowance' for a community spouse is an amount by which—

''(A) except as provided in subsection (e), the minimum monthly maintenance needs allowance (established under and in accordance with paragraph (3)) for the spouse, exceeds

''(B) the amount of monthly income otherwise available to the community spouse (determined without regard to such an allowance).

''(3) ESTABLISHMENT OF MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE.—

''(A) IN GENERAL.—Each State shall establish a minimum monthly maintenance needs allowance for each community spouse which, subject to subparagraph (B), is equal to or exceeds—

"(i) 150 percent of 1/12 of the income official poverty line (defined by the Office of Management and Budget and revised annually in accordance with section 673(2)) for a family unit of 2 members; plus

"(ii) an excess shelter allowance (as defined in paragraph (4)).

A revision of the official poverty line referred to in clause (i) shall apply to medical assistance furnished during and after the second calendar quarter that begins after the date of publication of the revision.

"(B) CAP ON MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE.—The minimum monthly maintenance needs allowance established under subparagraph (A) may not exceed $1,500 (subject to adjustment under subsections (e) and (g)).

"(4) EXCESS SHELTER ALLOWANCE DEFINED.—In paragraph (3)(A)(ii), the term 'excess shelter allowance' means, for a community spouse, the amount by which the sum of—

"(A) the spouse's expenses for rent or mortgage payment (including principal and in-

terest), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charge, for the community spouse's principal residence, and

''(B) the standard utility allowance (used by the State under section 5(e) of the Food Stamp Act of 1977) or, if the State does not use such an allowance, the spouse's actual utility expenses,

exceeds 30 percent of the amount described in paragraph (3)(A)(i), except that, in the case of a condominium or cooperative, for which a maintenance charge is included under subparagraph (A), any allowance under subparagraph (B) shall be reduced to the extent the maintenance charge includes utility expenses.

''(5) COURT ORDERED SUPPORT.—If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered.

''(6) PERSONAL NEEDS ALLOWANCE.—

''(A) IN GENERAL.—The State MediGrant plan must provide that, in the case of an insti-

tutionalized individual or couple described in subparagraph (B), in determining the amount of the individual's or couple's income to be applied monthly to payment for the cost of care in an institution, there shall be deducted from the monthly income (in addition to other allowances otherwise provided under the plan) a monthly personal needs allowance—

''(i) which is reasonable in amount for clothing and other personal needs of the individual (or couple) while in an institution, and

''(ii) which is not less (and may be greater) than the minimum monthly personal needs allowance described in subparagraph (C).

''(B) INSTITUTIONALIZED INDIVIDUAL OR COUPLE DEFINED.—In this paragraph, the term 'institutionalized individual or couple' means an individual or married couple—

''(i) who is an inpatient (or who are inpatients) in a medical institution or nursing facility for which payments are made under this title throughout a month, and

"(ii) who is or are determined to be eligible for medical assistance under the State MediGrant plan.

"(C) MINIMUM ALLOWANCE.—The minimum monthly personal needs allowance described in this subparagraph is $40 for an institutionalized individual and $80 for an institutionalized couple (if both are aged, blind, or disabled, and their incomes are considered available to each other in determining eligibility).

"(7) TREATMENT OF INCURRED EXPENSES.—With respect to the post-eligibility treatment of income under this section, there shall be taken into account amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

"(A) medicare and other health insurance premiums, deductibles, or coinsurance, and

"(B) necessary medical or remedial care recognized under State law but not covered under the State MediGrant plan under this title, subject to reasonable limits the State may establish on the amount of these expenses.

"(e) NOTICE AND HEARING.—

"(1) NOTICE.—Upon—

"(A) a determination of eligibility for medical assistance of an institutionalized spouse, or

"(B) a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse,

each State shall notify both spouses (in the case described in subparagraph (A)) or the spouse making the request (in the case described in subparagraph (B)) of the amount of the community spouse monthly income allowance (described in subsection (d)(1)(B)), of the amount of any family allowances (described in subsection (d)(1)(C)), of the method for computing the amount of the community spouse resources allowance permitted under subsection (f), and of the spouse's right to a hearing under the MediGrant plan respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

"(2) RESULTS OF HEARING.—

"(A) REVISION OF MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE.—If either such spouse establishes in a hearing under this subsection that the community spouse needs income, above the level otherwise provided by the

minimum monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A), an amount adequate to provide such additional income as is necessary.

''(B) REVISION OF COMMUNITY SPOUSE RESOURCE ALLOWANCE.—If either such spouse establishes in such a hearing that the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance under subsection (f)(2), an amount adequate to provide such a minimum monthly maintenance needs allowance.

''(f) PERMITTING TRANSFER OF RESOURCES TO COMMUNITY SPOUSE.—

''(1) IN GENERAL.—An institutionalized spouse may, without regard to any other provision of the MediGrant plan to contrary, transfer an amount equal to the community spouse resource allowance

(as defined in paragraph (2)), but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse. The transfer under the preceding sentence shall be made as soon as practicable after the date of the initial determination of eligibility, taking into account such time as may be necessary to obtain a court order under paragraph (3).

''(2) COMMUNITY SPOUSE RESOURCE ALLOWANCE DEFINED.—In paragraph (1), the 'community spouse resource allowance' for a community spouse is an amount (if any) by which—

''(A) the greatest of—

''(i) $12,000 (subject to adjustment under subsection (g)), or, if greater (but not to exceed the amount specified in clause (ii)(II)) an amount specified under the State plan,

''(ii) the lesser of (I) the spousal share computed under subsection (c)(1), or (II) $60,000 (subject to adjustment under subsection (g)),

''(iii) the amount established under subsection (e)(2); or

"(iv) the amount transferred under a court order under paragraph (3);

exceeds

"(B) the amount of the resources otherwise available to the community spouse (determined without regard to such an allowance).

"(g) INDEXING DOLLAR AMOUNTS.—For services furnished during a calendar year after 1989, the dollar amounts specified in subsections (d)(3)(C), (f)(2)(A)(i), and (f)(2)(A)(ii)(II) shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved.

"(h) DEFINITIONS.—In this section:

"(1) The term 'institutionalized spouse' means an individual—

"(A)(i) who is in a medical institution or nursing facility, or

"(ii) at the option of the State (I) who would be eligible under the MediGrant plan under this title if they were in a medical institution, (II) with respect to whom there has been a determination that but for the provision of home or community-based services they

would require the level of care provided in a hospital, nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the plan, and (III) who will receive home or community-based services pursuant the plan, and

''(B) is married to a spouse who is not in a medical institution or nursing facility;

but does not include any such individual who is not likely to meet the requirements of subparagraph (A) for at least 30 consecutive days.

''(2) The term 'community spouse' means the spouse of an institutionalized spouse.

**"SEC. 2116. CONSTRUCTION.**

''(a) NO FEDERAL ENTITLEMENT.—Nothing in this title (including section 2112) shall be construed as creating an entitlement under Federal law in any individual or category of individuals for medical assistance under a MediGrant plan.

''(b) STATE FLEXIBILITY IN BENEFITS, PROVIDER PAYMENTS, GEOGRAPHICAL COVERAGE AREA, AND SELECTION OF PROVIDERS.—Nothing in this title (other than section 2111(b)) shall be construed as requiring a State—

''(1) to provide medical assistance for any particular items or services;

''(2) subject to section 2111(c), to provide for any payments with respect to any specific health care providers or any level of payments for any services;

''(3) to provide for the same medical assistance in all geographical areas or political subdivisions of the State;

''(4) to provide that the medical assistance made available to any individual eligible for medical assistance must not be less in amount, duration, or scope than the medical assistance made available to any other such individual; or

''(5) to provide that any individual eligible for medical assistance with respect to an item or service may choose to obtain such assistance from any institution, agency, or person qualified to provide the item or service.

''(c) STATE FLEXIBILITY WITH RESPECT TO MANAGED CARE.—Nothing in this title shall be construed—

''(1) to limit a State's ability to contract with, on a capitated basis or otherwise, health care plans or individual health care providers for the provision or arrangement of medical assistance;

''(2) to limit a State's ability to contract with health care plans or other entities for case management services or for coordination of medical assistance; or

''(3) to restrict a State from establishing capitation rates on the basis of competition among health care plans or negotiations between the State and one or more health care plans.

**"SEC. 2117. LIMITATIONS ON CAUSES OF ACTION.**

''(a) IN GENERAL.—Notwithstanding any other provision of this Act (including section 1130A), no person (including an applicant, beneficiary, provider, or health plan) shall have a cause of action under Federal law against a State in relation to a State's compliance (or failure to comply) with the provisions of this title or of a MediGrant plan.

''(b) NO EFFECT ON STATE LAW.—Nothing in subsection (a) may be construed as affecting any actions brought under State law.

''PART C—PAYMENTS TO STATES

**"SEC. 2121. ALLOTMENT OF FUNDS AMONG STATES.**

''(a) ALLOTMENTS.—

''(1) COMPUTATION.—The Secretary shall provide for the computation of State obligation and out-

lay allotments in accordance with this section for each fiscal year beginning with fiscal year 1996.

''(2) LIMITATION ON OBLIGATIONS.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall not enter into obligations with any State under this title for a fiscal year in excess of the obligation allotment for that State for the fiscal year under paragraph (4). The sum of such obligation allotments for all States in any fiscal year (excluding amounts carried over under subparagraph (B) and excluding changes in allotments effected under paragraph (4)(D)) shall not exceed the aggregate limit on new obligation authority specified in paragraph (3) for that fiscal year.

''(B) ADJUSTMENTS.—

''(i) CARRYOVER OF ALLOTMENT PERMITTED.—If the amount of obligations entered into under this part with a State for quarters in a fiscal year is less than the amount of the obligation allotment under this section to the State for the fiscal year, the amount of the difference shall be added to the amount of the State obligation allot-

ment otherwise provided under this section for the succeeding fiscal year.

''(ii) REDUCTION FOR POST-ENACTMENT NEW OBLIGATIONS UNDER TITLE XIX IN FISCAL YEAR 1996.—The amount of the obligation allotment otherwise provided under this section for fiscal year 1996 for a State shall be reduced by the amount of the obligations entered into with respect to the State under section 1903(a) after the date of the enactment of this Act.

''(3) AGGREGATE LIMIT ON NEW OBLIGATION AUTHORITY.—

''(A) IN GENERAL.—For purposes of this subsection, subject to subparagraph (C), the 'aggregate limit on new obligation authority', for a fiscal year, is the pool amount under subsection (b) for the fiscal year, divided by the payout adjustment factor (described in subparagraph (B)) for the fiscal year.

''(B) PAYOUT ADJUSTMENT FACTOR.—For purposes of this subsection, the 'payout adjustment factor'—

''(i) for fiscal year 1996 is .950,

''(ii) for fiscal year 1997 is .986, and

''(iii) for a subsequent fiscal year is .998.

''(C) TRANSITIONAL ADJUSTMENT FOR PRE-ENACTMENT-OBLIGATION OUTLAYS.—In order to account for pre-enactment-obligation outlays described in paragraph (4)(C)(iv), in determining the aggregate limit on new obligation authority under subparagraph (A) for fiscal year 1996, the pool amount for such fiscal year is equal to—

''(i) the pool amount for such year, reduced by

''(ii) $24.624 billion.

''(4) OBLIGATION ALLOTMENTS.—

''(A) GENERAL RULE FOR 50 STATES AND THE DISTRICT OF COLUMBIA.—Except as provided in this paragraph, the 'obligation allotment' for any of the 50 States or the District of Columbia for a fiscal year (beginning with fiscal year 1997) is an amount that bears the same ratio to the outlay allotment under subsection (c)(2) for such State or District (not taking into account any adjustment due to an election under paragraph (4)) for the fiscal year as the ratio of—

"(i) the aggregate limit on new obligation authority (less the total of the obligation allotments under subparagraph (B)) for the fiscal year, to

"(ii) the pool amount (less the sum of the outlay allotments for the territories) for such fiscal year.

"(B) TERRITORIES.—The obligation allotment for each of the Commonwealths and territories for a fiscal year is the outlay allotment for such Commonwealth or territory (as determined under subsection (c)(5)) for the fiscal year divided by the payout adjustment factor for the fiscal year (as defined in paragraph (3)(B)).

"(C) TRANSITIONAL RULE FOR FISCAL YEAR 1996.—

"(i) IN GENERAL.—The obligation amount for fiscal year 1996 for any State (including the District, a Commonwealth, or territory) is determined according to the formula: A = (B-C)/D, where—

"(I) 'A' is the obligation amount for such State;

''(II) 'B' is the outlay allotment of such State for fiscal year 1996, as determined under subsection (c);

''(III) 'C' is the amount of the pre-enactment-obligation outlays (as established for such State under clause (ii)); and

''(IV) 'D' is the payout adjustment factor for such fiscal year (as defined in paragraph (3)(B)).

''(ii) PRE-ENACTMENT-OBLIGATION OUTLAY AMOUNTS.—Within 30 days after the date of the enactment of this title, the Secretary shall estimate (based on the best data available) and publish in the Federal Register the amount of the pre-enactment-obligation outlays (as defined in clause (iv)) for each State (including the District, Commonwealths, and territories). The total of such amounts shall equal the dollar amount specified in paragraph (3)(C)(ii).

''(iii) AGREEMENT.—The submission of a MediGrant plan by a State under this title is deemed to constitute the State's acceptance of the obligation allotment limita-

tions under this subsection (including the formula for computing the amount of such obligation allotment).

''(iv) PRE-ENACTMENT-OBLIGATION OUTLAYS DEFINED.—In this subsection, the term 'pre-enactment-obligation outlays' means, for a State, the outlays of the Federal Government that result from obligations that have been incurred under title XIX with respect to the State before the date of the enactment of this title, but for which payments to States have not been made as of such date of enactment.

''(D) ADJUSTMENT TO REFLECT ADOPTION OF ALTERNATIVE GROWTH FORMULA.—Any State that has elected an alternative growth formula under subsection (c)(4) which increases or decreases the dollar amount of an outlay allotment for a fiscal year is deemed to have increased or decreased, respectively, its obligation amount for such fiscal year by the amount of such increase or decrease.

''(b) POOL OF AVAILABLE FUNDS.—

''(1) IN GENERAL.—For purposes of this section, the 'pool amount' under this subsection for—

''(A) fiscal year 1996 is $95.673 billion;

''(B) fiscal year 1997 is $102.135 billion;

''(C) fiscal year 1998 is $106.221 billion;

''(D) fiscal year 1999 is $110.469 billion;

''(E) fiscal year 2000 is $114.888 billion;

''(F) fiscal year 2001 is $119.483 billion;

''(G) fiscal year 2002 is $124.263 billion; and

''(H) each subsequent fiscal year is the pool amount under this paragraph for the previous fiscal year increased by the lesser of 4 percent or the annual percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending in June before the beginning of that subsequent fiscal year.

''(2) NATIONAL MEDIGRANT GROWTH PERCENTAGE.—For purposes of this section for a fiscal year (beginning with fiscal year 1997), the 'national MediGrant growth percentage' is the percentage by which—

''(A) the pool amount under paragraph (1) for the fiscal year, exceeds

''(B) such pool amount for the previous fiscal year.

"(c) STATE OUTLAY ALLOTMENTS.—

"(1) FISCAL YEAR 1996.—

"(A) IN GENERAL.—For each of the 50 States and the District of Columbia, the amount of the State outlay allotment under this subsection for fiscal year 1996 is, subject to paragraph (4), equal to—

"(i) the total amount of Federal expenditures made to the State under title XIX for the 4 quarters in fiscal year 1994, increased by

"(ii) the percentage by which (I) $95,529,490,500 (which represents the total amount of outlay allotments for such States and District for fiscal year 1996), exceeds (II) $83,213,431,458 (which represents Federal medicaid expenditures for such States and District for fiscal year 1994).

"(B) COMPUTATION OF EXPENDITURES.—The amount of Federal expenditures described in subparagraph (A)(i) shall be computed, using data reported on the HCFA Form 64 as of September 1, 1995, based on—

"(i) the amount reported on line 11, or

"(ii) on the amount reported on line 6 multiplied by the ratio of (I) the sum of the amounts so reported on line 11 of such Form for fiscal year 1994 for the 50 States and the District of Columbia, to (II) the sum of the amounts so reported on line 6 of such Form for fiscal year 1994 for such States and District,

whichever is greater.

"(C) LIMITATION ON ADJUSTMENT.—The amount computed under subparagraph (B) shall not be subject to adjustment (based on any subsequent disallowances or otherwise).

"(2) COMPUTATION OF STATE OUTLAY ALLOTMENTS.—

"(A) IN GENERAL.—Subject to the succeeding provisions of this subsection, the amount of the State outlay allotment under this subsection for one of the 50 States and the District of Columbia for a fiscal year (beginning with fiscal year 1997) is equal to the product of—

''(i) the needs-based amount determined under subparagraph (B) for the State for the fiscal year, and

''(ii) the scalar factor described in subparagraph (C) for the fiscal year.

''(B) NEEDS-BASED AMOUNT.—The needs-based amount under this subparagraph for a State for a fiscal year is equal to the product of—

''(i) the State's aggregate expenditure need for the fiscal year (as determined under subsection (d)), and

''(ii) the State's old Federal medical assistance percentage (as defined in section 2122(d)) for the previous fiscal year (or, in the case of fiscal year 1997, the Federal medical assistance percentage determined under section 1905(b) for fiscal year 1996).

''(C) SCALAR FACTOR.—The scalar factor under this subparagraph for a fiscal year is such proportion so that, when it is applied under subparagraph (A)(ii) for the fiscal year (taking into account the floors and ceilings under paragraph (3)), the total of the outlay al-

lotments under this subsection for all the 50 States and the District of Columbia for the fiscal year (not taking into account any increase in an outlay allotment for a fiscal year attributable to the election of an alternative growth formula under paragraph (4)) is equal to the amount by which (i) the pool amount for the fiscal year (as determined under subsection (b)), exceeds (ii) the sum of the outlay allotments provided under paragraph (5) for the Commonwealths and territories for the fiscal year.

''(3) FLOORS AND CEILINGS.—

''(A) FLOORS.—In no case shall the amount of the State outlay allotment under paragraph (2) for a fiscal year be less than the following:

''(i) FLOOR BASED ON PREVIOUS YEAR'S OUTLAY ALLOTMENT.—102 percent of the amount of the State outlay allotment under this subsection for the previous fiscal year.

''(ii) FLOOR BASED ON OUTLAY ALLOTMENT GROWTH RATE IN FIRST YEAR.—Beginning with fiscal year 1998,

in the case of a State for which the outlay allotment under this subsection for fiscal year 1997 exceeded its outlay allotment under this subsection for the previous fiscal year by—

''(I) more than 125 percent of the national MediGrant growth percentage for fiscal year 1997, 104 percent of the amount of the State outlay allotment under this subsection for the previous fiscal year; or

''(II) less than 125 percent (but more than 75 percent) of the national MediGrant growth percentage for fiscal year 1997, 103 percent of the amount of the State outlay allotment under this subsection for the previous fiscal year.

''(B) CEILING.—

''(i) IN GENERAL.—Subject to clause (ii), in no case shall the amount of the State outlay allotment under paragraph (2) for a fiscal year be greater than the product of—

"(I) the State outlay allotment under this subsection for the State for the preceding fiscal year, and

"(II) 133 percent of the national MediGrant growth percentage (as determined under subsection (b)(2)) for the fiscal year involved.

"(ii) SPECIAL RULE.—For a fiscal year after fiscal year 1997, in the case of a State (among the 50 States and the District of Columbia) that is one of the 10 States with the lowest Federal MediGrant spending per resident-in-poverty rates (as determined under clause (iii)) for the fiscal year, the reference in clause (i)(II) to '133 percent' is deemed a reference to '150 percent'.

"(iii) DETERMINATION OF FEDERAL MEDIGRANT SPENDING PER RESIDENT-IN-POVERTY RATE.—For purposes of clause (ii), the 'Federal MediGrant spending per resident-in-poverty rate' for a State for a fiscal year is equal to—

"(I) the State's outlay allotment under this subsection for the previous

fiscal year (determined without regard to paragraph (4)), divided by

''(II) the average annual number of residents of the State in poverty (as defined in subsection (d)(2)) with respect to the fiscal year.

''(4) ELECTION OF ALTERNATIVE GROWTH FORMULA.—

''(A) ELECTION.—In order to reduce variations in increases in outlay allotments over time, any of the 50 States or the District of Columbia may elect (by notice provided to the Secretary by not later than April 1, 1996) to adopt an alternative growth rate formula under this paragraph for the determination of the State's outlay allotment in fiscal year 1996 and for the increase in the amount of such allotment in subsequent fiscal years.

''(B) FORMULA.—The alternative growth formula under this paragraph may be any formula under which a portion of the State outlay allotment for fiscal year 1996 under paragraph (1) is deferred and applied to increase the amount of its outlay allotment for one or more subsequent fiscal years, so long as the total

amount of such increases for all such subsequent fiscal years does not exceed the amount of the outlay allotment deferred from fiscal year 1996.

''(5) COMMONWEALTHS AND TERRITORIES.—The outlay allotment for each of the Commonwealths and territories for a fiscal year is the maximum amount that could have been certified under section 1108(c) with respect to the Commonwealth or territory for the fiscal year with respect to title XIX, if the national MediGrant growth percentage (as determined under subsection (b)(2)) for the fiscal year had been substituted (beginning with fiscal year 1997) for the percentage increase referred to in section 1108(c)(1)(B).

''(d) STATE AGGREGATE EXPENDITURE NEED DETERMINED.—

''(1) IN GENERAL.—For purposes of subsection (c), the 'State aggregate expenditure need' for a State for a fiscal year is equal to the product of the following 4 factors:

''(A) RESIDENTS IN POVERTY.—The average annual number of residents in poverty of the State with respect to the fiscal year (as determined under paragraph (2)).

"(B) CASE MIX INDEX.—The average of the case mix indexes for the State (as determined under paragraph (3)) for the 3 most recent fiscal years for which data are available, but in no case less than .9 or greater than 1.15.

"(C) INPUT COST INDEX.—The average of the input cost indexes for the State (as determined under paragraph (4)) for the 3 most recent fiscal years for which data are available.

"(D) NATIONAL AVERAGE SPENDING PER RESIDENT IN POVERTY.—The national average spending per resident in poverty (as determined under paragraph (5)).

"(2) RESIDENTS IN POVERTY.—In this section—

"(A) IN GENERAL.—The term 'average annual number of residents in poverty' means, with respect to a State and a fiscal year, the average annual number of residents in poverty (as defined in subparagraph (B)) in the State (based on data made generally available by the Bureau of the Census from the Current Population Survey) for the most recent 3-calendar-year period (ending before the fiscal year) for which such data are available.

"(B) RESIDENT IN POVERTY DEFINED.—The term 'resident in poverty' means an individual whose family income does not exceed the poverty threshold (as such terms are defined by the Office of Management and Budget and are generally interpreted and applied by the Bureau of the Census for the year involved).

"(3) CASE MIX INDEX.—

"(A) IN GENERAL.—In this subsection, the 'case mix index' for a State for a fiscal year is equal to—

"(i) the sum of—

"(I) the projected per recipient expenditures with respect to elderly individuals in the State for the fiscal year (determined under subparagraph (B)),

"(II) the projected per recipient expenditures with respect to the blind and disabled individuals in the State for the fiscal year (determined under subparagraph (C)), and

"(III) the projected per recipient expenditures with respect to other in-

dividuals in the State (determined under subparagraph (D));

divided by—

''(ii) the national average spending per recipient determined under subparagraph (E) for the fiscal year involved.

''(B) PROJECTED PER RECIPIENT EXPENDITURES FOR THE ELDERLY.—For purposes of subparagraph (A)(I)(i), the 'projected per recipient expenditures with respect to elderly individuals' in a State for a fiscal year is equal to the product of—

''(i) the national average per recipient expenditures under this title in the 50 States and the District of Columbia for the most recent fiscal year for which data are available for individuals who are 65 years of age or older, and

''(ii) the proportion, of all individuals who received medical assistance under this title in the State in the most recent fiscal year referred to in clause (i), that were individuals described in such clause.

''(C) PROJECTED PER RECIPIENT EXPENDITURES FOR THE BLIND AND DISABLED.—For

purposes of subparagraph (A)(i)(II), the 'projected per recipient expenditures with respect to blind and disabled individuals' in a State for a fiscal year is equal to the product of—

''(i) the national average per recipient expenditures under this title in the 50 States and the District of Columbia for the most recent fiscal year for which data are available for individuals who are eligible for medical assistance because they are blind or disabled and under 65 years of age, and

''(ii) the proportion, of all individuals who received medical assistance under this title in the State in the most recent fiscal year referred to in clause (i), that were individuals described in such clause.

''(D) PROJECTED PER RECIPIENT EXPENDITURES FOR OTHER INDIVIDUALS.—For purposes of subparagraph (A)(i)(III), the 'projected per recipient expenditures with respect to other individuals' in a State for a fiscal year is equal to the product of—

''(i) the national average per recipient expenditures under this title in the 50

States and the District of Columbia for the most recent fiscal year for which data are available for individuals who are not described in subparagraph (B)(i) or (C)(i), and

''(ii) the proportion, of all individuals who received medical assistance under this title in the State in the most recent fiscal year referred to in clause (i), that were individuals described in such clause.

''(E) NATIONAL AVERAGE SPENDING PER RECIPIENT.—For purposes of this paragraph, the 'national average expenditures per recipient' for a fiscal year is equal to the sum of—

''(i) the product of (I) the national average described in subparagraph (B)(i), and (II) the proportion, of all individuals who received medical assistance under this title in any of the 50 States or the District of Columbia in the fiscal year referred to in such subparagraph, who are described in such subparagraph;

''(ii) the product of (I) the national average described in subparagraph (C)(i), and (II) the proportion, of all individuals

who received medical assistance under this title in any of the 50 States or the District of Columbia in the fiscal year referred to in such subparagraph, who are described in such subparagraph; and

''(iii) the product of (I) the national average described in subparagraph (D)(i), and (II) the proportion, of all individuals who received medical assistance under this title in any of the 50 States or the District of Columbia in the fiscal year referred to in such subparagraph, who are described in such subparagraph.

''(F) DETERMINATION OF NATIONAL AVERAGES AND PROPORTIONS.—

''(i) IN GENERAL.—The national averages per recipient and the proportions referred to in clauses (i) and (ii), respectively, of subparagraphs (B), (C), and (D) and subparagraph (E) shall be determined by the Secretary using the most recent data available.

''(ii) USE OF MEDICAID DATA.—If for a fiscal year there is inadequate data to compute such averages and proportions

based on expenditures and numbers of individuals receiving medical assistance under this title, the Secretary may compute such averages based on expenditures and numbers of such individuals under title XIX for the most recent fiscal year for which data are available and, for this purpose—

''(I) any reference in subparagraph (B)(i) to 'individuals 65 years of age or older' is deemed a reference to 'individuals whose eligibility for medical assistance is based on being 65 years of age or older',

''(II) the reference in subparagraph (C)(i) to 'and under 65 years of age' shall be considered to be deleted, and

''(III) individuals whose basis for eligibility for medical assistance was reported as unknown shall not be counted as individuals under subparagraph (D)(i).

''(4) INPUT COST INDEX.—

"(A) IN GENERAL.—In this section, the 'input cost index' for a State for a fiscal year is the sum of—

"(i) 0.15, and

"(ii) 0.85 multiplied by the ratio of (I) the annual average wages for hospital employees in the State for the fiscal year (as determined under subparagraph (B)), to (II) the annual average wages for hospital employees in the 50 States and the District of Columbia for such year (as determined under such subparagraph).

"(B) DETERMINATION OF ANNUAL AVERAGE WAGES OF HOSPITAL EMPLOYEES.—The Secretary shall provide for the determination of annual average wages for hospital employees in a State and, collectively, in the 50 States and the District of Columbia for a fiscal year based on the area wage index applicable to hospitals under 1886(d)(2)(E) (or, if such index no longer exists, a comparable index of hospital wages) for discharges occurring during the fiscal year involved.

"(5) NATIONAL AVERAGE SPENDING PER RESIDENT IN POVERTY.—For purposes of this sub-

section, the 'national average spending per resident in poverty'—

''(A) for fiscal year 1997 is equal to—

''(i) the sum (for each of the 50 States and the District of Columbia) of the total of the Federal and State expenditures under title XIX for calendar quarters in fiscal year 1994, increased by the percentage specified in subsection (c)(1)(A)(ii), divided by

''(ii) the sum of the number of residents in poverty (as defined in paragraph (2)(A)) for all of the 50 States and the District of Columbia for fiscal year 1994;

''(B) for a succeeding fiscal year is equal to the national average spending per resident in poverty under this paragraph for the preceding fiscal year increased by the national MediGrant growth percentage (as defined in subsection (b)(2)) for the fiscal year involved.

''(e) PUBLICATION OF OBLIGATION AND OUTLAY ALLOTMENTS.—

''(1) NOTICE OF PRELIMINARY ALLOTMENTS.—Not later than April 1 before the beginning of each fiscal year (beginning with fiscal year 1997), the

Secretary shall initially compute, after consultation with the Comptroller General, and publish in the Federal Register notice of the proposed obligation and outlay allotments for each State under this section (not taking into account subsection (a)(2)(B)) for the fiscal year. The Secretary shall include in the notice a description of the methodology and data used in deriving such allotments for the year.

''(2) REVIEW BY GAO.—The Comptroller General shall submit to Congress by not later than May 15 of each such fiscal year, a report analyzing such allotments and the extent to which they comply with the precise requirements of this section.

''(3) NOTICE OF FINAL ALLOTMENTS.—Not later than July 1 before the beginning of each such fiscal year, the Secretary, taking into consideration the analysis contained in the report of the Comptroller General under paragraph (2), shall compute and publish in the Federal Register notice of the final allotments under this section (both taking into account and not taking into account subsection (a)(2)(B)) for the fiscal year. The Secretary shall include in the notice a description of any changes in such allotments from the initial allotments published under paragraph (1) for the fiscal year and the rea-

sons for such changes. Once published under this paragraph, the Secretary is not authorized to change such allotments.

''(4) GAO REPORT ON FINAL ALLOTMENTS.—The Comptroller General shall submit to Congress by not later than August 1 of each such fiscal year, a report analyzing the final allotments under paragraph (3) and the extent to which they comply with the precise requirements of this section.

**"SEC. 2122. PAYMENTS TO STATES.**

''(a) AMOUNT OF PAYMENT.—From the allotment of a State under section 2121 for a fiscal year, subject to the succeeding provisions of this title, the Secretary shall pay to each State which has a MediGrant plan approved under part E, for each quarter in the fiscal year—

''(1) an amount equal to the applicable Federal medical assistance percentage (as defined in subsection (c)) of the total amount expended during such quarter as medical assistance under the plan; plus

''(2) an amount equal to the applicable Federal medical assistance percentage of the total amount expended during such quarter for medically-related services (as defined in section 2112(e)(2)); plus

''(3) subject to section 2123(c)—

"(A) an amount equal to 90 percent of the amounts expended during such quarter for the design, development, and installation of information systems and for providing incentives to promote the enforcement of medical support orders, plus

"(B) an amount equal to 75 percent of the amounts expended during such quarter for medical personnel, administrative support of medical personnel, operation and maintenance of information systems, modification of information systems, quality assurance activities, utilization review, medical and peer review, anti-fraud activities, independent evaluations, coordination of benefits, and meeting reporting requirements under this title, plus

"(C) an amount equal to 50 percent of so much of the remainder of the amounts expended during such quarter as are expended by the State in the administration of the State plan.

"(b) PAYMENT PROCESS.—

"(1) QUARTERLY ESTIMATES.—Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under

subsection (a) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

''(2) PAYMENT.—

''(A) IN GENERAL.—The Secretary shall then pay to the State, in such installments as the Secretary may determine and in accordance with section 6503(a) of title 31, United States Code, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section (or section 1903) to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection (or under section 1903(d)).

"(B) TREATMENT AS OVERPAYMENTS.—Expenditures for which payments were made to the State under subsection (a) shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 2135.

"(C) RECOVERY OF OVERPAYMENTS.—For purposes of this subsection, when an overpayment is discovered, which was made by a State to a person or other entity, the State shall have a period of 60 days in which to recover or attempt to recover such overpayment before adjustment is made in the Federal payment to such State on account of such overpayment. Except as otherwise provided in subparagraph (D), the adjustment in the Federal payment shall be made at the end of the 60 days, whether or not recovery was made.

"(D) NO ADJUSTMENT FOR UNCOLLECTABLES.—In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity on account of

such debt having been discharged in bankruptcy or otherwise being uncollectable, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof).

''(3) FEDERAL SHARE OF RECOVERIES.—The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

''(4) TIMING OF OBLIGATION OF FUNDS.—Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

''(5) DISALLOWANCES.—In any case in which the Secretary estimates that there has been an overpayment under this section to a State on the basis of a claim by such State that has been disallowed by the Secretary under section 1116(d), and such State disputes such disallowance, the amount of the Federal payment in controversy shall, at the option of

the State, be retained by such State or recovered by the Secretary pending a final determination with respect to such payment amount. If such final determination is to the effect that any amount was properly disallowed, and the State chose to retain payment of the amount in controversy, the Secretary shall offset, from any subsequent payments made to such State under this title, an amount equal to the proper amount of the disallowance plus interest on such amount disallowed for the period beginning on the date such amount was disallowed and ending on the date of such final determination at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day treasury bill auction rates during such period.

''(c) APPLICABLE FEDERAL MEDICAL ASSISTANCE PERCENTAGE DEFINED.—In this section, except as provided in subsection (f), the term 'applicable Federal medical assistance percentage' means, with respect to one of the 50 States or the District of Columbia, at the State's or District's option—

''(1) the old Federal medical assistance percentage (as determined in subsection (d)), or

''(2) the new Federal medical assistance percentage (as determined under subsection (e)) or, if

less, the old Federal medical assistance percentage plus 10 percentage points.

''(d) OLD FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—

''(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (f), the term 'old Federal medical assistance percentage' for any State is 100 percent less the State percentage; and the State percentage is that percentage which bears the same ratio to 45 percent as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii.

''(2) LIMITATION ON RANGE.—In no case shall the old Federal medical assistance percentage be less than 50 percent or more than 83 percent.

''(3) PROMULGATION.—The old Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of section 1101(a)(8)(B).

''(e) NEW FEDERAL MEDICAL ASSISTANCE PERCENTAGE DEFINED.—

''(1) IN GENERAL.—

''(A) TERM DEFINED.—Except as provided in paragraph (3) and subsection (f), the term

'new Federal medical assistance percentage' means, for each of the 50 States and the District of Columbia, 100 percent reduced by the product 0.39 and the ratio of—

''(i)(I) for each of the 50 States, the total taxable resources (TTR) ratio of the State specified in subparagraph (B), or

''(II) for the District of Columbia, the per capita income ratio specified in subparagraph (C),

to—

''(ii) the aggregate expenditure need ratio of the State or District, as described in subparagraph (D).

''(B) TOTAL TAXABLE RESOURCES (TTR) RATIO.—For purposes of subparagraph (A)(i)(I), the total taxable resources (TTR) ratio for each of the 50 States is—

''(i) an amount equal to the most recent 3-year average of the total taxable resources (TTR) of the State, as determined by the Secretary of the Treasury, divided by

"(ii) an amount equal to the sum of the 3-year averages determined under clause (i) for each of the 50 States.

"(C) PER CAPITA INCOME RATIO.—For purposes of subparagraph (A)(i)(II), the per capita income ratio of the District of Columbia is—

"(i) an amount equal to the most recent 3-year average of the total personal income of the District of Columbia, as determined in accordance with the provisions of section 1101(a)(8)(B), divided by

"(ii) an amount equal to the total personal income of the continental United States (including Alaska) and Hawaii, as determined under section 1101(a)(8)(B).

"(D) AGGREGATE EXPENDITURE NEED RATIO.—For purposes of subparagraph (A), with respect to each of the 50 States and the District of Columbia for a fiscal year, the aggregate expenditure need ratio is—

"(i) the State aggregate expenditure need (as defined in section 2121(d)) for the State for the fiscal year, divided by

1 ''(ii) the such of such State aggregate
2 expenditure needs for the 50 States and
3 the District of Columbia for the fiscal year.
4 ''(2) LIMITATION ON RANGE.—Except as pro-
5 vided in subsection (f), the new Federal medical as-
6 sistance percentage shall in no case be less than 40
7 percent or greater than 83 percent.
8 ''(3) PROMULGATION.—The new Federal medi-
9 cal assistance percentage for any State shall be pro-
10 mulgated in a timely manner consistent with the
11 promulgation of the old Federal medical assistance
12 percentage under section 1101(a)(8)(B).
13 ''(f) SPECIAL RULES.—For purposes of this title—
14 ''(1) COMMONWEALTHS AND TERRITORIES.—In
15 the case of Puerto Rico, the Virgin Islands, Guam,
16 the Northern Mariana Islands, and American
17 Samoa, the old and new Federal medical assistance
18 percentages are 50 percent.
19 ''(2) INDIAN HEALTH SERVICE FACILITIES.—
20 ''(A) IN GENERAL.—The old and new Fed-
21 eral medical assistance percentages shall be 100
22 percent with respect to the amounts expended
23 as medical assistance for services which are re-
24 ceived through a facility described in subpara-
25 graph (B) of an Indian tribe or tribal organiza-

tion or through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 4 of the Indian Health Care Improvement Act).

''(B) FACILITY DESCRIBED.—For purposes of subparagraph (A), a facility described in this subparagraph is a facility of an Indian tribe if—

''(i) the facility is located in a State which, as of the date of the enactment of this title, was not operating its State plan under title XIX pursuant to a Statewide waiver approved under section 1115,

''(ii) the facility is not an Indian Health Service facility,

''(iii) the tribe owns at least 2 such facilities, and

''(iv) the tribe has at least 50,000 members (as of the date of the enactment of this title).

''(3) NO STATE MATCHING REQUIRED FOR CERTAIN EXPENDITURES.—In applying subsection (a)(1) with respect to medical assistance provided to unlawful aliens pursuant to the exception specified in sec-

tion 2123(e)(2), payment shall be made for the amount of such assistance without regard to any need for a State match.

**"SEC. 2123. LIMITATION ON USE OF FUNDS; DISALLOWANCE.**

''(a) IN GENERAL.—Funds provided to a State under this title shall only be used to carry out the purposes of this title.

''(b) DISALLOWANCES FOR EXCLUDED PROVIDERS.—

''(1) IN GENERAL.—Payment shall not be made to a State under this part for expenditures for items and services furnished—

''(A) by a provider who was excluded from participation under title V, XVIII, or XX or under this title pursuant to section 1128, 1128A, 1156, or 1842(j)(2), or

''(B) under the medical direction or on the prescription of a physician who was so excluded, if the provider of the services knew or had reason to know of the exclusion.

''(2) EXCEPTION FOR EMERGENCY SERVICES.—Paragraph (1) shall not apply to emergency items or services, not including hospital emergency room services.

1 ''(c) LIMITATIONS.—

2 ''(1) IN GENERAL.—No Federal financial assist-
3 ance is available for expenditures under the
4 MediGrant plan for—

5 ''(A) medically-related services for a quar-
6 ter to the extent such expenditures exceed 5
7 percent of the total expenditures under the plan
8 for the quarter; or

9 ''(B) total administrative expenses (other
10 than expenses described in paragraph (2) dur-
11 ing the first 8 quarters in which the plan is in
12 effect under this title) for quarters in a fiscal
13 year to the extent such expenditures exceed the
14 sum of $20,000,000 plus 10 percent of the total
15 expenditures under the plan for the year.

16 ''(2) ADMINISTRATIVE EXPENSES NOT SUBJECT
17 TO LIMITATION.—The administrative expenses re-
18 ferred to in this paragraph are expenditures under
19 the MediGrant plan for the following activities:

20 ''(A) Quality assurance.

21 ''(B) The development and operation of the
22 certification program for nursing facilities and
23 intermediate care facilities for the mentally re-
24 tarded under section 2137(a)(2).

''(C) Utilization review activities, including medical activities and activities of peer review organizations.

''(D) Inspection and oversight of providers and capitated health care organizations.

''(E) Anti-fraud activities.

''(F) Independent evaluations.

''(G) Activities required to meet reporting requirements under this title.

''(d) TREATMENT OF THIRD PARTY LIABILITY.—No payment shall be made to a State under this part for expenditures for medical assistance provided for an individual under its MediGrant plan to the extent that a private insurer (as defined by the Secretary by regulation and including a group health plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), a service benefit plan, and a health maintenance organization) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided medical assistance under the plan.

''(e) LIMITATION ON PAYMENTS TO EMERGENCY SERVICES FOR NONLAWFUL ALIENS.—

"(1) IN GENERAL.—Notwithstanding the preceding provisions of this section, except as provided in paragraph (2), no payment may be made to a State under this part for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

"(2) EXCEPTION FOR EMERGENCY SERVICES.—Payment may be made under this section for care and services that are furnished to an alien described in paragraph (1) only if—

"(A) such care and services are necessary for the treatment of an emergency medical condition of the alien,

"(B) such alien otherwise meets the eligibility requirements for medical assistance under the MediGrant plan (other than a requirement of the receipt of aid or assistance under title IV, supplemental security income benefits under title XVI, or a State supplementary payment), and

"(C) such care and services are not related to an organ transplant procedure.

"(3) EMERGENCY MEDICAL CONDITION DEFINED.—For purposes of this subsection, the term

'emergency medical condition' means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

''(A) placing the patient's health in serious jeopardy,

''(B) serious impairment to bodily functions, or

''(C) serious dysfunction of any bodily organ or part.

''(f) LIMITATION ON PAYMENT FOR CERTAIN OUTPATIENT PRESCRIPTION DRUGS.—

''(1) IN GENERAL.—No payment may be made to a State under this part for medical assistance for covered outpatient drugs (as defined in section 2175(i)(2)) of a manufacturer provided under the MediGrant plan unless the manufacturer (as defined in section 2175(i)(4)) of the drug—

''(A) has entered into a MediGrant master rebate agreement with the Secretary under section 2175; and

''(B) is complying with the provisions of section 8126 of title 38, United States Code, in-

cluding the requirement of entering into a master agreement with the Secretary of Veterans Affairs under such section.

''(2) CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a State to participate in the MediGrant master rebate agreement under section 2175.

''(3) EFFECT OF SUBSEQUENT AMENDMENTS.—For purposes of paragraph (1)(B), in determining whether a manufacturer is in compliance with the requirements of section 8126 of title 38, United States Code—

''(A) the Secretary shall not take into account any amendments to such section that are enacted after the enactment of title VI of the Veterans Health Care Act of 1992; and

''(B) a manufacturer is deemed to meet such requirements if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of section 8126 of title 38, United States Code (as in effect immediately after the enactment of the Veterans Health Care Act of 1992) and would have entered into an agreement under such sec-

tion (as such section was in effect at such time), but for a legislative change in such section after the date of the enactment of the Veterans Health Care Act of 1992.

''(g) LIMITATION ON PAYMENT FOR ABORTIONS.—

''(1) IN GENERAL.—Payment shall not be made to a State under this part for any amount expended under the MediGrant plan to pay for any abortion or to assist in the purchase, in whole or in part, of health benefit coverage that includes coverage of abortion.

''(2) EXCEPTION.—Paragraph (1) shall not apply to an abortion—

''(A) if the pregnancy is the result of an act of rape or incest, or

''(B) in the case where a woman suffers from a physical disorder, illness, or injury that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

''(h) LIMITATION ON PAYMENT FOR ASSISTING DEATHS.—Payment shall not be made to a State under this part for amounts expended under the MediGrant plan to pay for, or to assist in the purchase, in whole or in part, of health benefit coverage that includes payment for

any drug, biological product, or service which was furnished for the purpose of causing, or assisting in causing, the death, suicide, euthanasia, or mercy killing of a person.

''PART D—PROGRAM INTEGRITY AND QUALITY

**"SEC. 2131. USE OF AUDITS TO ACHIEVE FISCAL INTEGRITY.**

''(a) FINANCIAL AUDITS OF PROGRAM.—

''(1) IN GENERAL.—Each MediGrant plan shall provide for an annual audit of the State's expenditures from amounts received under this title, in compliance with chapter 75 of title 31, United States Code.

''(2) VERIFICATION AUDITS.—If, after consultation with the State and the Comptroller General and after a fair hearing, the Secretary determines that a State's audit under paragraph (1) was performed in substantial violation of chapter 75 of title 31, United States Code, the Secretary may—

''(A) require that the State provide for a verification audit in compliance with such chapter, or

''(B) conduct such a verification audit.

''(3) AVAILABILITY OF AUDIT REPORTS.—Within 30 days after completion of each audit or verification audit under this subsection, the State shall—

"(A) provide the Secretary with a copy of the audit report, including the State's response to any recommendations of the auditor, and

"(B) make the audit report available for public inspection in the same manner as proposed MediGrant plan amendments are made available under section 2105.

"(b) FISCAL CONTROLS.—

"(1) IN GENERAL.—With respect to the accounting and expenditure of funds under this title, each State shall adopt and maintain such fiscal controls, accounting procedures, and data processing safeguards as the State deems reasonably necessary to assure the fiscal integrity of the State's activities under this title.

"(2) CONSISTENCY WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—Such controls and procedures shall be generally consistent with generally accepted accounting principles as recognized by the Governmental Accounting Standards Board or the Comptroller General.

"(c) AUDITS OF PROVIDERS.—Each MediGrant plan shall provide that the records of any entity providing items or services for which payment may be made under the plan

may be audited as necessary to ensure that proper payments are made under the plan.

**"SEC. 2132. FRAUD PREVENTION PROGRAM.**

''(a) ESTABLISHMENT.—Each MediGrant plan shall provide for the establishment and maintenance of an effective program for the detection and prevention of fraud and abuse by beneficiaries, providers, and others in connection with the operation of the program.

''(b) PROGRAM REQUIREMENTS.—The program established pursuant to subsection (a) shall include at least the following requirements:

''(1) DISCLOSURE OF INFORMATION.—Any disclosing entity (as defined in section 1124(a)) receiving payments under the MediGrant plan shall comply with the requirements of section 1124.

''(2) SUPPLY OF INFORMATION.—An entity (other than an individual practitioner or a group of practitioners) that furnishes, or arranges for the furnishing of, an item or service under the MediGrant plan shall supply upon request specifically addressed to the entity by the Secretary or the State agency the information described in section 1128(b)(9).

''(3) EXCLUSION.—

''(A) IN GENERAL.—The MediGrant plan shall exclude any specified individual or entity

from participation in the plan for the period specified by the Secretary when required by the Secretary to do so pursuant to section 1128 or section 1128A, and provide that no payment may be made under the plan with respect to any item or service furnished by such individual or entity during such period.

''(B) AUTHORITY.—In addition to any other authority, a State may exclude any individual or entity for purposes of participating under the MediGrant plan for any reason for which the Secretary could exclude the individual or entity from participation in a program under title XVIII or under section 1128, 1128A, or 1866(b)(2).

''(4) NOTICE.—The MediGrant plan shall provide that whenever a provider of services or any other person is terminated, suspended, or otherwise sanctioned or prohibited from participating under the plan, the State agency responsible for administering the plan shall promptly notify the Secretary and, in the case of a physician, the State medical licensing board of such action.

''(5) ACCESS TO INFORMATION.—The MediGrant plan shall provide that the State will pro-

vide information and access to certain information respecting sanctions taken against health care practitioners and providers by State licensing authorities in accordance with section 2133.

**"SEC. 2133. INFORMATION CONCERNING SANCTIONS TAKEN BY STATE LICENSING AUTHORITIES AGAINST HEALTH CARE PRACTITIONERS AND PROVIDERS.**

''(a) INFORMATION REPORTING REQUIREMENT.—The requirement referred to in section 2132(b)(5) is that the State must provide for the following:

''(1) INFORMATION REPORTING SYSTEM.—The State must have in effect a system of reporting the following information with respect to formal proceedings (as defined by the Secretary in regulations) concluded against a health care practitioner or entity by any authority of the State (or of a political subdivision thereof) responsible for the licensing of health care practitioners (or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners) or entities:

''(A) Any adverse action taken by such licensing authority as a result of the proceeding, including any revocation or suspension of a li-

cense (and the length of any such suspension), reprimand, censure, or probation.

''(B) Any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction.

''(C) Any other loss of the license of the practitioner or entity, whether by operation of law, voluntary surrender, or otherwise.

''(D) Any negative action or finding by such authority, organization, or entity regarding the practitioner or entity.

''(2) ACCESS TO DOCUMENTS.—The State must provide the Secretary (or an entity designated by the Secretary) with access to such documents of the authority described in paragraph (1) as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations described in such paragraph for the purpose of carrying out this Act.

''(b) FORM OF INFORMATION.—The information described in subsection (a)(1) shall be provided to the Secretary (or to an appropriate private or public agency, under suitable arrangements made by the Secretary with respect to receipt, storage, protection of confidentiality,

and dissemination of information) in such a form and manner as the Secretary determines to be appropriate in order to provide for activities of the Secretary under this Act and in order to provide, directly or through suitable arrangements made by the Secretary, information—

''(1) to agencies administering Federal health care programs, including private entities administering such programs under contract,

''(2) to licensing authorities described in subsection (a)(1),

''(3) to State agencies administering or supervising the administration of State health care programs (as defined in section 1128(h)),

''(4) to utilization and quality control peer review organizations described in part B of title XI and to appropriate entities with contracts under section 1154(a)(4)(C) with respect to eligible organizations reviewed under the contracts,

''(5) to State MediGrant fraud control units (as defined in section 2134),

''(6) to hospitals and other health care entities (as defined in section 431 of the Health Care Quality Improvement Act of 1986), with respect to physicians or other licensed health care practitioners that have entered (or may be entering) into an employ-

ment or affiliation relationship with, or have applied for clinical privileges or appointments to the medical staff of, such hospitals or other health care entities (and such information shall be deemed to be disclosed pursuant to section 427 of, and be subject to the provisions of, that Act),

''(7) to the Attorney General and such other law enforcement officials as the Secretary deems appropriate, and

''(8) upon request, to the Comptroller General, in order for such authorities to determine the fitness of individuals to provide health care services, to protect the health and safety of individuals receiving health care through such programs, and to protect the fiscal integrity of such programs.

''(c) CONFIDENTIALITY OF INFORMATION PROVIDED.—The Secretary shall provide for suitable safeguards for the confidentiality of the information furnished under subsection (a). Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure.

''(d) APPROPRIATE COORDINATION.—The Secretary shall provide for the maximum appropriate coordination in the implementation of subsection (a) of this section and

section 422 of the Health Care Quality Improvement Act of 1986.

**"SEC. 2134. STATE MEDIGRANT FRAUD CONTROL UNITS.**

''(a) IN GENERAL.—Each MediGrant plan shall provide for a State MediGrant fraud control unit described in subsection (b) that effectively carries out the functions and requirements described in such subsection, unless the State demonstrates to the satisfaction of the Secretary that the effective operation of such a unit in the State would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the plan, and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision of medical assistance under the plan without the existence of such a unit

''(b) UNITS DESCRIBED.—For purposes of this subsection, the term 'State MediGrant fraud control unit' means a single identifiable entity of the State government which meets the following requirements:

''(1) ORGANIZATION.—The entity—

''(A) is a unit of the office of the State Attorney General or of another department of State government which possesses statewide authority to prosecute individuals for criminal violations;

''(B) is in a State the constitution of which does not provide for the criminal prosecution of individuals by a statewide authority and has formal procedures that—

''(i) assure its referral of suspected criminal violations relating to the program under this title to the appropriate authority or authorities in the State for prosecution, and

''(ii) assure its assistance of, and coordination with, such authority or authorities in such prosecutions; or

''(C) has a formal working relationship with the office of the State Attorney General and has formal procedures (including procedures for its referral of suspected criminal violations to such office) which provide effective coordination of activities between the entity and such office with respect to the detection, investigation, and prosecution of suspected criminal violations relating to the program under this title.

''(2) INDEPENDENCE.—The entity is separate and distinct from any State agency that has prin-

cipal responsibilities for administering or supervising the administration of the MediGrant plan.

''(3) FUNCTION.—The entity's function is conducting a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud in connection with any aspect of the provision of medical assistance and the activities of providers of such assistance under the MediGrant plan.

''(4) REVIEW OF COMPLAINTS.—The entity has procedures for reviewing complaints of the abuse and neglect of patients of health care facilities which receive payments under the MediGrant plan under this title, and, where appropriate, for acting upon such complaints under the criminal laws of the State or for referring them to other State agencies for action.

''(5) OVERPAYMENTS.—The entity provides for the collection, or referral for collection to a single State agency, of overpayments that are made under the MediGrant plan to health care providers and that are discovered by the entity in carrying out its activities.

''(6) PERSONNEL.—The entity employs such auditors, attorneys, investigators, and other nec-

essary personnel and is organized in such a manner as is necessary to promote the effective and efficient conduct of the entity's activities.

**"SEC. 2135. RECOVERIES FROM THIRD PARTIES AND OTHERS.**

''(a) THIRD PARTY LIABILITY.—Each MediGrant plan shall provide for reasonable steps—

''(1) to ascertain the legal liability of third parties to pay for care and services available under the plan, including the collection of sufficient information to enable States to pursue claims against third parties; and

''(2) to seek reimbursement for medical assistance provided to the extent legal liability is establish where the amount expected to be recovered exceeds the costs of the recovery.

''(b) BENEFICIARY PROTECTION.—

''(1) IN GENERAL.—Each MediGrant plan shall provide that in the case of a person furnishing services under the plan for which a third party may be liable for payment—

''(A) the person may not seek to collect from the individual (or financially responsible relative) payment of an amount for the service

more than could be collected under the plan in the absence of such third party liability, and

''(B) may not refuse to furnish services to such an individual because of a third party's potential liability for payment for the service.

''(2) PENALTY.—A MediGrant plan may provide for a reduction of any payment amount otherwise due with respect to a person who furnishes services under the plan in an amount equal to up to three times the amount of any payment sought to be collected by that person in violation of paragraph (1)(A).

''(c) GENERAL LIABILITY.—The State shall prohibit any health insurer (including a group health plan as defined in section 607 of the Employee Retirement Income Security Act of 1974, a service benefit plan, or a health maintenance organization), in enrolling an individual or in making any payments for benefits to the individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance under a MediGrant plan for any State.

''(d) ACQUISITION OF RIGHTS OF BENEFICIARIES.—To the extent that payment has been made under a MediGrant plan in any case where a third party has a legal liability to make payment for such assistance, the

State shall have in effect laws under which, to the extent that payment has been made under the plan for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services.

''(e) ASSIGNMENT OF MEDICAL SUPPORT RIGHTS.—The MediGrant plan shall provide for mandatory assignment of rights of payment for medical support and other medical care owed to recipients in accordance with section 2136.

''(f) REQUIRED LAWS RELATING TO MEDICAL CHILD SUPPORT.—

''(1) IN GENERAL.—Each State with a MediGrant plan shall have in effect the following laws:

''(A) A law that prohibits an insurer from denying enrollment of a child under the health coverage of the child's parent on the ground that—

''(i) the child was born out of wedlock,

''(ii) the child is not claimed as a dependent on the parent's Federal income tax return, or

''(iii) the child does not reside with the parent or in the insurer's service area.

''(B) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an insurer, a law that requires such insurer—

''(i) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

''(ii) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this title or part D of title IV; and

''(iii) not to disenroll (or eliminate coverage of) such a child unless the insurer is provided satisfactory written evidence that—

''(I) such court or administrative order is no longer in effect, or

''(II) the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of such disenrollment.

''(C) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an employer doing business in the State, a law that requires such employer—

''(i) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

''(ii) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this title or part D of title IV; and

''(iii) not to disenroll (or eliminate coverage of) any such child unless—

''(I) the employer is provided satisfactory written evidence that such court or administrative order is no longer in effect, or the child is or will be enrolled in comparable health coverage which will take effect not later than the effective date of such disenrollment, or

''(II) the employer has eliminated family health coverage for all of its employees; and

''(iv) to withhold from such employee's compensation the employee's share (if any) of premiums for health coverage (except that the amount so withheld may not exceed the maximum amount permitted to be withheld under section 303(b) of the Consumer Credit Protection Act), and to pay such share of premiums to the insurer, except that the Secretary may provide by regulation for appropriate circumstances under which an employer may withhold

less than such employee's share of such premiums.

''(D) A law that prohibits an insurer from imposing requirements on a State agency, which has been assigned the rights of an individual eligible for medical assistance under this title and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

''(E) A law that requires an insurer, in any case in which a child has health coverage through the insurer of a noncustodial parent—

''(i) to provide such information to the custodial parent as may be necessary for the child to obtain benefits through such coverage;

''(ii) to permit the custodial parent (or provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and

''(iii) to make payment on claims submitted in accordance with clause (ii) di-

rectly to such custodial parent, the provider, or the State agency.

''(F) A law that permits the State agency under this title to garnish the wages, salary, or other employment income of, and requires withholding amounts from State tax refunds to, any person who—

''(i) is required by court or administrative order to provide coverage of the costs of health services to a child who is eligible for medical assistance under this title,

''(ii) has received payment from a third party for the costs of such services to such child, but

''(iii) has not used such payments to reimburse, as appropriate, either the other parent or guardian of such child or the provider of such services,

to the extent necessary to reimburse the State agency for expenditures for such costs under its plan under this title, but any claims for current or past-due child support shall take priority over any such claims for the costs of such services.

"(2) DEFINITION.—For purposes of this subsection, the term 'insurer' includes a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, a health maintenance organization, and an entity offering a service benefit plan.

"(g) ESTATE RECOVERIES AND LIENS PERMITTED.—A State may take such actions as it considers appropriate to adjust or recover from the individual or the individual's estate any amounts paid as medical assistance to or on behalf of the individual under the MediGrant plan, including through the imposition of liens against the property or estate of the individual.

**"SEC. 2136. ASSIGNMENT OF RIGHTS OF PAYMENT.**

"(a) IN GENERAL.—For the purpose of assisting in the collection of medical support payments and other payments for medical care owed to recipients of medical assistance under the MediGrant plan, each MediGrant plan shall—

"(1) provide that, as a condition of eligibility for medical assistance under the plan to an individual who has the legal capacity to execute an assignment for himself, the individual is required—

"(A) to assign the State any rights, of the individual or of any other person who is eligible

for medical assistance under the plan and on whose behalf the individual has the legal authority to execute an assignment of such rights, to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party,

''(B) to cooperate with the State (i) in establishing the paternity of such person (referred to in subparagraph (A)) if the person is a child born out of wedlock, and (ii) in obtaining support and payments (described in subparagraph (A)) for himself and for such person, unless (in either case) the individual is a pregnant woman or the individual is found to have good cause for refusing to cooperate as determined by the State, and

''(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the plan, unless such individual has good cause for refusing to cooperate as determined by the State; and

"(2) provide for entering into cooperative arrangements (including financial arrangements), with any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, with a State's agency established or designated under section 454(3)) and with appropriate courts and law enforcement officials, to assist the agency or agencies administering the plan with respect to—

"(A) the enforcement and collection of rights to support or payment assigned under this section, and

"(B) any other matters of common concern.

"(b) USE OF AMOUNTS COLLECTED.—Such part of any amount collected by the State under an assignment made under the provisions of this section shall be retained by the State as is necessary to reimburse it for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing of such medical assistance), and the remainder of such amount collected shall be paid to such individual.

**"SEC. 2137. QUALITY ASSURANCE STANDARDS FOR NURSING FACILITIES.**

''(a) STANDARDS FOR AND CERTIFICATION OF CERTAIN FACILITIES.—

''(1) STANDARDS FOR FACILITIES.—

''(A) IN GENERAL.—Each MediGrant plan shall provide for the establishment and maintenance of standards consistent with the contents described in subparagraph (B) for nursing facilities which furnish services under the plan. Such standards shall provide that nursing facilities must care for residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

''(B) CONTENTS OF STANDARDS.—The standards established for facilities under this paragraph shall contain provisions relating to the following items:

''(i) The treatment of resident medical records.

''(ii) Policies, procedures, and bylaws for operation.

''(iii) Quality assurance systems.

''(iv) Resident assessment procedures, including care planning and outcome evaluation.

''(v) The assurance of a safe and adequate physical plant for the facility.

''(vi) Qualifications for staff sufficient to provide adequate care, as defined by the State.

''(vii) Utilization review.

''(viii) The protection and enforcement of resident rights described in paragraph (2)(A).

''(C) PROCESS FOR ESTABLISHMENT.—The standards established by the State for facilities under this paragraph shall be promulgated either through the State's legislative, regulatory, or other process, and may only take effect after the State has provided the public with notice and an opportunity for comment.

''(2) RESIDENTS' RIGHTS.—

''(A) IN GENERAL.—The resident rights described in this paragraph are the rights of residents to the following:

''(i) To exercise the individual's rights as a resident of the facility and as a citizen or resident of the United States.

''(ii) To receive notice of rights and services.

''(iii) To be protected against the misuse of resident funds.

''(iv) To be provided privacy and confidentiality.

''(v) To voice grievances.

''(vi) To examine the results of State certification program inspections.

''(vii) To refuse to perform services for the facility.

''(viii) To be provided privacy in communications and to receive mail.

''(ix) To have the facility provide immediate access to any resident by any representative of the certification program, the resident's individual physician, the State long term care ombudsman, and any person the resident has designated as a visitor.

''(x) To retain and use personal property.

''(xi) To be free from abuse, including verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion and not to have any physical or chemical restraints imposed for purposes of discipline or convenience unless required to treat the resident's medical symptoms.

''(xii) To be provided with prior written notice of a pending transfer or discharge.

''(xiii) To organize and participate in resident groups in the facility and to have family members meet in the facility with the families of other residents in the facility.

''(xiv) To participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

''(xv) To choose a personal attending physician, to be fully informed in advance about care and treatment, and (except with respect to a resident adjudged incompetent) to participate in planning care and

treatment or changes in care and treatment.

''(xvi) To not have psychopharmacologic drugs administered except under the orders of a physician and as part of a plan designed to eliminate or modify the symptoms for which the drugs are prescribed.

''(B) RIGHTS OF INCOMPETENT RESIDENTS.—In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under the MediGrant plan shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

''(3) CERTIFICATION PROGRAM.—

''(A) IN GENERAL.—Each MediGrant plan shall provide for the establishment and operation of a program consistent with the requirements of subparagraph (B) for the certification of nursing facilities which meet the standards established under paragraph (1) and the decertification of facilities which fail to meet such standards.

"(B) REQUIREMENTS FOR PROGRAM.—In addition to any other requirements the State may impose, in establishing and operating the certification program under subparagraph (A), the State shall ensure the following:

"(i) The State shall ensure public access (as defined by the State) to the certification program's evaluations of participating facilities, including compliance records and enforcement actions and other reports by the State regarding the ownership, compliance histories, and services provided by certified facilities.

"(ii) Not less often than every 4 years, the State shall audit its expenditures under the program, through an entity designated by the State which is not affiliated with the program, as designated by the State.

"(b) INTERMEDIATE SANCTION AUTHORITY.—

"(1) AUTHORITY.—In addition to any other authority under State law, where a State determines that a nursing facility which is certified for participation under the MediGrant plan no longer substantially meets the requirements for such a facility

under this title and further determines that the facility's deficiencies—

''(A) immediately jeopardize the health and safety of its residents, the State shall at least provide for the termination of the facility's certification for participation under the plan, or

''(B) do not immediately jeopardize the health and safety of its residents, the State may, in lieu of providing for terminating the facility's certification for participation under the plan, provide lesser sanctions including one that provides that no payment will be made under the plan with respect to any individual admitted to such facility after a date specified by the State.

''(2) NOTICE.—The State shall not make such a decision with respect to a facility until the facility has had a reasonable opportunity, following the initial determination that it no longer substantially meets the requirements for such a facility under the plan, to correct its deficiencies, and, following this period, has been given reasonable notice and opportunity for a hearing.

''(3) EFFECTIVENESS.—The State's decision to deny payment may be made effective only after such

notice to the public and to the facility as may be provided for by the State, and its effectiveness shall terminate (A) when the State finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance) with the requirements for such a facility under this title, or (B) in the case described in paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause (B) of the previous sentence applies still fails to substantially meet the provisions of the respective section on the date specified in such clause, the State shall terminate such facility's certification for participation under the MediGrant plan effective with the first day of the first month following the month specified in such clause.

**"SEC. 2138. OTHER PROVISIONS PROMOTING PROGRAM INTEGRITY.**

''(a) PUBLIC ACCESS TO SURVEY RESULTS.—Each MediGrant plan shall provide that upon completion of a survey of any health care facility or organization by a State agency to carry out the plan, the agency shall make public in readily available form and place the pertinent

findings of the survey relating to the compliance of the facility or organization with requirements of law.

''(b) RECORD KEEPING.—Each MediGrant plan shall provide for agreements with persons or institutions providing services under the plan under which the person or institution agrees—

''(1) to keep such records (including ledgers, books, and original evidence of costs) as are necessary to fully disclose the extent of the services provided to individuals receiving assistance under the plan; and

''(2) to furnish the State agency with such information regarding any payments claimed by such person or institution for providing services under the plan, as the State agency may from time to time request.

## ''PART E—ESTABLISHMENT AND AMENDMENT OF MEDIGRANT PLANS

### "SEC. 2151. SUBMITTAL AND APPROVAL OF MEDIGRANT PLANS.

''(a) SUBMITTAL.—As a condition of receiving funding under part C, each State shall submit to the Secretary a MediGrant plan that meets the applicable requirements of this title.

''(b) APPROVAL.—Except as the Secretary may provide under section 2154, a MediGrant plan submitted under subsection (a)—

''(1) shall be approved for purposes of this title, and

''(2) shall be effective beginning with a calendar quarter that is specified in the plan, but in no case earlier than the first calendar quarter that begins at least 60 days after the date the plan is submitted.

''(c) APPROVAL OF LEGISLATURE FOR SUBMITTAL.—In the case of a State which has a State allotment under section 2121(c)(1) for fiscal year 1996 of more than $10 billion, the State may not submit a MediGrant plan under this section unless the State legislature, by law, has specifically authorized such submittal.

**"SEC. 2152. SUBMITTAL AND APPROVAL OF PLAN AMENDMENTS.**

''(a) SUBMITTAL OF AMENDMENTS.—A State may amend, in whole or in part, its MediGrant plan at any time through transmittal of a plan amendment under this section.

''(b) APPROVAL.—Except as the Secretary may provide under section 2154, an amendment to a MediGrant plan submitted under subsection (a)—

''(1) shall be approved for purposes of this title, and

''(2) shall be effective as provided in subsection (c).

''(c) EFFECTIVE DATES FOR AMENDMENTS.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, an amendment to MediGrant plan shall take effect on one or more effective dates specified in the amendment.

''(2) AMENDMENTS RELATING TO ELIGIBILITY OR BENEFITS.—Except as provided in paragraph (4)—

''(A) NOTICE REQUIREMENT.—Any plan amendment that eliminates or restricts eligibility or benefits under the plan may not take effect unless the State certifies that it has provided prior or contemporaneous public notice of the change, in a form and manner provided under applicable State law.

''(B) TIMELY TRANSMITTAL.—Any plan amendment that eliminates or restricts eligibility or benefits under the plan shall not be effective for longer than a 60 day period unless the amendment has been transmitted to the Secretary before the end of such period.

"(3) OTHER AMENDMENTS.—Subject to paragraph (4), any plan amendment that is not described in paragraph (2) becomes effective in a State fiscal year may not remain in effect after the end of such fiscal year (or, if later, the end of the 90-day period on which it becomes effective) unless the amendment has been transmitted to the Secretary.

"(4) EXCEPTION.—The requirements of paragraphs (2) and (3) shall not apply to a plan amendment that is submitted on a timely basis pursuant to a court order or an order of the Secretary.

**"SEC. 2153. PROCESS FOR STATE WITHDRAWAL FROM PROGRAM.**

"(a) IN GENERAL.—A State may rescind its MediGrant plan and discontinue participation in the program under this title at any time after providing—

"(1) the public with 90 days prior notice in a publication in one or more daily newspapers of general circulation in the State or in any publication used by the State to publish State statutes or rules, and

"(2) the Secretary with 90 days prior written notice.

"(b) EFFECTIVE DATE.—Such discontinuation shall not apply to payments under part C for expenditures made

for items and services furnished under the MediGrant plan before the effective date of the discontinuation.

''(c) PRORATION OF ALLOTMENTS.—In the case of any withdrawal under this section other than at the end of a Federal fiscal year, notwithstanding any provision of section 2121 to the contrary, the Secretary shall provide for such appropriate proration of the application of allotments under section 2121 as is appropriate.

**''SEC. 2154. SANCTIONS FOR SUBSTANTIAL NONCOMPLIANCE.**

''(a) PROMPT REVIEW OF PLAN SUBMITTALS.—The Secretary shall promptly review MediGrant plans and plan amendments submitted under this part to determine if they substantially comply with the requirements of this title.

''(b) DETERMINATIONS OF SUBSTANTIAL NONCOMPLIANCE.—

''(1) AT TIME OF PLAN OR AMENDMENT SUBMITTAL.—

''(A) IN GENERAL.—If the Secretary, during the 30-day period beginning on the date of submittal of a MediGrant plan or plan amendment—

''(i) determines that the plan or amendment substantially violates (within

the meaning of subsection (c)) a requirement of this title, and

''(ii) provides written notice of such determination to the State,

the Secretary shall issue an order specifying that the plan or amendment, insofar as it is in substantial violation of such a requirement, shall not be effective, except as provided in subsection (c), beginning at the end of a period of not less than 30 days, or 120 days in the case of the initial submission of the MediGrant plan) specified in the order beginning on the date of the notice of the determination.

''(B) EXTENSION OF TIME PERIODS.—The time periods specified in subparagraph (A) may be extended by written agreement of the Secretary and the State involved.

''(2) VIOLATIONS IN ADMINISTRATION OF PLAN.—

''(A) IN GENERAL.—If the Secretary determines, after reasonable notice and opportunity for a hearing for the State, that in the administration of a MediGrant plan there is a substantial violation of a requirement of this title, the Secretary shall provide the State with written

notice of the determination and with an order to remedy such violation. Such an order shall become effective prospectively, as specified in the order, after the date of receipt of such written notice. Such an order may include the withholding of funds, consistent with subsection (f), for parts of the MediGrant plan affected by such violation, until the Secretary is satisfied that the violation has been corrected.

''(B) EFFECTIVENESS.—If the Secretary issues an order under paragraph (1), the order shall become effective, except as provided in subsection (c), beginning at the end of a period (of not less than 30 days) specified in the order beginning on the date of the notice of the determination to the State.

''(C) TIMELINESS OF DETERMINATIONS RELATING TO REPORT-BASED COMPLIANCE.—The Secretary shall make determinations under this paragraph respecting violations relating to information contained in an annual report under section 2102, an independent evaluation under section 2103, or an audit report under section 2131 not later than 30 days after the

date of transmittal of the report or evaluation to the Secretary.

''(3) CONSULTATION WITH STATE.—Before making a determination adverse to a State under this section, the Secretary shall (within any time periods provided under this section)—

''(A) reasonably consult with the State involved,

''(B) offer the State a reasonable opportunity to clarify the submission and submit further information to substantiate compliance with the requirements of this title, and

''(C) reasonably consider any such clarifications and information submitted.

''(4) JUSTIFICATION OF ANY INCONSISTENCIES IN DETERMINATIONS.—If the Secretary makes a determination under this section that is, in whole or in part, inconsistent with any previous determination issued by the Secretary under this title, the Secretary shall include in the determination a detailed explanation and justification for any such difference.

''(5) SUBSTANTIAL VIOLATION DEFINED.—For purposes of this title, a MediGrant plan (or amendment to such a plan) or the administration of the MediGrant plan is considered to 'substantially vio-

late' a requirement of this title if a provision of the plan or amendment (or an omission from the plan or amendment) or the administration of the plan—

''(A) is material and substantial in nature and effect, and

''(B) is inconsistent with an express requirement of this title.

A failure to meet a strategic objective or performance goal (as described in section 2101) shall not be considered to substantially violate a requirement of this title.

''(c) STATE RESPONSE TO ORDERS.—

''(1) STATE RESPONSE BY REVISING PLAN.—

''(A) IN GENERAL.—Insofar as an order under subsection (b)(1) relates to a substantial violation by a MediGrant plan or plan amendment, a State may respond (before the date the order becomes effective) to such an order by submitting a written revision of the plan or plan amendment to substantially comply with the requirements of this part.

''(B) REVIEW OF REVISION.—In the case of submission of such a revision, the Secretary shall promptly review the submission and shall

withhold any action on the order during the period of such review.

''(C) SECRETARIAL RESPONSE.—The revision shall be considered to have corrected the deficiency (and the order rescinded insofar as it relates to such deficiency) unless the Secretary determines and notifies the State in writing, within 15 days after the date the Secretary receives the revision, that the plan or amendment, as proposed to be revised, still substantially violates a requirement of this title. In such case the State may respond by seeking reconsideration or a hearing under paragraph (2).

''(D) REVISION RETROACTIVE.—If the revision provides for substantial compliance, the revision may be treated, at the option of the State, as being effective either as of the effective date of the provision to which it relates or such later date as the State and Secretary may agree.

''(2) STATE RESPONSE BY SEEKING RECONSIDERATION OR AN ADMINISTRATIVE HEARING.—A State may respond to an order under subsection (b) by filing a request with the Secretary for—

"(A) a reconsideration of the determination, pursuant to subsection (d)(1), or

"(B) a review of the determination through an administrative hearing, pursuant to subsection (d)(2).

In such case, the order shall not take effect before the completion of the reconsideration or hearing.

"(3) STATE RESPONSE BY CORRECTIVE ACTION PLAN.—

"(A) IN GENERAL.—In the case of an order described in subsection (b)(2) that relates to a substantial violation in the administration of the MediGrant plan, a State may respond to such an order by submitting a corrective action plan with the Secretary to correct deficiencies in the administration of the plan which are the subject of the order.

"(B) REVIEW OF CORRECTIVE ACTION PLAN.—In such case, the Secretary shall withhold any action on the order for a period (not to exceed 30 days) during which the Secretary reviews the corrective action plan.

"(C) SECRETARIAL RESPONSE.—The corrective action plan shall be considered to have corrected the deficiency (and the order re-

scinded insofar as it relates to such deficiency) unless the Secretary determines and notifies the State in writing, within 15 days after the date the Secretary receives the corrective action plan, that the State's administration of the MediGrant plan, as proposed to be corrected in the plan, will still substantially violate a requirement of this title. In such case the State may respond by seeking reconsideration or a hearing under paragraph (2).

''(4) STATE RESPONSE BY WITHDRAWAL OF PLAN AMENDMENT; FAILURE TO RESPOND.—Insofar as an order relates to a substantial violation in a plan amendment submitted, a State may respond to such an order by withdrawing the plan amendment and the MediGrant plan shall be treated as though the amendment had not been made.

''(d) ADMINISTRATIVE REVIEW AND HEARING.—

''(1) RECONSIDERATION.—Within 30 days after the date of receipt of a request under subsection (b)(2)(A), the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering the Secretary's determination. The hearing shall be held not less than 20 days nor more than 60 days after the date notice of

the hearing is furnished to the State, unless the Secretary and the State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse the original determination within 60 days of the conclusion of the hearing.

''(2) ADMINISTRATIVE HEARING.—Within 30 days after the date of receipt of a request under subsection (b)(2)(B), an administrative law judge shall schedule a hearing for the purpose of reviewing the Secretary's determination. The hearing shall be held not less than 20 days nor more than 60 days after the date notice of the hearing is furnished to the State, unless the Secretary and the State agree in writing to holding the hearing at another time. The administrative law judge shall affirm, modify, or reverse the determination within 60 days of the conclusion of the hearing.

''(e) JUDICIAL REVIEW.—

''(1) IN GENERAL.—A State which is dissatisfied with a final determination made by the Secretary under subsection (d)(1) or a final determination of an administrative law judge under subsection (d)(2) may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which the State

is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary and, in the case of a determination under subsection (d)(2), to the administrative law judge involved. The Secretary (or judge involved) thereupon shall file in the court the record of the proceedings on which the final determination was based, as provided in section 2112 of title 28, United States Code.

''(2) STANDARD FOR REVIEW.—The findings of fact by the Secretary or administrative law judge, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary or judge to take further evidence, and the Secretary or judge may thereupon make new or modified findings of fact and may modify a previous determination, and shall certify to the court the transcript and record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

''(3) JURISDICTION OF APPELLATE COURT.—The court shall have jurisdiction to affirm the action of the Secretary or judge or to set it aside, in whole or in part. The judgment of the court shall be sub-

ject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

''(f) WITHHOLDING OF FUNDS.—

''(1) IN GENERAL.—Any order under this section relating to the withholding of funds shall be effective not earlier than the effective date of the order and shall only relate to the portions of a MediGrant plan or administration thereof which substantially violate a requirement of this title. In the case of a failure to meet a set-aside requirement under section 2112, any withholding shall only apply to the extent of such failure.

''(2) SUSPENSION OF WITHHOLDING.—The Secretary may suspend withholding of funds under paragraph (1) during the period reconsideration or administrative and judicial review is pending under subsection (d) or (e).

''(3) RESTORATION OF FUNDS.—Any funds withheld under this subsection under an order shall be immediately restored to a State—

''(A) to the extent and at the time the order is—

''(i) modified or withdrawn by the Secretary upon reconsideration,

''(ii) modified or reversed by an administrative law judge, or

''(iii) set aside (in whole or in part) by an appellate court; or

''(B) when the Secretary determines that the deficiency which was the basis for the order is corrected;

''(C) when the Secretary determines that violation which was the basis for the order is resolved or the amendment which was the basis for the order is withdrawn; or

''(D) at any time upon the initiative of the Secretary.

**"SEC. 2155. SECRETARIAL AUTHORITY.**

''(a) NEGOTIATED AGREEMENT AND DISPUTE RESOLUTION.—

''(1) NEGOTIATIONS.—Nothing in this part shall be construed as preventing the Secretary and a State from at any time negotiating a satisfactory resolution to any dispute concerning the approval of a MediGrant plan (or amendments to a MediGrant plan) or the compliance of a MediGrant plan (including its administration) with requirements of this title.

"(2) COOPERATION.—The Secretary shall act in a cooperative manner with the States in carrying out this title. In the event of a dispute between a State and the Secretary, the Secretary shall, whenever practicable, engage in informal dispute resolution activities in lieu of formal enforcement or sanctions under section 2154.

"(b) LIMITATIONS ON DELEGATION OF DECISION-MAKING AUTHORITY.—The Secretary may not delegate (other than to the Administrator of the Health Care Financing Administration) the authority to make determinations or reconsiderations respecting the approval of MediGrant plans (or amendments to such plans) or the compliance of a MediGrant plan (including its administration) with requirements of this title. Such Administrator may not further delegate such authority to any individual, including any regional official of such Administration.

"(c) REQUIRING FORMAL RULEMAKING FOR CHANGES IN SECRETARIAL ADMINISTRATION.—The Secretary shall carry out the administration of the program under this title only through a prospective formal rulemaking process, including issuing notices of proposed rule making, publishing proposed rules or modifications to rules in the Federal Register, and soliciting public comment.

''PART F—GENERAL PROVISIONS

**"SEC. 2171. DEFINITIONS.**

''(a) MEDICAL ASSISTANCE.—

''(1) IN GENERAL.—For purposes of this title, except as provided in paragraph (2), the term 'medical assistance' means payment of part or all the cost of any of the following for eligible low-income individuals (as defined in subsection (b)) as specified under the MediGrant plan:

''(A) Inpatient hospital services.

''(B) Outpatient hospital services.

''(C) Physician services.

''(D) Surgical services.

''(E) Clinic services and other ambulatory health care services.

''(F) Nursing facility services.

''(G) Intermediate care facility services for the mentally retarded.

''(H) Prescription drugs and biologicals.

''(I) Over-the-counter medications.

''(J) Laboratory and radiological services.

''(K) Family planning services and supplies.

''(L) Inpatient mental health services, including services furnished in a State-operated

mental hospital and including residential or other 24-hour therapeutically planned structured services in the case of a child.

''(M) Outpatient mental health services, including services furnished in a State-operated mental hospital and including community-based services in the case of a child.

''(N) Durable medical equipment and other medically-related or remedial devices (such as prosthetic devices, implants, eyeglasses, hearing aids, dental devices, and adaptive devices).

''(O) Disposable medical supplies.

''(P) Home and community-based health care services and related supportive services (such as home health nursing services, home health aide services, personal care, assistance with activities of daily living, chore services, day care services, respite care services, and training for family members).

''(Q) Community supported living arrangements.

''(R) Nursing care services (such as private duty nursing care, nurse midwife services, respiratory care services, pediatric nurse services,

and advanced practice nurse services) in a home, school, or other setting.

''(S) Dental services.

''(T) Inpatient substance abuse treatment services and residential substance abuse treatment services.

''(U) Outpatient substance abuse treatment services.

''(V) Case management services.

''(W) Care coordination services.

''(X) Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

''(Y) Hospice care.

''(Z) Any other medical, diagnostic, screening, preventive, restorative, remedial, therapeutic, or rehabilitative services (whether in a facility, home, school, or other setting) if recognized by State law and if the service is—

''(i) prescribed by or furnished by a physician or other licensed or registered practitioner within the scope of practice as defined by State law,

''(ii) performed under the general supervision or at the direction of a physician, or

''(iii) furnished by a health care facility that is operated by a State or local government or is licensed under State law and operating within the scope of the license.

''(AA) Premiums for private health care insurance coverage, including private long-term care insurance coverage.

''(BB) Medical transportation.

''(CC) Medicare cost-sharing (as defined in subsection (c)).

''(DD) Enabling services (such as transportation, translation, and outreach services) designed to increase the accessibility of primary and preventive health care services for eligible low-income individuals.

''(EE) Any other health care services or items specified by the Secretary.

''(2) EXCLUSION OF CERTAIN PAYMENTS.—Such term does not include the payment with respect to care or services for—

1 ''(A) any individual who is an inmate of a
2 public institution (except as a patient in a State
3 psychiatric hospital); and
4 ''(B) any individual who is not an eligible
5 low-income individual.
6 ''(b) ELIGIBLE LOW-INCOME INDIVIDUAL.—The
7 term 'eligible low-income individual' means an individual
8 who has been determined eligible by the State for medical
9 assistance under the MediGrant plan and whose family in-
10 come (as determined under the plan) does not exceed a
11 percentage (specified in the MediGrant plan and not to
12 exceed 300 percent) of the poverty line for a family of
13 the size involved. In determining the amount of income
14 under the previous sentence, a State may exclude costs
15 incurred for medical care or other types of remedial care
16 recognized by the State.
17 ''(c) MEDICARE COST-SHARING.—For purposes of
18 this title, the term 'medicare cost-sharing' means any of
19 the following:
20 ''(1)(A) Premiums under section 1839.
21 ''(B) Premiums under section 1818 or 1818A.
22 ''(2) Coinsurance under title XVIII (including
23 coinsurance described in section 1813).

''(3) Deductibles established under title XVIII (including those described in section 1813 and section 1833(b)).

''(4) The difference between the amount that is paid under section 1833(a) and the amount that would be paid under such section if any reference to '80 percent' therein were deemed a reference to '100 percent'.

''(5) Premiums for enrollment of an individual with an eligible organization under section 1876 or with a MedicarePlus organization under part C of title XVIII.

''(d) ADDITIONAL DEFINITIONS.—For purposes of this title:

''(1) CHILD.—The term 'child' means an individual under 19 years of age.

''(2) POVERTY LINE DEFINED.—The term 'poverty line' means the income official poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981).

''(3) PREGNANT WOMAN.—The term 'pregnant woman' includes a woman during the 60-day period beginning on the last day of the pregnancy.

**"SEC. 2172. TREATMENT OF TERRITORIES.**

''Notwithstanding any other requirement of this title, the Secretary may waive or modify any requirement of this title with respect to the medical assistance program a State other than the 50 States and the District of Columbia, other than a waiver of—

''(1) the applicable Federal medical assistance percentage,

''(2) the limitation on total payments in a fiscal year to the amount of the allotment under section 2121(c), or

''(3) the requirement that payment may be made for medical assistance only with respect to amounts expended by the State for care and services described in paragraph (1) of section 2171(a) and medically-related services (as defined in section 2112(e)(2)).

**"SEC. 2173. DESCRIPTION OF TREATMENT OF INDIAN HEALTH SERVICE FACILITIES.**

''In the case of a State in which one or more facilities of the Indian Health Service are located, the MediGrant plan shall include a description of—

''(1) what provision (if any) has been made for payment for items and services furnished by such facilities, and

''(2) the manner in which medical assistance for low-income eligible individuals who are Indians will be provided, as determined by the State in consultation with the appropriate Indian tribes and tribal organizations.

**''SEC. 2174. APPLICATION OF CERTAIN GENERAL PROVISIONS.**

''The following sections in part A of title XI shall apply to States under this title in the same manner as they applied to a State under title XIX:

''(1) Section 1101(a)(1) (relating to definition of State).

''(2) Section 1116 (relating to administrative and judicial review), but only insofar as consistent with the provisions of part C.

''(3) Section 1124 (relating to disclosure of ownership and related information).

''(4) Section 1126 (relating to disclosure of information about certain convicted individuals).

''(5) Section 1132 (relating to periods within which claims must be filed).

**''SEC. 2175. MEDIGRANT MASTER DRUG REBATE AGREEMENTS.**

''(a) REQUIREMENT FOR MANUFACTURER TO ENTER INTO AGREEMENT.—

"(1) IN GENERAL.—Pursuant to section 2123(f), in order for payment to be made to a State under part C for medical assistance for covered outpatient drugs of a manufacturer, the manufacturer shall enter into and have in effect an MediGrant master rebate agreement described in subsection (b) with the Secretary on behalf of States electing to participate in the agreement.

"(2) STATE PARTICIPATION IN MASTER AGREEMENT OPTIONAL.—Nothing in this section shall be construed to—

"(A) require a State to participate in an MediGrant master rebate agreement under this section; or

"(B) prohibit a State from entering into an agreement with a manufacturer of covered outpatient drugs (under such terms as the State and manufacturer may agree upon) regarding the amount of payment for such drugs under the MediGrant plan.

"(3) COVERAGE OF DRUGS NOT COVERED UNDER REBATE AGREEMENTS.—Nothing in this section shall be construed to prohibit a State in its discretion from providing coverage under its MediGrant

plan of a covered outpatient drug for which no rebate agreement is in effect under this section.

''(4) EFFECT ON EXISTING AGREEMENTS.—If a State has a rebate agreement in effect with a manufacturer on the date of the enactment of this section which provides for a minimum aggregate rebate equal to or greater than the minimum aggregate rebate which would otherwise be paid under the MediGrant master agreement under this section, at the option of the State—

''(A) such agreement shall be considered to meet the requirements of the MediGrant master rebate agreement; and

''(B) the State shall be considered to have elected to participate in the MediGrant master rebate agreement.

''(b) TERMS OF REBATE AGREEMENT.—

''(1) PERIODIC REBATES.—The MediGrant master rebate agreement under this section shall require the manufacturer to provide, to the MediGrant plan of each State participating in the agreement, a rebate for a rebate period in an amount specified in subsection (c) for covered outpatient drugs of the manufacturer dispensed after the effective date of the agreement, for which payment was made under

the plan for such period. Such rebate shall be paid by the manufacturer not later than 30 days after the date of receipt of the information described in paragraph (2) for the period involved.

''(2) STATE PROVISION OF INFORMATION.—

''(A) STATE RESPONSIBILITY.—Each State participating in the MediGrant master rebate agreement shall report to each manufacturer not later than 60 days after the end of each rebate period and in a form consistent with a standard reporting format established by the Secretary, information on the total number of units of each dosage form and strength and package size of each covered outpatient drug, for which payment was made under the MediGrant plan for the period, and shall promptly transmit a copy of such report to the Secretary.

''(B) AUDITS.—A manufacturer may audit the information provided (or required to be provided) under subparagraph (A). Adjustments to rebates shall be made to the extent that information indicates that utilization was greater or less than the amount previously specified.

"(3) MANUFACTURER PROVISION OF PRICE INFORMATION.—

"(A) IN GENERAL.—Each manufacturer which is subject to the MediGrant master rebate agreement under this section shall report to the Secretary—

"(i) not later than 30 days after the last day of each rebate period under the agreement (beginning on or after January 1, 1991), on the average manufacturer price (as defined in subsection (i)(1)) and, for single source drugs and innovator multiple source drugs, the manufacturer's best price (as defined in subsection (c)(1)(C)) for each covered outpatient drug for the rebate period under the agreement, and

"(ii) not later than 30 days after the date of entering into an agreement under this section, on the average manufacturer price (as defined in subsection (i)(1)) as of October 1, 1990, for each of the manufacturer's covered outpatient drugs.

"(B) VERIFICATION SURVEYS OF AVERAGE MANUFACTURER PRICE.—The Secretary may survey wholesalers and manufacturers that di-

rectly distribute their covered outpatient drugs, when necessary, to verify manufacturer prices reported under subparagraph (A). The Secretary may impose a civil monetary penalty in an amount not to exceed $10,000 on a wholesaler, manufacturer, or direct seller, if the wholesaler, manufacturer, or direct seller of a covered outpatient drug refuses a request for information by the Secretary in connection with a survey under this subparagraph. The provisions of section 1128A (other than subsections (a) (with respect to amounts of penalties or additional assessments) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

''(C) PENALTIES.—

''(i) FAILURE TO PROVIDE TIMELY INFORMATION.—In the case of a manufacturer which is subject to the MediGrant master rebate agreement that fails to provide information required under subparagraph (A) on a timely basis, the amount of the penalty shall be $10,000 for each day

in which such information has not been provided and such amount shall be paid to the Treasury. If such information is not reported within 90 days of the deadline imposed, the agreement shall be suspended for services furnished after the end of such 90-day period and until the date such information is reported (but in no case shall such suspension be for a period of less than 30 days).

''(ii) FALSE INFORMATION.—Any manufacturer which is subject to the MediGrant master rebate agreement, or a wholesaler or direct seller, that knowingly provides false information under subparagraph (A) or (B) is subject to a civil money penalty in an amount not to exceed $100,000 for each item of false information. Any such civil money penalty shall be in addition to other penalties as may be prescribed by law. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same man-

ner as such provisions apply to a penalty or proceeding under section 1128A(a).

''(D) CONFIDENTIALITY OF INFORMATION.—Notwithstanding any other provision of law, information disclosed by manufacturers or wholesalers under this paragraph or under an agreement with the Secretary of Veterans Affairs described in section 2123(f) is confidential and shall not be disclosed by the Secretary or the Secretary of Veterans Affairs or a State agency (or contractor therewith) in a form which discloses the identity of a specific manufacturer or wholesaler or the prices charged for drugs by such manufacturer or wholesaler, except—

''(i) as the Secretary determines to be necessary to carry out this section,

''(ii) to permit the Comptroller General to review the information provided, and

''(iii) to permit the Director of the Congressional Budget Office to review the information provided.

''(4) LENGTH OF AGREEMENT.—

"(A) IN GENERAL.—The MediGrant master rebate agreement under this section shall be effective for an initial period of not less than 1 year and shall be automatically renewed for a period of not less than one year unless terminated under subparagraph (B).

"(B) TERMINATION.—

"(i) BY THE SECRETARY.—The Secretary may provide for termination of the MediGrant master rebate agreement with respect to a manufacturer for violation of the requirements of the agreement or other good cause shown. Such termination shall not be effective earlier than 60 days after the date of notice of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, but such hearing shall not delay the effective date of the termination. Failure of a State to provide any advance notice of such a termination as required by regulation shall not affect the State's right to terminate coverage of the drugs affected by such termination as of the effective date of such termination.

"(ii) BY A MANUFACTURER.—A manufacturer may terminate its participation in the MediGrant master rebate agreement under this section for any reason. Any such termination shall not be effective until the calendar quarter beginning at least 60 days after the date the manufacturer provides notice to the Secretary.

"(iii) EFFECTIVENESS OF TERMINATION.—Any termination under this subparagraph shall not affect rebates due under the agreement before the effective date of its termination.

"(iv) NOTICE TO STATES.—In the case of a termination under this subparagraph, the Secretary shall provide notice of such termination to the States within not less than 30 days before the effective date of such termination.

"(v) APPLICATION TO TERMINATIONS OF OTHER AGREEMENTS.—The provisions of this subparagraph shall apply to the terminations of master agreements described in section 8126(a) of title 38, United States Code.

"(C) DELAY BEFORE REENTRY.—In the case of any rebate agreement with a manufacturer under this section which is terminated, another such agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of 1 calendar quarter has elapsed since the date of the termination, unless the Secretary finds good cause for an earlier reinstatement of such an agreement.

"(c) DETERMINATION OF AMOUNT OF REBATE.—

"(1) BASIC REBATE FOR SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS.—

"(A) IN GENERAL.—Except as provided in paragraph (2), the amount of the rebate specified in this subsection with respect to a State participating in the MediGrant master rebate agreement for a rebate period (as defined in subsection (i)(8)) with respect to each dosage form and strength of a single source drug or an innovator multiple source drug shall be equal to the product of—

"(i) the total number of units of each dosage form and strength paid for under

the State plan in the rebate period (as reported by the State); and

''(ii) the greater of—

''(I) the difference between the average manufacturer price and the best price (as defined in subparagraph (C)) for the dosage form and strength of the drug, or

''(II) the minimum rebate percentage (specified in subparagraph (B)) of such average manufacturer price,

for the rebate period.

''(B) MINIMUM REBATE PERCENTAGE.—For purposes of subparagraph (A)(ii)(II), the 'minimum rebate percentage' is 15.1 percent.

''(C) BEST PRICE DEFINED.—For purposes of this section—

''(i) IN GENERAL.—The term 'best price' means, with respect to a single source drug or innovator multiple source drug of a manufacturer, the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization,

nonprofit entity, or governmental entity within the United States, excluding—

''(I) any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, United States Code, the Department of Defense, the Public Health Service, or a covered entity described in section 340B(a)(4) of the Public Health Service Act;

''(II) any prices charged under the Federal Supply Schedule of the General Services Administration;

''(III) any prices used under a State pharmaceutical assistance program; and

''(IV) any depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government.

''(ii) SPECIAL RULES.—The term 'best price'—

"(I) shall be inclusive of cash discounts, free goods that are contingent on any purchase requirement, volume discounts, and rebates (other than rebates under this section);

"(II) shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package;

"(III) shall not take into account prices that are merely nominal in amount; and

"(IV) shall exclude rebates paid under this section or any other rebates paid to a State participating in the MediGrant master rebate agreement.

"(2) ADDITIONAL REBATE FOR SINGLE SOURCE AND INNOVATOR MULTIPLE SOURCE DRUGS.—

"(A) IN GENERAL.—The amount of the rebate specified in this subsection with respect to a State participating in the MediGrant master rebate agreement for a rebate period, with respect to each dosage form and strength of a single source drug or an innovator multiple

source drug, shall be increased by an amount equal to the product of—

''(i) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the MediGrant plan for the rebate period; and

''(ii) the amount (if any) by which—

''(I) the average manufacturer price for the dosage form and strength of the drug for the period, exceeds

''(II) the average manufacturer price for such dosage form and strength for the calendar quarter beginning July 1, 1990 (without regard to whether or not the drug has been sold or transferred to an entity, including a division or subsidiary of the manufacturer, after the first day of such quarter), increased by the percentage by which the consumer price index for all urban consumers (United States city average) for the month before the month in which the rebate pe-

riod begins exceeds such index for September 1990.

''(B) TREATMENT OF SUBSEQUENTLY APPROVED DRUGS.—In the case of a covered outpatient drug approved by the Food and Drug Administration after October 1, 1990, clause (ii)(II) of subparagraph (A) shall be applied by substituting 'the first full calendar quarter after the day on which the drug was first marketed' for 'the calendar quarter beginning July 1, 1990' and 'the month prior to the first month of the first full calendar quarter after the day on which the drug was first marketed' for 'September 1990'.

''(3) REBATE FOR OTHER DRUGS.—

''(A) IN GENERAL.—The amount of the rebate paid to a State participating in the MediGrant master rebate agreement for a rebate period with respect to each dosage form and strength of covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of—

''(i) the applicable percentage (as described in subparagraph (B)) of the average manufacturer price for the dosage

form and strength for the rebate period, and

''(ii) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the MediGrant plan for the rebate period.

''(B) APPLICABLE PERCENTAGE DEFINED.—For purposes of subparagraph (A)(i), the 'applicable percentage' is 11 percent.

''(4) LIMITATION ON AMOUNT OF REBATE TO AMOUNTS PAID FOR CERTAIN DRUGS.—Upon request of a manufacturer of a covered outpatient drug for which a majority of the estimated number of units of such dosage form and strength that are subject to rebates under this section were dispensed to inpatients of nursing facilities (including drugs which are exempt from the requirements of the MediGrant master rebate agreement under this section under subsection (h)(1)(B)), the Secretary shall limit the amount of the rebate under this subsection with respect to a dosage form and strength of the drug for a rebate period to the amount paid under the MediGrant plan with respect to such dosage form

and strength of the drug in the rebate period (without consideration of any dispensing fees paid).

''(d) LIMITATIONS ON COVERAGE OF DRUGS BY STATES PARTICIPATING IN MASTER AGREEMENT.—

''(1) PERMISSIBLE RESTRICTIONS.—A State participating in the MediGrant master rebate agreement under this section may—

''(A) subject to prior authorization under its MediGrant plan any covered outpatient drug so long as any such prior authorization program complies with the requirements of paragraph (5); and

''(B) exclude or otherwise restrict coverage under its plan of a covered outpatient drug if—

''(i) the prescribed use is not for a medically accepted indication (as defined in subsection (i)(5));

''(ii) the drug is contained in the list referred to in paragraph (2);

''(iii) the drug is subject to such restrictions pursuant to the MediGrant master rebate agreement or any agreement described in subsection (a)(4); or

"(iv) the State has excluded coverage of the drug from its formulary established in accordance with paragraph (4).

"(2) LIST OF DRUGS SUBJECT TO RESTRICTION.—The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted by a State participating in the MediGrant master rebate agreement:

"(A) Agents when used for anorexia, weight loss, or weight gain.

"(B) Agents when used to promote fertility.

"(C) Agents when used for cosmetic purposes or hair growth.

"(D) Agents when used for the symptomatic relief of cough and colds.

"(E) Agents when used to promote smoking cessation.

"(F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

"(G) Nonprescription drugs.

"(H) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services

be purchased exclusively from the manufacturer or its designee.

''(I) Barbiturates.

''(J) Benzodiazepines.

''(3) ADDITIONS TO DRUG LISTINGS.—The Secretary shall, by regulation, periodically update the list of drugs or classes of drugs described in paragraph (2), or their medical uses, which the Secretary has determined to be subject to clinical abuse or inappropriate use.

''(4) REQUIREMENTS FOR FORMULARIES.—A State participating in the MediGrant master rebate agreement may establish a formulary if the formulary meets the following requirements:

''(A) The formulary is developed by a committee consisting of physicians, pharmacists, and other appropriate individuals appointed by the Governor of the State.

''(B) Except as provided in subparagraph (C), the formulary includes the covered outpatient drugs of any manufacturer which has entered into and complies with the agreement under subsection (a) (other than any drug excluded from coverage or otherwise restricted under paragraph (2)).

"(C) A covered outpatient drug may be excluded with respect to the treatment of a specific disease or condition for an identified population (if any) only if, based on the drug's labeling (or, in the case of a drug the prescribed use of which is not approved under the Federal Food, Drug, and Cosmetic Act but is a medically accepted indication, based on information from the appropriate compendia described in subsection (i)(5)), the excluded drug does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome of such treatment for such population over other drugs included in the formulary and there is a written explanation (available to the public) of the basis for the exclusion.

"(D) The State plan permits coverage of a drug excluded from the formulary (other than any drug excluded from coverage or otherwise restricted under paragraph (2)) pursuant to a prior authorization program that is consistent with paragraph (5).

"(E) The formulary meets such other requirements as the Secretary may impose in

order to achieve program savings consistent with protecting the health of program beneficiaries.

A prior authorization program established by a State under paragraph (5) is not a formulary subject to the requirements of this paragraph.

''(5) REQUIREMENTS OF PRIOR AUTHORIZATION PROGRAMS.—The MediGrant plan of a State participating in the MediGrant master rebate agreement may require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (i)(5)) only if the system providing for such approval—

''(A) provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and

''(B) except with respect to the drugs on the list referred to in paragraph (2), provides for the dispensing of at least a 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

"(6) OTHER PERMISSIBLE RESTRICTIONS.—A State participating in the MediGrant master rebate agreement may impose limitations, with respect to all such drugs in a therapeutic class, on the minimum or maximum quantities per prescription or on the number of refills, if such limitations are necessary to discourage waste, and may address instances of fraud or abuse by individuals in any manner authorized under this Act.

"(e) DRUG USE REVIEW.—

"(1) IN GENERAL.—A State participating in the MediGrant master rebate agreement may provide for a drug use review program to educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs, as well as potential and actual severe adverse reactions to drugs.

"(2) APPLICATION OF STATE STANDARDS.—A State with a drug use review program under this subsection shall establish and operate the program under such standards as it may establish.

"(f) ELECTRONIC CLAIMS MANAGEMENT.—In accordance with chapter 35 of title 44, United States Code

(relating to coordination of Federal information policy), the Secretary shall encourage each State to establish, as its principal means of processing claims for covered outpatient drugs under its MediGrant plan, a point-of-sale electronic claims management system, for the purpose of performing on-line, real time eligibility verifications, claims data capture, adjudication of claims, and assisting pharmacists (and other authorized persons) in applying for and receiving payment.

''(g) ANNUAL REPORT.—

''(1) IN GENERAL.—Not later than May 1 of each year, the Secretary shall transmit to the Committee on Finance of the Senate, the Committee on Commerce of the House of Representatives, and the Committee on Aging of the Senate a report on the operation of this section in the preceding fiscal year.

''(2) DETAILS.—Each report shall include information on—

''(A) ingredient costs paid under this title for single source drugs, multiple source drugs, and nonprescription covered outpatient drugs;

''(B) the total value of rebates received and number of manufacturers providing such rebates;

"(C) the effect of inflation on the value of rebates required under this section;

"(D) trends in prices paid under this title for covered outpatient drugs; and

"(E) Federal and State administrative costs associated with compliance with the provisions of this title.

"(h) EXEMPTION FOR CAPITATED HEALTH CARE ORGANIZATIONS, HOSPITALS, AND NURSING FACILITIES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the requirements of the MediGrant master rebate agreement under this section shall not apply with respect to covered outpatient drugs dispensed by or through—

"(A) a capitated health care organization (as defined in section 2114(c)(1)); or

"(B) a hospital or nursing facility that dispenses covered outpatient drugs using a drug formulary system and bills the State no more than the hospital's purchasing costs for covered outpatient drugs.

"(2) CONSTRUCTION IN DETERMINING BEST PRICE.—Nothing in paragraph (1) shall be construed as excluding amounts paid by the entities de-

scribed in such paragraph for covered outpatient drugs from the determination of the best price (as defined in subsection (c)(1)(C)) for such drugs.

''(i) DEFINITIONS.—In the section—

''(1) AVERAGE MANUFACTURER PRICE.—The term 'average manufacturer price' means, with respect to a covered outpatient drug of a manufacturer for a rebate period, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade, after deducting customary prompt pay discounts.

''(2) COVERED OUTPATIENT DRUG.—Subject to the exceptions in subparagraph (D), the term 'covered outpatient drug' means—

''(A) of those drugs which are treated as prescribed drugs for purposes of section 2171(a)(1)(H), a drug which may be dispensed only upon prescription (except as provided in paragraph (7)), and—

''(i) which is approved as a prescription drug under section 505 or 507 of the Federal Food, Drug, and Cosmetic Act;

''(ii)(I) which was commercially used or sold in the United States before the

date of the enactment of the Drug Amendments of 1962 or which is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) which has not been the subject of a final determination by the Secretary that it is a 'new drug' (within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act) or an action brought by the Secretary under section 301, 302(a), or 304(a) of such Act to enforce section 502(f) or 505(a) of such Act; or

''(iii)(I) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) for which the Secretary has not issued a notice of an opportunity for a hearing under section 505(e) of the Federal Food, Drug, and Cosmetic Act on a proposed

order of the Secretary to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling;

''(B) a biological product, other than a vaccine which—

''(i) may only be dispensed upon prescription,

''(ii) is licensed under section 351 of the Public Health Service Act, and

''(iii) is produced at an establishment licensed under such section to produce such product;

''(C) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act; and

''(D) a drug which may be sold without a prescription (commonly referred to as an 'over-the-counter drug'), if the drug is prescribed by a physician (or other person authorized to prescribe under State law).

''(3) LIMITING DEFINITION.—The term 'covered outpatient drug' does not include any drug, biologi-

cal product, or insulin provided as part of, or as incident to and in the same setting as, any of the following (and for which payment may be made under a MediGrant plan as part of payment for the following and not as direct reimbursement for the drug):

''(A) Inpatient hospital services.

''(B) Hospice services.

''(C) Dental services, except that drugs for which the MediGrant plan authorizes direct reimbursement to the dispensing dentist are covered outpatient drugs.

''(D) Physicians' services.

''(E) Outpatient hospital services.

''(F) Nursing facility services and services provided by an intermediate care facility for the mentally retarded.

''(G) Other laboratory and x-ray services.

''(H) Renal dialysis services.

Such term also does not include any such drug or product for which a National Drug Code number is not required by the Food and Drug Administration or a drug or biological used for a medical indication which is not a medically accepted indication. Any drug, biological product, or insulin excluded from the definition of such term as a result of this paragraph

shall be treated as a covered outpatient drug for purposes of determining the best price (as defined in subsection (c)(1)(C)) for such drug, biological product, or insulin.

''(4) MANUFACTURER.—The term 'manufacturer' means, with respect to a covered outpatient drug, the entity holding legal title to or possession of the National Drug Code number for such drug.

''(5) MEDICALLY ACCEPTED INDICATION.—The term 'medically accepted indication' means any use for a covered outpatient drug which is approved under the Federal Food, Drug, and Cosmetic Act, or the use of which is supported by one or more citations included or approved for inclusion in any of the following compendia:

''(A) American Hospital Formulary Service Drug Information.

''(B) United States Pharmacopeia-Drug Information.

''(C) American Medical Association Drug Evaluations.

''(D) The peer-reviewed medical literature.

''(6) MULTIPLE SOURCE DRUG; INNOVATOR MULTIPLE SOURCE DRUG; NONINNOVATOR MULTIPLE SOURCE DRUG; SINGLE SOURCE DRUG.—

"(A) DEFINED.—

"(i) MULTIPLE SOURCE DRUG.—The term 'multiple source drug' means, with respect to a rebate period, a covered outpatient drug (not including any drug described in paragraph (2)(D)) for which there are 2 or more drug products which—

"(I) are rated as therapeutically equivalent (under the Food and Drug Administration's most recent publication of 'Approved Drug Products with Therapeutic Equivalence Evaluations'),

"(II) except as provided in subparagraph (B), are pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C) and as determined by the Food and Drug Administration, and

"(III) are sold or marketed in the State during the period.

"(ii) INNOVATOR MULTIPLE SOURCE DRUG.—The term 'innovator multiple source drug' means a multiple source drug that was originally marketed under an

original new drug application or product licensing application approved by the Food and Drug Administration.

''(iii) NONINNOVATOR MULTIPLE SOURCE DRUG.—The term 'noninnovator multiple source drug' means a multiple source drug that is not an innovator multiple source drug.

''(iv) SINGLE SOURCE DRUG.—The term 'single source drug' means a covered outpatient drug which is produced or distributed under an original new drug application approved by the Food and Drug Administration, including a drug product marketed by any cross-licensed producers or distributors operating under the new drug application or product licensing application.

''(B) EXCEPTION.—Subparagraph (A)(i)(II) shall not apply if the Food and Drug Administration changes by regulation the requirement that, for purposes of the publication described in subparagraph (A)(i)(I), in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically

equivalent and bioequivalent, as defined in subparagraph (C).

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity;

''(ii) drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence; and

''(iii) a drug product is considered to be sold or marketed in a State if it appears in a published national listing of average wholesale prices selected by the Secretary, if the listed product is generally available to the public through retail pharmacies in that State.

"(7) NONPRESCRIPTION DRUGS.—If the MediGrant plan of a State participating in the MediGrant master rebate agreement under this section includes coverage of prescribed drugs as described in section 2171(a)(1)(H) and permits coverage of drugs which may be sold without a prescription (commonly referred to as 'over-the-counter' drugs), if they are prescribed by a physician (or other person authorized to prescribe under State law), such a drug shall be regarded as a covered outpatient drug for purposes of the State's participation in the agreement.

"(8) REBATE PERIOD.—The term 'rebate period' means, with respect to an agreement under subsection (a), a calendar quarter or other period specified by the Secretary with respect to the payment of rebates under such agreement.".

**SEC. 16002. TERMINATION OF CURRENT PROGRAM AND TRANSITION.**

(a) TERMINATION OF CURRENT PROGRAM; LIMITATION ON MEDICAID PAYMENTS IN FISCAL YEAR 1996.—Title XIX of the Social Security Act is amended—

(1) by redesignating section 1931 as section 1932; and

(2) by inserting after section 1930 the following new section:

''TERMINATION OF MEDICAID PROGRAM; LIMITATION ON NEW OBLIGATION AUTHORITY

''SEC. 1931. (a) ELIMINATION OF INDIVIDUAL ENTITLEMENT.—Effective on the date of the enactment of this section—

''(1) except as provided in subsection (b), the Federal Government has no obligation to provide payment with respect to items and services provided under this title, and

''(2) this title shall not be construed as providing for an entitlement, under Federal law in relation to the Federal Government, in an individual or person (including any provider) at the time of provision or receipt of services.

''(b) LIMITATION ON OBLIGATION AUTHORITY.—Notwithstanding any other provision of this title—

''(1) POST-ENACTMENT, PRE-MEDIGRANT.—Subject to paragraph (2), the Secretary is authorized to enter into obligations with any State under this title for expenses incurred after the date of the enactment of this Act and during fiscal year 1996, but not in excess of the obligation allotment for that State for fiscal year 1996 under section 2121(b)(4).

"(2) NONE AFTER MEDIGRANT.—The Secretary is not authorized to enter into any obligation with any State under this title for expenses incurred on or after the earlier of—

"(A) October 1, 1996; or

"(B) the first day of the first quarter on which the State plan under title XXI is first effective.

"(3) AGREEMENT.—A State's submission of claims for payment under section 1903 after the date of the enactment of this title with respect to which the limitation described in paragraph (1) applies is deemed to constitute the State's acceptance of the obligation limitation under such paragraph (including the formula for computing the amount of such obligation limitation).

"(c) REQUIREMENT FOR TIMELY SUBMITTAL OF CLAIMS.—No payment shall be made to a State under this title with respect to an obligation incurred before the date of the enactment of this section, unless the State has submitted to the Secretary, by not later than June 30, 1996, a claim for Federal financial participation for expenses paid by the State with respect to such obligations. Nothing in subsection (a) or (b) shall be construed as affecting the

obligation of the Federal Government to pay claims described in the previous sentence.''.

(b) MEDICAID TRANSITION.—

(1) TREATMENT OF CERTAIN CAUSES OF ACTION.—No cause of action under title XIX of the Social Security Act which seeks to require a State to establish or maintain minimum payment rates under such title and which has not become final as of the date of the enactment of this Act shall be brought or continued.

(2) TREATMENT OF CERTAIN DISALLOWANCES.—Notwithstanding any provision of law, in the case where payment has been made under section 1903(a) of the Social Security Act to a State before October 1, 1995, and for which a disallowance has not been taken as of such date (or, if so taken, has not been completed by such date), the Secretary of Health and Human Services shall discontinue the disallowance proceeding and, if such disallowance has been taken as of the date of the enactment of this Act, any payment reductions effected shall be rescinded and the payments returned to the State.

(3) EXTENSION OF MORATORIUM.—Section 6408(a)(3) of the Omnibus Budget Reconciliation

Act of 1989, as amended by section 13642 of the Omnibus Budget Reconciliation Act of 1993, is amended by striking ''December 31, 1995'' and inserting ''the first day of the first quarter on which the MediGrant plan for the State of Michigan is first effective under title XXI of such Act''.

(c) NO APPLICATION OF PRIOR MEDICAID JUDGMENTS TO MEDIGRANT PROGRAM.—No judicial or administrative decision rendered regarding requirements imposed under title XIX of the Social Security Act with respect to a State shall have any application to the MediGrant plan of the State title XXI of such Act. A State may, pursuant to the previous sentence, seek the abrogation or modification of any such decision after the date of termination of the State plan under title XIX of such Act.

(d) TERMINATION OF PROGRAM FOR DISTRIBUTION OF PEDIATRIC VACCINES

(1) IN GENERAL.—Subject to paragraph (2), section 1928 of the Social Security Act (42 U.S.C. 1396s) is repealed, effective on the date of the enactment of this Act.

(2) TRANSITION.—(A) Such repeal shall not affect the distribution of vaccines purchased and deliv-

ered to the States before the date of the enactment of this Act.

(B) No vaccine may be purchased after such date by the Federal Government or any State under any contract under section 1928(d) of the Social Security Act.

(e) ANTI-FRAUD PROVISIONS.—

(1) IN GENERAL.—Section 1128(h)(1) of the Social Security Act (42 U.S.C. 1320a–7(h)(1)) is amended by inserting ''or a MediGrant plan under title XXI'' after ''title XIX''.

(2) CONTINUED ROLE OF INSPECTOR GENERAL.—The Inspector General in the Department of Health and Human Services shall have the same responsibilities and duties in relation to fraud and abuse and related matters under the MediGrant program under title XXI of the Social Security Act as such Inspector General has had in relation to the medicaid program under title XIX of such Act before the date of the enactment of this Act.

(f) FINAL EXTENSION OF MEDICAID WAIVER FOR DAYTON AREA HEALTH PLAN.—Section 2 of Public Law 102–276, as amended by section 13644 of the Omnibus Budget Reconciliation Act of 1993, is amended by striking ''December 31, 1995'' and inserting ''the last day of the

last calendar quarter in which a State medicaid plan is in effect in Ohio under title XIX of the Social Security Act''.

# TITLE XVII—ABOLISHMENT OF DEPARTMENT OF COMMERCE

**SEC. 17001. SHORT TITLE.**

This title may be cited as the ''Department of Commerce Dismantling Act''.

**SEC. 17002. TABLE OF CONTENTS.**

The table of contents for this title is as follows:

TITLE XVII—ABOLISHMENT OF DEPARTMENT OF COMMERCE

Sec. 17001. Short title.
Sec. 17002. Table of contents.

Subtitle A—Abolishment of Department of Commerce

Sec. 17101. Abolishment of Department of Commerce.
Sec. 17102. Resolution and termination of Department functions.
Sec. 17103. Responsibilities of the Director of the Office of Management and Budget.
Sec. 17104. Office of Programs Resolution.
Sec. 17105. Personnel.
Sec. 17106. Plans and reports.
Sec. 17107. GAO audit and access to records.
Sec. 17108. Conforming amendments.
Sec. 17109. Privatization framework.
Sec. 17110. Priority placement programs for Federal employees affected by a reduction in force attributable to this title.
Sec. 17111. Funding reductions for transferred functions.
Sec. 17112. Definitions.

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

Sec. 17201. Abolishment of Economic Development Administration and transfer of functions.
Sec. 17202. Technology Administration.
Sec. 17203. Reorganization of the Bureau of the Census.
Sec. 17204. Bureau of Economic Analysis.
Sec. 17205. Terminated functions of NTIA.
Sec. 17206. National Oceanic and Atmospheric Administration.
Sec. 17207. National Institute for Science and Technology.
Sec. 17208. Miscellaneous terminations; moratorium on program activities.

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Subtitle C—Office of United States Trade Representative

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Sec. 17301. Definitions.

CHAPTER 2—OFFICE OF UNITED STATES TRADE REPRESENTATIVE

SUBCHAPTER A—ESTABLISHMENT

Sec. 17311. Establishment of the Office.
Sec. 17312. Functions of the USTR.

SUBCHAPTER B—OFFICERS

Sec. 17321. Deputy Administrator of the Office.
Sec. 17322. Deputy United States Trade Representatives.
Sec. 17323. Assistant Administrators.
Sec. 17324. Director General for Export Promotion.
Sec. 17325. General Counsel.
Sec. 17326. Inspector General.
Sec. 17327. Chief Financial Officer.

SUBCHAPTER C—TRANSFERS TO THE OFFICE

Sec. 17331. Office of the United States Trade Representative.
Sec. 17332. Transfers from the Department of Commerce.
Sec. 17333. Trade and Development Agency.
Sec. 17334. Export-Import Bank.
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Sec. 17336. Consolidation of export promotion and financing activities.
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Sec. 17341. Personnel provisions.
Sec. 17342. Delegation and assignment.
Sec. 17343. Succession.
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Sec. 17345. Rules.
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Sec. 17347. Contracts, grants, and cooperative agreements.
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Sec. 17352. Seal of Office.

SUBCHAPTER E—RELATED AGENCIES

Sec. 17361. Interagency Trade Organization.
Sec. 17362. National Security Council.
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SUBCHAPTER F—CONFORMING AMENDMENTS

Sec. 17371. Amendments to general provisions.
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SUBCHAPTER G—MISCELLANEOUS

Sec. 17381. Effective date.
Sec. 17382. Interim appointments.
Sec. 17383. Funding reductions resulting from reorganization.

Subtitle D—Patent and Trademark Office Corporation

Sec. 17401. Short title.

CHAPTER 1—PATENT AND TRADEMARK OFFICE

Sec. 17411. Establishment of Patent and Trademark Office as a corporation.
Sec. 17412. Powers and duties.
Sec. 17413. Organization and management.
Sec. 17414. Management Advisory Board.
Sec. 17415. Independence from Department of Commerce.
Sec. 17416. Trademark trial and appeal board.
Sec. 17417. Board of patent appeals and interferences.
Sec. 17418. Suits by and against the corporation.
Sec. 17419. Annual report of Commissioner.
Sec. 17420. Suspension or exclusion from practice.
Sec. 17421. Funding.
Sec. 17422. Audits.
Sec. 17423. Transfers.

CHAPTER 2—EFFECTIVE DATE; TECHNICAL AMENDMENTS

Sec. 17431. Effective date.
Sec. 17432. Technical and conforming amendments.

Subtitle E—Miscellaneous Provisions

Sec. 17501. References.
Sec. 17502. Exercise of authorities.
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Sec. 17507. Certain vesting of functions considered transfers.
Sec. 17508. Availability of existing funds.
Sec. 17509. Definitions.

# Subtitle A—Abolishment of Department of Commerce

**SEC. 17101. ABOLISHMENT OF DEPARTMENT OF COMMERCE.**

(a) ABOLISHMENT OF DEPARTMENT.—The Department of Commerce is abolished effective on the abolishment date specified in subsection (c).

(b) TRANSFER OF DEPARTMENT FUNCTIONS TO OMB.—Except as otherwise provided in this title, all functions that immediately before the abolishment date specified in subsection (c) are authorized to be performed by the Secretary of Commerce, any other officer or employee of the Department acting in that capacity, or any agency or office of the Department, are transferred to the Director of the Office of Management and Budget effective on that abolishment date.

(c) ABOLISHMENT DATE.—The abolishment date referred to in subsections (a) and (b) is the earlier of—

(1) the last day of the 6-month period beginning on the date of the enactment of this Act; or

(2) September 30, 1996.

**SEC. 17102. RESOLUTION AND TERMINATION OF DEPARTMENT FUNCTIONS.**

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

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

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

(2) the Director shall resolve all functions that are transferred to the Director under section 17101(b) and are not otherwise continued under this title.

(b) TERMINATION OF FUNCTIONS.—All functions that are transferred to the Director under section 17101(b) that are not otherwise continued by this title shall terminate on the functions termination date specified in subsection (c).

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

**SEC. 17103. RESPONSIBILITIES OF THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.**

The Director of the Office of Management and Budget, acting through the Administrator of the Office of Programs Resolution, shall be responsible for the implementation of this subtitle, including—

(1) the administration and wind-up, during the wind-up period, of all functions transferred to the Director under section 17101(b);

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

(3) taking such other actions as may be necessary to wind-up any outstanding affairs of the Department of Commerce before the end of the wind-up period.

**SEC. 17104. OFFICE OF PROGRAMS RESOLUTION.**

(a) ESTABLISHMENT OF OFFICE.—There is established in the Office of Management and Budget an office to be known as the Office of Programs Resolution.

(b) ADMINISTRATOR.—There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code. The Administrator shall serve as principal adviser to the Director on Government organization and reorganization matters, and shall report directly to the Director.

(c) FUNCTIONS.—The Administrator shall perform such functions as are vested in the Administrator by this title or delegated to the Administrator by the Director.

(d) AUTHORITIES OF THE ADMINISTRATOR.—For purposes of performing the functions of the Administrator under subsection (c) and subject to the availability of appropriations, the Administrator may—

(1) enter into contracts;

(2) employ experts and consultants in accordance with section 3109 of title 5, United States Code, at rates for individuals not to exceed the per diem rate equivalent to the rate for level IV of the Executive Schedule; and

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

(e) AUDITOR GENERAL.—

(1) IN GENERAL.—There shall be in the Office an Auditor General, who shall be appointed by and report to the Administrator.

(2) FUNCTIONS.—The Auditor General shall—

(A) conduct audits and investigations with respect to activities of the Office; and

(B) submit to the Administrator and the Director reports on the findings of those audits and investigations.

(f) REORGANIZATION.—The Administrator may allocate or reallocate among the officers of the Office any function vested in the Administrator or the Office, and may establish, consolidate, alter, or discontinue in the Office any organizational entities that were entities of the Department of Commerce, as the Administrator considers necessary or appropriate.

(g) ANNUAL AUTHORIZATION REQUIRED.—No sums may be appropriated for any fiscal year for the Office except as specifically authorized for that fiscal year by law.

**SEC. 17105. PERSONNEL.**

Effective on the abolishment date specified in section 17101(c), there are transferred to the Office all individuals who—

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

(2) in their capacity as such an officer or employee, performed functions that are transferred to the Director under section 17101(b).

**SEC. 17106. PLANS AND REPORTS.**

(a) INITIAL IMPLEMENTATION PLAN.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Director shall submit a report, through the President, to the Con-

gress specifying those actions taken and necessary to be taken—

(A) to resolve those programs and functions terminated on the date of enactment of this Act; and

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

(2) CONTENTS.—The report shall include—

(A) a description of the anticipated size and composition of the Programs Resolution Office,

(B) recommendations for additional legislation, if any, needed to reflect or otherwise to implement the abolishments, transfers, terminations, and other dispositions of programs and functions under this title; and

(C) a description of actions planned and taken to comply with limitations imposed by this Act on future spending for continued functions.

(b) ANNUAL STATUS REPORTS.—At the end of each of the first, second, and third years following the date of enactment of this Act, the Director shall submit a report, through the President, to the Congress which—

(1) specifies the status and progress of actions taken to implement this title and to wind-up the affairs of the Department of Commerce by the functions termination date specified in section 17102(c);

(2) includes a summary of reports submitted to the Director under section 17104(e)(2)(B) during the period covered by the report by the Auditor General of the Office;

(3) includes any recommendations the Director may have for additional legislation; and

(4) describes actions taken to comply with limitations imposed by this Act on future spending for continued functions.

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

(1) evaluates the report under that subsection; and

(2) includes any recommendations the Comptroller General considers appropriate.

**SEC. 17107. GAO AUDIT AND ACCESS TO RECORDS.**

(a) AUDIT OF PERSONS PERFORMING FUNCTIONS PURSUANT TO THIS ACT.—All agencies, corporations, organizations, and other persons of any description which

under the authority of the United States perform any function or activity pursuant to this title shall be subject to audit by the Comptroller General of the United States with respect to such function or activity.

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

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

(1) NATURE AND SCOPE OF AUDIT.—The Comptroller General of the United States shall determine the nature, scope, terms, and conditions of audits conducted under this section.

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

(3) RIGHTS OF ACCESS, EXAMINATION, AND COPYING.—The Comptroller General of the United States, and any duly authorized representative of the Comptroller General, shall have access to, and the right to examine and copy, all records and other recorded information in any form, and to examine any property within the possession or control of any agency or person which is subject to audit under this section, which the Comptroller General considers relevant to an audit conducted under this section.

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

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

**SEC. 17108. CONFORMING AMENDMENTS.**

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

(b) EXECUTIVE DEPARTMENTS.—Section 101 of title 5, United States Code, is amended by striking the following item: ''The Department of Commerce.''.

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

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

(1) by striking the following item:

''Under Secretary of Commerce, Under Secretary of Commerce for Economic Affairs, Under Secretary of Commerce for Export Administration and Under Secretary of Commerce for Travel and Tourism.'';

(2) by striking the following item:

''Under Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Administrator of the National Oceanic and Atmospheric Administration.'';

(3) by striking the following item:

''Under Secretary of Commerce for Technology.''; and

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

''Administrator, Office of Programs Resolution''.

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

(1) by striking the following item:

''Assistant Secretaries of Commerce (11).'';

(2) by striking the following item:

''General Counsel of the Department of Commerce.'';

(3) by striking the following item:

''Assistant Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Deputy Administrator of the National Oceanic and Atmospheric Administration.'';

(4) by striking the following item:

''Director, National Institute of Standards and Technology, Department of Commerce.'';

(5) by striking the following item:

''Inspector General, Department of Commerce.'';

(6) by striking the following item:

''Chief Financial Officer, Department of Commerce.''; and

(7) in the item relating to the Bureau of the Census, by striking '', Department of Commerce''.

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

(1) by striking the following item:

''Director, United States Travel Service, Department of Commerce.''; and

(2) by striking the following item:

''National Export Expansion Coordinator, Department of Commerce.''.

(g) INSPECTOR GENERAL ACT OF 1978.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

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

(2) in section 11(1), by striking ''Commerce,''; and

(3) in section 11(2), by striking ''Commerce,''.

(h) EFFECTIVE DATE.—The amendments made by this section shall be effective on the abolishment date specified in section 17101(c).

**SEC. 17109. PRIVATIZATION FRAMEWORK.**

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

(b) ROLE OF THE FEDERAL GOVERNMENT.—No privatization arrangement made under subsection (a) shall include any future role for, or accountability to, the Federal Government unless it is necessary to assure the continued accomplishment of a specific Federal objective. The Federal role should be the minimum necessary to accomplish Federal objectives.

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

**SEC. 17110. PRIORITY PLACEMENT PROGRAMS FOR FEDERAL EMPLOYEES AFFECTED BY A REDUCTION IN FORCE ATTRIBUTABLE TO THIS TITLE.**

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

**"§ 3329b. Priority placement programs for employees affected by a reduction in force attributable to the Department of Commerce Dismantling Act**

''(a)(1) For the purpose of this section, the term 'affected agency'—

''(A) except as provided in subparagraph (B), means an Executive agency to which personnel are transferred in connection with a transfer of function under the Department of Commerce Dismantling Act, and

''(B) with respect to employees of the Department of Commerce in general administration, the Inspector General's office, or the General Council's office, or who provided overhead support to other components of the Department on a reimbursable basis, means all agencies to which functions of those employees are transferred under the Department of Commerce Dismantling Act.

''(2) This section applies with respect to any reduction in force that—

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

''(B) is due to—

''(i) the termination of any function of the Department of Commerce or the Office of Programs Resolution, as the case may be; or

''(ii) the agency's having excess personnel as a result of a transfer of function described in paragraph (1), as determined by—

''(I) the Administrator of the Office of Programs Resolution, in the case of a function transferred to the Office of Management and Budget; or

''(II) the head of the agency, in the case of any other function.

''(b) As soon as practicable after the date of the enactment of this section, each affected agency shall establish an agencywide priority placement program to facilitate employment placement for employees who—

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

''(2) are separated from service due to such a reduction in force.

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

''(A) there is then available any individual described in paragraph (2) who is qualified for the position; and

''(B) the position—

''(i) is at the same grade (or pay level) or not more than 1 grade (or pay level) below that of the position last held by such individual before placement in the new position; and

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

''(2) For purposes of an agencywide priority placement program, an individual shall be considered to be described in this paragraph if such individual's most recent performance evaluation was at least fully successful (or the equivalent), and such individual is either—

''(A) an employee of such agency who is scheduled to be separated, as described in subsection (b)(1); or

''(B) an individual who became a former employee of such agency as a result of a separation, as described in subsection (b)(2).

''(d)(1) Nothing in this section shall affect any priority placement program of the Department of Defense

which is in operation as of the date of the enactment of this section.

''(2) Nothing in this section shall impair placement programs within agencies subject to reductions in force resulting from causes other than the Department of Commerce Dismantling Act.

''(e) An individual shall cease to be eligible to participate in a program under this section on the earlier of—

''(1) the conclusion of the 12-month period beginning on the date on which that individual first became eligible to participate under subsection (c)(2); or

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

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Title 5, United States Code, is amended by redesignating the second section which is designated as section 3329 as section 3329a.

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

''3329a. Government-wide list of vacant positions.
''3329b. Priority placement programs for employees affected by a reduction in force attributable to the Department of Commerce Dismantling Act.''.

**SEC. 17111. FUNDING REDUCTIONS FOR TRANSFERRED FUNCTIONS.**

(a) FUNDING REDUCTIONS.—Except as provided in subsection (b), for each fiscal year that begins on or after the date of the enactment of this Act, the total amount obligated or expended by the United States in performing functions transferred under this title to the Director or to the Office from the Department of Commerce, or any of its officers or components, may not exceed 75 percent of the total amount obligated or expended by the United States in performing such functions for fiscal year 1995.

(b) EXCEPTIONS.—Subsection (a) shall not apply to—

(1) functions transferred to the Director under section 17203 (relating to the Bureau of the Census); or

(2) obligations or expenditures incurred as a direct consequence of the termination, transfer, or other disposition of functions described in subsection (a) pursuant to this title.

(c) RULE OF CONSTRUCTION.—This section shall take precedence over any other provision of law unless

such provision explicitly refers to this section and makes an exception to it.

(d) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall—

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

(2) include in each report under sections 17106 (a) and (b) a description of actions taken to comply with such requirements.

**SEC. 17112. DEFINITIONS.**

For purposes of this subtitle, the following definitions apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Office of Programs Resolution.

(2) DIRECTOR.—The term ''Director'' means the Director of the Office of Management and Budget.

(3) OFFICE.—The term ''Office'' means the Office of Programs Resolution.

(4) WIND-UP PERIOD.—The term ''wind-up period'' means the period beginning on the date of the enactment of this Act and ending on the functions termination date specified in section 17102(c).

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

**SEC. 17201. ABOLISHMENT OF ECONOMIC DEVELOPMENT ADMINISTRATION AND TRANSFER OF FUNCTIONS.**

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

**"SEC. 2. ADMINISTRATOR DEFINED.**

''In this Act, the term 'Administrator' means the Administrator of the Small Business Administration.

# "TITLE I—STATEMENT OF PURPOSE

**"SEC. 101. FINDINGS AND DECLARATION.**

''(a) FINDINGS.—Congress finds that—

''(1) the maintenance of the national economy at a high level is vital to the best interests of the United States, but that some of our regions, counties, and communities are suffering substantial and persistent unemployment and underemployment that cause hardship to many individuals and their families, and waste invaluable human resources;

"(2) to overcome this problem the Federal Government, in cooperation with the States, should help areas and regions of substantial and persistent unemployment and underemployment to take effective steps in planning and financing their public works and economic development;

"(3) Federal financial assistance, including grants for public works and development facilities to communities, industries, enterprises, and individuals in areas needing development should enable such areas to help themselves achieve lasting improvement and enhance the domestic prosperity by the establishment of stable and diversified local economies and improved local conditions, if such assistance is preceded by and consistent with sound, long-range economic planning; and

"(4) under the provisions of this Act, new employment opportunities should be created by developing and expanding new and existing public works and other facilities and resources rather than by merely transferring jobs from one area of the United States to another.

"(b) DECLARATION.—Congress declares that, in furtherance of maintaining the national economy at a high level—

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

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

''(3) such assistance should be used for long-term economic rehabilitation in areas where long-term economic deterioration has occurred or is taking place.

# "TITLE II—GRANTS FOR PUBLIC WORKS AND DEVELOPMENT FACILITIES

**"SEC. 201. DIRECT AND SUPPLEMENTARY GRANTS.**

''(a) IN GENERAL.—Upon the application of any eligible recipient, the Administrator may—

''(1) make direct grants for the acquisition or development of land and improvements for public works, public service, or development facility usage, and the acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such facilities, including related machinery and equipment, within an area described in section 502(a), if the Administrator finds that—

''(A) the project for which financial assistance is sought will directly or indirectly—

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

''(ii) otherwise assist in the creation of additional long-term employment opportunities for such area; or

''(iii) primarily benefit the long-term unemployed and members of low-income families;

''(B) the project for which a grant is requested will fulfill a pressing need of the area, or part thereof, in which it is, or will be, located; and

''(C) the area for which a project is to be undertaken has an approved investment strategy as provided by section 503 and such project is consistent with such strategy;

''(2) make supplementary grants in order to enable the States and other entities within areas described in section 502(a) to take maximum advantage of designated Federal grant-in-aid programs (as

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

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

''(c) REQUIREMENTS APPLICABLE TO SUPPLEMENTARY GRANTS.—

''(1) AMOUNT OF SUPPLEMENTARY GRANTS.—

''(A) IN GENERAL.—Except as provided by subparagraph (B), the amount of any supplementary grant under this section for any project shall not exceed the applicable percentage established by regulations promulgated by the Administrator, but in no event shall the non-Federal share of the aggregate cost of any such project (including assumptions of debt) be less than 20 percent of such cost.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), in the case of an Indian tribe, a State (or a political subdivision of the State), or a community development corporation which the Administrator determines has exhausted its effective taxing and borrowing capacity, the Administrator shall reduce the non-Federal share below the percentage specified in subparagraph (A) or shall waive the non-Federal share in the case of such a grant for a project in an area described in section 502(a)(4).

"(2) FORM OF SUPPLEMENTARY GRANTS.—Supplementary grants shall be made by the Administrator, in accordance with such regulations as the Administrator may prescribe, by increasing the amounts of direct grants authorized under this section or by the payment of funds appropriated under this Act to the heads of the departments, agencies, and instrumentalities of the Federal Government responsible for the administration of the applicable Federal programs.

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

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

''(4) DESIGNATED FEDERAL GRANT-IN-AID PROGRAMS DEFINED.—In this subsection, the term 'designated Federal grant-in-aid programs' means such existing or future Federal grant-in-aid programs assisting in the construction or equipping of facilities as the Administrator may, in furtherance of the purposes of this Act, designate as eligible for allocation of funds under this section.

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

''(d) REGULATIONS.—The Administrator shall prescribe rules, regulations, and procedures to carry out this section which will assure that adequate consideration is given to the relative needs of eligible areas. In prescribing

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

''(1) the severity of the rates of unemployment in the eligible areas and the duration of such unemployment; and

''(2) the income levels of families and the extent of underemployment in eligible areas.

''(e) REVIEW AND COMMENT UPON PROJECTS BY LOCAL GOVERNMENTAL AUTHORITIES.—The Administrator shall prescribe regulations which will assure that appropriate local governmental authorities have been given a reasonable opportunity to review and comment upon proposed projects under this section.

**''SEC. 202. CONSTRUCTION COST INCREASES.**

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

**"SEC. 203. USE OF FUNDS IN PROJECTS CONSTRUCTED UNDER PROJECTED COST.**

''In any case where a grant (including a supplemental grant) has been made by the Administrator under this title for a project, and after such grant has been made but before completion of the project, the cost of such project based upon the designs and specifications which were the basis of the grant has decreased because of decreases in costs, such underrun funds may be used to improve the project either directly or indirectly as determined by the Administrator.

**"SEC. 204. CHANGED PROJECT CIRCUMSTANCES.**

''In any case where a grant (including a supplemental grant) has been made by the Administrator under this title for a project, and after such grant has been made but before completion of the project, the purpose or scope of such project based upon the designs and specifications which were the basis of the grant has changed, the Administrator may approve the use of grant funds on such changed project if the Administrator determines that such changed project meets the requirements of this title and that such changes are necessary to enhance economic development in the area.

# "TITLE III—SPECIAL ECONOMIC DEVELOPMENT AND ADJUSTMENT ASSISTANCE

## "SEC. 301. STATEMENT OF PURPOSE.

''The purpose of this title to provide special economic development and adjustment assistance programs to help State and local areas meet special needs arising from actual or threatened severe unemployment arising from economic dislocation (including unemployment arising from actions of the Federal Government, from defense base closures and realignments, and from compliance with environmental requirements which remove economic activities from a locality) and economic adjustment problems resulting from severe changes in economic conditions (including long-term economic deterioration), and to encourage cooperative intergovernmental action to prevent or solve economic adjustment problems. Nothing in this title is intended to replace the efforts of the economic adjustment program of the Department of Defense.

## "SEC. 302. SPECIAL ECONOMIC DEVELOPMENT AND ADJUSTMENT ASSISTANCE.

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

criteria to be established by the Administrator by regulation—

''(1) has experienced, or may reasonably be foreseen to be about to experience, a special need to meet an expected rise in unemployment, or other economic adjustment problems (including those caused by any action or decision of the Federal Government); or

''(2) has demonstrated long-term economic deterioration.

''(b) PURPOSES.—Amounts from grants under subsection (a) shall be used by an eligible recipient to carry out or develop an investment strategy which—

''(1) meets the requirements of section 503; and

''(2) is approved by the Administrator.

''(c) TYPES OF ASSISTANCE.—In carrying out an investment strategy using amounts from grants under subsection (a), an eligible recipient may provide assistance for any of the following:

''(1) Public facilities.

''(2) Public services.

''(3) Business development.

''(4) Planning.

''(5) Research and technical assistance.

''(6) Administrative expenses.

''(7) Training.

''(8) Relocation of individuals and businesses.

''(9) Other assistance which demonstrably furthers the economic adjustment objectives of this title.

''(d) DIRECT EXPENDITURE OR REDISTRIBUTION BY RECIPIENT.—Amounts from grants under subsection (a) may be used in direct expenditures by the eligible recipient or through redistribution by the eligible recipient to public and private entities in grants, loans, loan guarantees, payments to reduce interest on loan guarantees, or other appropriate assistance, but no grant shall be made by an eligible recipient to a private profit-making entity.

''(e) COORDINATION.—The Administrator to the extent practicable shall coordinate the activities relating to the requirements for investment strategies and making grants and loans under this title with other Federal programs, States, economic development districts, and other appropriate planning and development organizations.

''(f) BASE CLOSINGS AND REALIGNMENTS.—

''(1) LOCATION OF PROJECTS.—In any case in which the Administrator determines a need for assistance under subsection (a) due to the closure or realignment of a military installation, the Administrator may make such assistance available for

projects to be carried out on the military installation and for projects to be carried out in communities adversely affected by the closure or realignment.

''(2) INTEREST IN PROPERTY.—Notwithstanding any other provision of law, the Administrator may provide to an eligible recipient any assistance available under this Act for a project to be carried out on a military installation that is closed or scheduled for closure or realignment without requiring that the eligible recipient have title to the property or a leasehold interest in the property for any specified term.

**''SEC. 303. ANNUAL REPORTS BY RECIPIENT.**

''Each eligible recipient which receives assistance under this title from the Administrator shall annually during the period such assistance continue to make a full and complete report to the Administrator, in such manner as the Administrator shall prescribe, and such report shall contain an evaluation of the effectiveness of the economic assistance provided under this title in meeting the need it was designed to alleviate and the purposes of this title.

**''SEC. 304. SALE OF FINANCIAL INSTRUMENTS IN REVOLVING LOAN FUNDS.**

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

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

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

''(2) shall be subject to the financial management, accounting, reporting, and auditing standards which were originally applicable to the grant.

**"SEC. 305. TREATMENT OF REVOLVING LOAN FUNDS.**

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

''(b) EXCEPTIONS.—Amounts described in subsection (a) which are loaned from a revolving loan fund to a borrower and repaid to the fund—

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

''(2) shall be subject to the financial management, accounting, reporting, and auditing standards which were originally applicable to the grant.

''(c) REGULATIONS.—Not later than 30 days after the effective date specified in section 802, the Administrator shall issue regulations to carry out subsection (a).

''(d) PUBLIC REVIEW AND COMMENT.—Before issuing any final guidelines or administrative manuals governing the operation of revolving loan funds established using amounts from grants under this title, the Administrator shall provide reasonable opportunity for public review of and comment on such guidelines and administrative manuals.

''(e) APPLICABILITY TO PAST GRANTS.—The requirements of this section applicable to amounts from grants made under this title shall also apply to amounts from grants made, before the effective date specified in section 802, under title I of this Act, as in effect on the day before such effective date.

# "TITLE IV—TECHNICAL ASSISTANCE, RESEARCH, AND INFORMATION

## "SEC. 401. TECHNICAL ASSISTANCE.

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

ance which would be useful in alleviating or preventing conditions of excessive unemployment or underemployment to areas which the Administrator finds have substantial need for such assistance. Such assistance shall include project planning and feasibility studies, management and operational assistance, establishment of business outreach centers, and studies evaluating the needs of, and development potentialities for, economic growth of such areas.

''(b) PROCEDURES AND TERMS.—

''(1) MANNER OF PROVIDING ASSISTANCE.—Assistance may be provided by the Administrator through—

''(A) members of the Administrator's staff;

''(B) the payment of funds authorized for this section to departments or agencies of the Federal Government;

''(C) the employment of private individuals, partnerships, firms, corporations, or suitable institutions under contracts entered into for such purposes; or

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

"(2) REPAYMENT TERMS.—The Administrator, in the Administrator's discretion, may require the repayment of assistance provided under this subsection and prescribe the terms and conditions of such repayment.

"(c) GRANTS COVERING ADMINISTRATIVE EXPENSES.—

"(1) IN GENERAL.—The Administrator may make grants to defray not to exceed 50 percent of the administrative expenses of organizations which the Administrator determines to be qualified to receive grants-in-aid under subsections (a) and (b); except that in the case of a grant under this subsection to an Indian tribe, the Administrator is authorized to defray up to 100 percent of such expenses.

"(2) DETERMINATION OF NON-FEDERAL SHARE.—In determining the amount of the non-Federal share of such costs or expenses, the Administrator shall give due consideration to all contributions both in cash and in kind, fairly evaluated, including contributions of space, equipment, and services.

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

ized under this subsection shall be used in conjunction with other available planning grants to assure adequate and effective planning and economical use of funds.

''(d) AVAILABILITY OF TECHNICAL INFORMATION; FEDERAL PROCUREMENT.—The Administrator shall aid areas described in section 502(a) and other areas by furnishing to interested individuals, communities, industries, and enterprises within such areas any assistance, technical information, market research, or other forms of assistance, information, or advice which would be useful in alleviating or preventing conditions of excessive unemployment or underemployment within such areas. The Administrator may furnish the procurement divisions of the various departments, agencies, and other instrumentalities of the Federal Government with a list containing the names and addresses of business firms which are located in areas described in section 502(a) and which are desirous of obtaining Government contracts for the furnishing of supplies or services, and designating the supplies and services such firms are engaged in providing.

**''SEC. 402. ECONOMIC DEVELOPMENT PLANNING.**

''(a) DIRECT GRANTS.—

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

other political subdivision of a State, or sub-State planning and development organization (including an area described in section 502(a) or an economic development district), direct grants to such State, city, or other political subdivision, or organization to pay up to 50 percent of the cost for economic development planning.

''(2) PLANNING PROJECTS SPECIFICALLY INCLUDED.—The planning for cities, other political subdivisions, and sub-State planning and development organizations (including areas described in section 502(a) and economic development districts) assisted under this section shall include systematic efforts to reduce unemployment and increase incomes.

''(3) PLANNING PROCESS.—The planning shall be a continuous process involving public officials and private citizens in analyzing local economies, defining development goals, determining project opportunities, and formulating and implementing a development program.

''(4) COORDINATION OF ASSISTANCE UNDER SECTION 401(c).—The assistance available under this section may be provided in addition to assistance available under section 401(c) but shall not supplant such assistance.

''(b) COMPLIANCE WITH REVIEW PROCEDURE.—The planning assistance authorized under this title shall be used in conjunction with any other available Federal planning assistance to assure adequate and effective planning and economical use of funds.

# "TITLE V—ELIGIBILITY AND INVESTMENT STRATEGIES

## "PART A—ELIGIBILITY

### "SEC. 501. ELIGIBLE RECIPIENT DEFINED.

''In this Act, the term 'eligible recipient' means an area described in section 502(a), an economic development district designated under section 510, an Indian tribe, a State, a city or other political subdivision of a State, or a consortium of such political subdivisions, or a public or private nonprofit organization or association acting in cooperation with officials of such political subdivisions.

### "SEC. 502. AREA ELIGIBILITY.

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

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

''(2) The area has an unemployment rate 1 percent above the national average percentage for the most recent 24-month period for which statistics are available.

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

''(4) The area is a community or neighborhood (defined without regard to political or other subdivisions or boundaries) which the Administrator determines has one or more of the following conditions:

''(A) A large concentration of low-income persons.

''(B) Rural areas having substantial outmigration.

''(C) Substantial unemployment.

''(b) DOCUMENTATION.—A certification made under subsection (a) shall be supported by Federal data, when available, and in other cases by data available through the State government. Such documentation shall be accepted by the Administrator unless it is determined to be inaccurate. The most recent statistics available shall be used.

''(c) PRIOR DESIGNATIONS.—Any designation of a redevelopment area made before the effective date specified in section 802 shall not be effective after such effective date.

**"SEC. 503. INVESTMENT STRATEGY.**

''The Administrator may provide assistance under titles II and III to an applicant for a project only if the applicant submits to the Administrator, as part of an application for such assistance, and the Administrator approves an investment strategy which—

''(1) identifies the economic development problems to be addressed using such assistance;

''(2) identifies past, present, and projected future economic development investments in the area receiving such assistance and public and private participants and sources of funding for such investments;

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

''(4) provides a description of the project necessary to implement the strategy, estimates of costs, and timetables; and

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

**"SEC. 504. APPROVAL OF PROJECTS.**

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

''(1) to be included in a State investment strategy;

''(2) to have adequate assurance that the project will be properly administered, operated, and maintained; and

''(3) to otherwise meet the requirements for assistance under this Act.

**"PART B—ECONOMIC DEVELOPMENT DISTRICTS**

**"SEC. 510. DESIGNATION OF ECONOMIC DEVELOPMENT DISTRICTS AND ECONOMIC DEVELOPMENT CENTERS.**

''(a) IN GENERAL.—In order that economic development projects of broader geographic significance may be planned and carried out, the Administrator may—

''(1) designate appropriate 'economic development districts' within the United States with the concurrence of the States in which such districts will be wholly or partially located, if—

''(A) the proposed district is of sufficient size or population, and contains sufficient resources, to foster economic development on a scale involving more than a single area described in section 502(a);

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

''(C) the proposed district contains 1 or more areas described in section 502(a) or economic development centers identified in an approved district investment strategy as having sufficient size and potential to foster the economic growth activities necessary to alleviate the distress of the areas described in section 502(a) within the district; and

''(D) the proposed district has a district investment strategy which includes adequate land use and transportation planning and contains a specific program for district cooperation, self-help, and public investment and is approved by the State or States affected and by the Administrator;

''(2) designate as 'economic development centers', in accordance with such regulations as the Ad-

ministrator shall prescribe, such areas as the Administrator may deem appropriate, if—

''(A) the proposed center has been identified and included in an approved district investment strategy and recommended by the State or States affected for such special designation;

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

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

''(3) provide financial assistance in accordance with the criteria of this Act, except as may be herein otherwise provided, for projects in economic development centers designated under subsection (a)(2), if—

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

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

ditional long-term employment opportunities commensurate with the amount of Federal financial assistance requested; and

''(C) the amount of Federal financial assistance requested is reasonably related to the size, population, and economic needs of the district;

''(4) subject to the 50 percent non-Federal share required for any project by section 201(c), increase the amount of grant assistance authorized by section 201 for projects within areas described in section 502(a), by an amount not to exceed 10 percent of the aggregate cost of any such project, in accordance with such regulations as the Administrator shall prescribe if—

''(A) the area described in section 502(a) is situated within a designated economic development district and is actively participating in the economic development activities of the district; and

''(B) the project is consistent with an approved investment strategy.

''(b) AUTHORITIES.—In designating economic development districts and approving district investment strate-

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

"(1) invite the several States to draw up proposed district boundaries and to identify potential economic development centers;

"(2) cooperate with the several States—

"(A) in sponsoring and assisting district economic planning and development groups; and

"(B) in assisting such district groups to formulate district investment strategies; and

"(3) encourage participation by appropriate local governmental authorities in such economic development districts.

"(c) TERMINATION OR MODIFICATION OF DESIGNATIONS.—The Administrator shall by regulation prescribe standards for the termination or modification of economic development districts and economic development centers designated under the authority of this section.

"(d) DEFINITIONS.—In this Act, the following definitions apply:

"(1) ECONOMIC DEVELOPMENT DISTRICT.—The term 'economic development district' refers to any area within the United States composed of cooperating areas described in section 502(a) and, where ap-

propriate, designated economic development centers and neighboring counties or communities, which has been designated by the Administrator as an economic development district. Such term includes any economic development district designated under section 403 of this Act, as in effect on the day before the effective date specified in section 802.

''(2) ECONOMIC DEVELOPMENT CENTER.—The term 'economic development center' refers to any area within the United States which has been identified as an economic development center in an approved investment strategy and which has been designated by the Administrator as eligible for financial assistance under this Act in accordance with the provisions of this section.

''(3) LOCAL GOVERNMENT.—The term 'local government' means any city, county, town, parish, village, or other general-purpose political subdivision of a State.

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

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

# "TITLE VI—ADMINISTRATION

## "SEC. 601. APPOINTMENT OF ASSOCIATE ADMINISTRATOR; FULL TIME EQUIVALENT EMPLOYEES.

''(a) APPOINTMENT.—The Administrator shall carry out the duties vested in the Administrator by this Act acting through an Associate Administrator of the Small Business Administration, who shall be appointed by the President by and with the advice and consent of the Senate.

''(b) PAY.—The Associate Administrator shall be compensated by the Federal Government at the rate prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code.

''(c) FULL TIME EQUIVALENT EMPLOYEES.—The Administrator shall assign not to exceed 25 full time equivalent employees of the Small Business Administration (excluding the Associate Administrator) to assist the

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

**"SEC. 602. REGIONAL COOPERATIVE AGREEMENTS.**

''(a) IN GENERAL.—The Administrator shall make grants and carry out such other functions under this Act as the Administrator considers appropriate by entering into cooperative agreements with 1 or more States on a regional basis. Each State entering into such an agreement shall be represented by the chief executive officer of the State.

''(b) TERMS AND CONDITIONS.—A cooperative agreement entered into under subsection (a) shall include such terms and conditions as the Administrator determines are necessary to carry out the provisions of this Act. Such terms and conditions at a minimum shall provide that no decision concerning regional policies or approval of project or grant applications may be made without the consent of the Administrator and a majority of the States participating in the cooperative agreement.

''(c) PARTICIPATION NOT REQUIRED.—No State shall be required to enter into a cooperative agreement under this section or to participate in any program established by this Act.

**"SEC. 603. ADMINISTRATIVE EXPENSES.**

''(a) PAYMENT BY STATES.—Fifty percent of the administrative expenses incurred by States in participating in a cooperative agreement entered into under section 602 shall be paid by such States and the remaining 50 percent of such expenses shall be paid by the Federal Government.

''(b) DETERMINATION OF STATE SHARE.—The share of the administrative expenses to be paid by each State participating in a cooperative agreement shall be determined by a majority vote of such States. The Administrator may not participate or vote in such determination.

''(c) DELINQUENT PAYMENTS.—No assistance authorized by this Act shall be furnished to any State or to any political subdivision or resident of a State, nor shall the State participate or vote in any decision described in section 602(b), while such State is delinquent in the payment of such State's share of the administrative expenses described in subsection (a).

**"SEC. 604. FEDERAL SHARE.**

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

**"SEC. 605. COOPERATION OF FEDERAL AGENCIES.**

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

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

**"SEC. 606. CONSULTATION WITH OTHER PERSONS AND AGENCIES.**

''(a) CONSULTATION ON PROBLEMS RELATING TO EMPLOYMENT.—The Administrator is authorized from time to time to call together and confer with any persons, including representatives of labor, management, agriculture, and government, who can assist in meeting the problems of area and regional unemployment or underemployment.

''(b) CONSULTATION ON ADMINISTRATION OF ACT.—The Administrator may make provisions for such consultation with interested departments and agencies as the Administrator may deem appropriate in the performance of the functions vested in the Administrator by this Act.

**"SEC. 607. ADMINISTRATION, OPERATION, AND MAINTENANCE.**

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

# "TITLE VII—MISCELLANEOUS

**"SEC. 701. POWERS OF ADMINISTRATOR.**

''(a) IN GENERAL.—In performing the Administrator's duties under this Act, the Administrator is authorized to—

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

''(2) subject to the civil-service and classification laws, select, employ, appoint, and fix the compensation of such personnel as may be necessary to carry out the provisions of this Act;

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

''(4) request directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality information, suggestions, estimates, and statistics needed to carry out the purposes of this Act; and each department, bureau, agency, board, commission, office, establishment, or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics directly to the Administrator;

''(5) under regulations prescribed by the Administrator, assign or sell at public or private sale,

or otherwise dispose of for cash or credit, in the Administrator's discretion and upon such terms and conditions and for such consideration as the Administrator determines to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by the Administrator in connection with assistance extended under this Act, and collect or compromise all obligations assigned to or held by the Administrator in connection with such assistance until such time as such obligations may be referred to the Attorney General for suit or collection;

''(6) deal with, complete, renovate, improve, modernize, insure, rent, or sell for cash or credit, upon such terms and conditions and for such consideration as the Administrator determines to be reasonable, any real or personal property conveyed to, or otherwise acquired by the Administrator in connection with assistance extended under this Act;

''(7) pursue to final collection, by way of compromise or other administrative action, prior to reference to the Attorney General, all claims against third parties assigned to the Administrator in connection with assistance extended this Act;

''(8) acquire, in any lawful manner and in accordance with the requirements of the Federal Property and Administrative Services Act of 1949, any property (real, personal, or mixed, tangible or intangible), whenever necessary or appropriate to the conduct of the activities authorized under this Act;

''(9) in addition to any powers, functions, privileges, and immunities otherwise vested in the Administrator, take any action, including the procurement of the services of attorneys by contract, determined by the Administrator to be necessary or desirable in making, purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively dealing with assets held in connection with financial assistance extended under this Act;

''(10) employ experts and consultants or organizations as authorized by section 3109 of title 5, United States Code, compensate individuals so employed at rates not in excess of $100 per diem, including travel time, and allow them, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed, except that

contracts for such employment may be renewed annually;

''(11) sue and be sued in any court of record of a State having general jurisdiction or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Administrator or the Administrator's property;

''(12) make discretionary grants, pursuant to authorities otherwise available to the Administrator under this Act and without regard to the requirements of section 504, to implement significant regional initiatives, to take advantage of special development opportunities, or to respond to emergency economic distress in a region from the funds withheld from distribution by the Administrator; except that the aggregate amount of such discretionary grants in any fiscal year may not exceed 10 percent of the amounts appropriated under title VIII for such fiscal year;

''(13) allow a State to use not to exceed 5 percent of the total of amounts received by the State

in a fiscal year in grants under this Act for reasonable expenses incurred by the State in administering such amounts; and

''(14) establish such rules, regulations, and procedures as the Administrator considers appropriate in carrying out the provisions of this Act.

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

''(c) INAPPLICABILITY OF CERTAIN OTHER REQUIREMENTS.—Section 3709 of the Revised Statutes of the United States shall not apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of property obtained by the Administrator as a result of assistance extended under this Act if the premium for the insurance or the amount of the insurance does not exceed $1,000.

''(d) POWERS OF CONVEYANCE AND EXECUTION.—The power to convey and to execute, in the name of the Administrator, deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real or personal property or any interest therein acquired by the Administrator pursuant to the provisions of this Act may be exercised by

the Administrator, or by any officer or agent appointed by the Administrator for such purpose, without the execution of any express delegation of power or power of attorney.

**"SEC. 702. ESTABLISHMENT OF CLEARINGHOUSE.**

''In carrying out the Administrator's duties under this Act, the Administrator shall ensure that the Small Business Administration—

''(1) serves as a central information clearinghouse on matters relating to economic development, economic adjustment, disaster recovery, and defense conversion programs and activities of the Federal and State governments, including political subdivisions of the States; and

''(2) helps potential and actual applicants for economic development, economic adjustment, disaster recovery, and defense conversion assistance under Federal, State, and local laws in locating and applying for such assistance, including financial and technical assistance.

**"SEC. 703. PERFORMANCE MEASURES.**

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

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

**"SEC. 704. MAINTENANCE OF STANDARDS.**

''The Administrator shall continue to implement and enforce the provisions of section 712 of this Act, as in effect on the day before the effective date specified in section 802.

**"SEC. 705. TRANSFER OF FUNCTIONS.**

''The functions, powers, duties, and authorities and the assets, funds, contracts, loans, liabilities, commitments, authorizations, allocations, and records which are vested in or authorized to be transferred to the Secretary of the Treasury under section 29(b) of the Area Redevelopment Act, and all functions, powers, duties, and authorities under section 29(c) of such Act are hereby vested in the Administrator.

**"SEC. 706. DEFINITION OF STATE.**

''In this Act, the terms 'State', 'States', and 'United States' include the several States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Marshall Islands, Micronesia, and the Northern Mariana Islands.

**"SEC. 707. ANNUAL REPORT TO CONGRESS.**

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

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

**"SEC. 708. USE OF OTHER FACILITIES.**

''(a) DELEGATION OF FUNCTIONS TO OTHER FEDERAL DEPARTMENTS AND AGENCIES.—The Administrator may delegate to the heads of other departments and agencies of the Federal Government any of the Administrator's functions, powers, and duties under this Act as the Administrator may deem appropriate, and to authorize the redelegation of such functions, powers, and duties by the heads of such departments and agencies.

''(b) DEPARTMENT AND AGENCY EXECUTION OF DELEGATED AUTHORITY.—Departments and agencies of the Federal Government shall exercise their powers, duties, and functions in such manner as will assist in carrying out the objectives of this Act.

''(c) TRANSFER BETWEEN DEPARTMENTS.—Funds authorized to be appropriated under this Act may be transferred between departments and agencies of the Government, if such funds are used for the purposes for which they are specifically authorized and appropriated.

''(d) FUNDS TRANSFERRED FROM OTHER DEPARTMENTS AND AGENCIES.—In order to carry out the objectives of this Act, the Administrator may accept transfers of funds from other departments and agencies of the Federal Government if the funds are used for the purposes for which (and in accordance with the terms under which) the funds are specifically authorized and appropriated. Such transferred funds shall remain available until expended, and may be transferred to and merged with the appropriations under the heading 'salaries and expenses' by the Administrator to the extent necessary to administer the program.

**"SEC. 709. EMPLOYMENT OF EXPEDITERS AND ADMINISTRATIVE EMPLOYEES.**

''No financial assistance shall be extended by the Administrator under this Act to any business enterprise unless the owners, partners, or officers of such business enterprise—

''(1) certify to the Administrator the names of any attorneys, agents, and other persons engaged by or on behalf of such business enterprise for the purpose of expediting applications made to the Administrator for assistance of any sort, under this Act, and the fees paid or to be paid to any such person; and

''(2) execute an agreement binding such business enterprise, for a period of 2 years after such assistance is rendered by the Administrator to such business enterprise, to refrain from employing, tendering any office or employment to, or retaining for professional services, any person who, on the date such assistance or any part thereof was rendered, or within the 1-year period ending on such date, shall have served as an officer, attorney, agent, or employee, occupying a position or engaging in activities which the Administrator determines involves discretion with respect to the granting of assistance under this Act.

**"SEC. 710. MAINTENANCE OF RECORDS OF APPROVED APPLICATIONS FOR FINANCIAL ASSISTANCE; PUBLIC INSPECTION.**

''(a) MAINTENANCE OF RECORD REQUIRED.—The Administrator shall maintain as a permanent part of the records of the Small Business Administration a list of applications approved for financial assistance under this Act, which shall be kept available for public inspection during the regular business hours of the Small Business Administration.

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

''(1) The name of the applicant and, in the case of corporate applications, the names of the officers and directors thereof.

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

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

**"SEC. 711. RECORDS AND AUDIT.**

''(a) RECORDKEEPING AND DISCLOSURE REQUIREMENTS.—Each recipient of assistance under this Act shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

''(b) ACCESS TO BOOKS FOR EXAMINATION AND AUDIT.—The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and

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

**"SEC. 712. PROHIBITION AGAINST A STATUTORY CONSTRUCTION WHICH MIGHT CAUSE DIMINUTION IN OTHER FEDERAL ASSISTANCE.**

''All financial and technical assistance authorized under this Act shall be in addition to any Federal assistance previously authorized, and no provision of this Act shall be construed as authorizing or permitting any reduction or diminution in the proportional amount of Federal assistance to which any State or other entity eligible under this Act would otherwise be entitled under the provisions of any other Act.

**"SEC. 713. ACCEPTANCE OF APPLICANTS' CERTIFICATIONS.**

''The Administrator may accept, when deemed appropriate, the applicants' certifications to meet the requirements of this Act.

# "TITLE VIII—FUNDING; EFFECTIVE DATE

**"SEC. 801. AUTHORIZATION OF APPROPRIATIONS**

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

**"SEC. 802. EFFECTIVE DATE.**

''The effective date specified in this section is the abolishment date specified in section 17101(c) of the Department of Commerce Dismantling Act.''.

(b) CONFORMING AMENDMENTS TO TITLE 5.—Section 5316 of title 5, United States Code, is amended—

(1) by striking ''Associate Administrators of the Small Business Administration (4)'' and inserting ''Associate Administrators of the Small Business Administration (5)''; and

(2) by striking ''Administrator for Economic Development.''.

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

**SEC. 17202. TECHNOLOGY ADMINISTRATION.**

(a) TECHNOLOGY ADMINISTRATION.—

(1) GENERAL RULE.—Except as otherwise provided in this section, the Technology Administration is terminated.

(2) OFFICE OF TECHNOLOGY POLICY.—The Office of Technology Policy is terminated.

(b) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—

(1) REDESIGNATION.—The National Institute of Standards and Technology is hereby redesignated as the National Bureau of Standards, and all references to the National Institute of Standards and Technology in Federal law or regulations are deemed to be references to the National Bureau of Standards.

(2) GENERAL RULE.—The National Bureau of Standards (in this subsection referred to as the ''Bureau'') is transferred to the National Institute for Science and Technology, established under section 17207.

(3) FUNCTIONS OF DIRECTOR.—Except as otherwise provided in this section or section 17208, upon the transfer under paragraph (2), the Director of the Bureau shall perform all functions relating to the Bureau that, immediately before the effective date specified in section 17209(a), were functions of

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

(c) NATIONAL TECHNICAL INFORMATION SERVICE.—All functions of the National Technical Information Service are transferred to the Director of Office of Management and Budget for privatization in accordance with section 17109.

(d) AMENDMENTS.—

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

(A) in section 2(b), by striking paragraph (1) and redesignating paragraphs (2) through (11) as paragraphs (1) through (10), respectively;

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

(C) in section 10, by striking ‘‘Advanced’’ in both the section heading and subsection (a), and inserting in lieu thereof ‘‘Standards and’’; and

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

(2) STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980.—The Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) is amended—

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

(B) in section 4, by striking paragraphs (1), (4), and (13) and redesignating paragraphs (2), (3), (5), (6), (7), (8), (9), (10), (11), and (12) as paragraphs (1) through (10), respectively;

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

(D) in section 11—

(i) by striking ‘‘, the Federal Laboratory Consortium for Technology Transfer,’’ in subsection (c)(3);

(ii) by striking ‘‘and the Federal Laboratory Consortium for Technology Transfer’’ in subsection (d)(2);

(iii) by striking ‘‘, and refer such requests’’ and all that follows through ‘‘available to the Service’’ in subsection (d)(3); and

(iv) by striking subsection (e); and

(E) in section 17—

(i) by striking ''Subject to paragraph (2), separate'' in subsection (c)(1) and inserting in lieu thereof ''Separate'';

(ii) by striking paragraph (2) of subsection (c) and redesignating paragraph (3) as paragraph (2);

(iii) by striking ''funds to carry out'' in subsection (f), and inserting in lieu thereof ''funds only to pay the salary of the Director of the Office of Quality Programs, who shall be responsible for carrying out''; and

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

''(h) VOLUNTARY AND UNCOMPENSATED SERVICES.—The Director of the Office of Quality Programs may accept voluntary and uncompensated services notwithstanding the provisions of section 1342 of title 31, United States Code.''.

(3) MISCELLANEOUS AMENDMENTS.—Section 3 of Public Law 94–168 (15 U.S.C. 205b) is amended—

(A) by striking paragraph (2);

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

(C) in paragraph (3), as so redesignated by subparagraph (B) of this paragraph, by striking ''in nonbusiness activities''.

**SEC. 17203. REORGANIZATION OF THE BUREAU OF THE CENSUS.**

(a) PROVISIONS RELATING TO INTERIM PERIOD.—

(1) FUNCTIONS OF THE SECRETARY OF COMMERCE.—During the 6-month period beginning on the abolishment date specified in section 17101(c), the Director of the Office of Management and Budget shall perform all functions that, immediately before such effective date, were functions of the Secretary of Commerce under title 13, United States Code.

(2) REORGANIZATION AUTHORITY UNDER SECTION 17104(f) NOT TO APPLY.—Section 17104(f) shall not apply with respect to the Bureau of the Census or any function to be performed by the appropriate official pursuant to paragraph (1).

(b) TRANSFER OF FUNCTIONS.—

(1) IN GENERAL.—Notwithstanding any provision of section 17209, effective as of the first day

following the end of the 6-month period referred to in subsection (a)(1)—

(A) the Bureau of the Census shall be transferred to the Department of Labor; and

(B) all functions that, immediately before such first day, were functions of the Director of the Office of Management and Budget by reason of subsection (a)(1) shall be transferred to the Secretary of Labor.

(2) CONTINUATION OF SERVICE OF THE DIRECTOR OF THE CENSUS.—The individual serving as the Director of the Census at the end of the 6-month period referred to in subsection (a)(1) may continue serving in that capacity, after the end of such period, until a successor has taken office.

(c) AMENDMENTS.—Effective as of the first day following the end of the 6-month period referred to in subsection (a)(1)—

(1) TRANSFER OF THE BUREAU OF THE CENSUS TO THE DEPARTMENT OF LABOR.—(A) Section 2 of title 13, United States Code, is amended by striking ''is continued as'' through the period and inserting ''is an agency within, and under the jurisdiction of, the Department of Labor.''.

(B) Subsection (e) of section 12 of the Act of February 14, 1903 (15 U.S.C. 1511(e)) is repealed.

(2) DEFINITION OF SECRETARY.—Title 13, United States Code, is amended in section 1(2) by striking ''Secretary of Commerce'' and inserting ''Secretary of Labor''.

(3) REFERENCES TO THE DEPARTMENT OF COMMERCE.—Title 13, United States Code, is amended in sections 4, 9(a), 23(b), 24(e), 44, 103, 132, 211, 213(b)(2), 221, 222, 223, 224, 225(a), and 241 by striking ''Department of Commerce'' each place it appears and inserting ''Department of Labor''.

(4) REFERENCES TO THE SECRETARY OF COMMERCE.—(A) Section 304(a) of title 13, United States Code, is amended by striking ''Secretary of Commerce'' and inserting ''Secretary of Labor''.

(B)(i) Section 401(a) of title 13, United States Code, is amended by striking ''Secretary of Commerce'' and inserting ''Secretary''.

(ii) Section 8(e) of the Foreign Direct Investment and International Financial Data Improvements Act of 1990 (22 U.S.C. 3144(e)) is amended by striking ''Secretary of Commerce'' and inserting ''Secretary of Labor''.

(iii) Section 401(a) of title 13, United States Code, is amended by striking ''Department of Commerce'' and inserting ''Federal Reserve System''.

(5) COMPENSATION FOR THE POSITION OF DIRECTOR OF THE CENSUS.—Section 5315 of title 5, United States Code, as amended by section 17108(e)(7), is further amended by striking ''Census.'' and inserting ''Census, Department of Labor.''.

(6) CONFIDENTIALITY.—Section 9 of title 13, United States Code, is amended by adding at the end the following:

''(c)(1) Nothing in subsection (a)(3) shall be considered to permit the disclosure of any matter or information to an officer or employee of the Department of Labor who is not referred to in subchapter II if, immediately before the start of the 6-month period referred to in section 17203(a)(1) of the Department of Commerce Dismantling Act, such disclosure (if then made by an officer or employee of the Department of Commerce) would have been impermissible under this section (as then in effect).

''(2) Paragraph (1) shall not apply with respect to any disclosure made to the Secretary.''.

(d) SENSE OF THE CONGRESS.—It is the sense of the Congress that the Bureau of the Census should—

(1) make appropriate use of any authority afforded to it by the Census Address List Improvement Act of 1994 (Public Law 103–430; 108 Stat. 4393), and take measures to ensure the timely implementation of such Act; and

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

(e) RULE OF CONSTRUCTION.—For purposes of subtitle E, the reorganization of the Bureau of the Census pursuant to subsections (b) and (c) shall be treated as if it involved a transfer of functions.

**SEC. 17204. BUREAU OF ECONOMIC ANALYSIS.**

(a) IN GENERAL.—(1) The functions of the Bureau of Economic Analysis are transferred to the Secretary of Labor.

(2) All functions which, immediately before such date, are functions of the Secretary of Commerce with respect to the Bureau of Economic Analysis are transferred to the Secretary of Labor.

(b) CONSOLIDATION WITH THE BUREAU OF LABOR STATISTICS.—The Secretary of Labor shall consolidate the functions transferred under subsection (a) with the Bureau of Labor Statistics within the Department of Labor.

(c) REPORTS.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Labor, after consultation with the Director of the Office of Management and Budget, shall submit to the Congress a written report on—

(1) the availability of any private sector resources that may be capable of performing any or all of the functions of the Bureau of Economic Analysis, and the feasibility of having any such functions so performed; and

(2) the feasibility of implementing a system under which fees may be assessed by the Bureau of Economic Analysis in order to defray the costs of any services performed by the Bureau of Economic Analysis, when such services are performed other than on behalf of the Federal Government or an agency or instrumentality thereof.

(d) RULE OF CONSTRUCTION.—For purposes of subtitle E, the reorganization of the Bureau of Economic Analysis under this section shall be treated as if it involved a transfer of functions.

(e) LIMITATION ON ANNUAL OBLIGATIONS AND EXPENDITURES FOR CONTINUED FUNCTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), for each fiscal year that begins on or

after the effective date of this section, the total of amounts obligated or expended by the United States each fiscal year for performance of functions which immediately before the date of the enactment of this Act were authorized to be performed by the Secretary of Commerce with respect to the Bureau of Economic Analysis, or by or an agency, officer, or employee of the Department of Commerce with respect to that bureau, may not exceed 75 percent of the total of amounts obligated or expended by the United States for performance of such functions for fiscal year 1995.

(2) EXCEPTION.—Paragraph (1) shall not apply to obligations or expenditures incurred as a direct consequence of the termination, transfer, or other disposition of funtions pursuant to this section.

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

(4) RESPONSIBILITIES OF THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall—

(A) ensure compliance with the requirements of this subsection; and

(B) include in each report under sections 17106(a) and (b) a description of actions taken to comply with such requirements.

**SEC. 17205. TERMINATED FUNCTIONS OF NTIA.**

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

(1) Subpart A of part IV of title III of the Communications Act of 1934 (47 U.S.C. 390 et seq.), relating to assistance for public telecommunications facilities.

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

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

(b) DISPOSAL OF NTIA LABORATORIES.—

(1) PRIVATIZATION.—All laboratories of the National Telecommunications and Information Administration are transferred to the Director of the

Office of Management and Budget for privatization in accordance with section 17109.

(2) TRANSFER OF FUNCTIONS.—The functions of the National Telecommunications and Information Administration concerning research and analysis of the electromagnetic spectrum described in section 5112(b) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 1532) are transferred to the Director of the National Bureau of Standards.

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

(1) TRANSFER TO USTR.—Except as provided in subsection (b)(2), the functions of the National Telecommunications and Information Administration, and of the Secretary of Commerce and the Assistant Secretary for Communications and Information of the Department of Commerce with respect to the National Telecommunications and Information Administration, are transferred to the United States Trade Representative.

(2) REFERENCES.—References in any provision of law (including the National Telecommunications and Information Administration Organization Act) to the Secretary of Commerce or the Assistant Sec-

retary for Communications and Information of the Department of Commerce—

(A) with respect to a function vested pursuant to this section in the United States Trade Representative shall be deemed to refer to the United States Trade Representative; and

(B) with respect to a function vested pursuant to this section in the Director of the National Bureau of Standards shall be deemed to refer to the Director of the National Bureau of Standards.

(3) TERMINATION OF NTIA.—Effective on the abolishment date specified in section 17101(c), the National Telecommunications and Information Administration is abolished.

**SEC. 17206. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.**

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

(1) IN GENERAL.—No funds may be appropriated in any fiscal year for the following programs and accounts of the National Oceanic and Atmospheric Administration:

(A) The National Undersea Research Program.

(B) The Fleet Modernization Program.

(C) The Charleston, South Carolina, Special Management Plan.

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

(E) Federal/State Weather Modification Grants.

(F) The Southeast Storm Research Account.

(G) The Southeast United States Caribbean Fisheries Oceanographic Coordinated Investigations Program.

(H) National Institute for Environmental Renewal.

(I) The Lake Champlain Study.

(J) The Maine Marine Research Center.

(K) The South Carolina Cooperative Geodetic Survey Account.

(L) Pacific Island Technical Assistance.

(M) Sea Grant Oyster Disease Account.

(N) Sea Grant Zebra Mussel Account.

(O) VENTS program.

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

(Q) National Weather Service Regional Climate Centers.

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

(S) Dissemination of Weather Charts (Marine Facsimile Service).

(T) The Climate and Global Change Account.

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

(V) Great Lakes nearshore research.

(W) Mussel watch.

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

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

(B) Title IV of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1447 et seq.).

(C) Title V of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 2801 et seq.).

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

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

(F) The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.), except for those provisions affecting the Assistant Secretary of the Army (civil works) and the Secretary of the department in which the Coast Guard is operating.

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

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

(I) Section 305 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454) is repealed effective October 1, 1998.

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

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

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

(M) Public Law 86–359 (16 U.S.C. 760e et seq.), relating to the study of migratory marine gamefish.

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

(b) AERONAUTICAL MAPPING AND CHARTING.—

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

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

(3) FUNCTIONS REQUESTED BY FEDERAL AVIATION ADMINISTRATION.—(A) Notwithstanding paragraph (2), the Director of the Defense Mapping Agency shall carry out such aeronautical charting functions as may be requested by the Administrator of the Federal Aviation Administration.

(B) In carrying out aeronautical mapping functions requested by the Administrator under subparagraph (A), the Director shall—

(i) publish and distribute to the public and to the Administrator any aeronautical charts requested by the Administrator; and

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

in such manner and including such information as the Administrator determines is necessary for, or will promote, the safe and efficient movement of aircraft in air commerce.

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

(c) TRANSFER OF MAPPING, CHARTING, AND GEODESY FUNCTIONS TO THE UNITED STATES GEOLOGICAL SURVEY.—

(1) IN GENERAL.—Except as provided in subsection (b), there are hereby transferred to the Director of the United States Geological Survey the

functions relating to mapping, charting, and geodesy authorized under the Act of August 7, 1947 (61 Stat. 787; 33 U.S.C. 883a).

(2) TERMINATION OF CERTAIN FUNCTIONS.—The Director of the United States Geological Survey shall terminate any functions transferred under paragraph (1) that are performed by the private sector.

(d) NESDIS.—There are transferred to the National Institute for Science and Technology all functions and assets of the National Oceanic and Atmospheric Administration that on the date immediately before the effective date of this section were authorized to be performed by the National Environmental Satellite, Data, and Information System.

(e) OAR.—There are transferred to the National Institute for Science and Technology all functions and assets of the National Oceanic and Atmospheric Administration (including global programs) that on the date immediately before the effective date of this section were authorized to be performed by the Office of Oceanic and Atmospheric Research.

(f) NWS.—

(1) IN GENERAL.—There are transferred to the National Institute for Science and Technology all

functions and assets of the National Oceanic and Atmospheric Administration that on the date immediately before the effective date of this section were authorized to be performed by the National Weather Service.

(2) DUTIES.—To protect life and property and enhance the national economy, the Administrator of Science and Technology, through the National Weather Service, except as outlined in paragraph (3), shall be responsible for the following:

(A) Forecasts. The Administrator of Science and Technology, through the National Weather Service, shall serve as the sole official source of severe weather warnings.

(B) Issuance of storm warnings.

(C) The collection, exchange, and distribution of meteorological, hydrological, climatic, and oceanographic data and information.

(D) The preparation of hydro-meteorological guidance and core forecast information.

(3) LIMITATIONS ON COMPETITION.—The National Weather Service may not compete, or assist other entities to compete, with the private sector to provide a service when that service is currently pro-

vided or can be provided by a commercial enterprise unless—

(A) the Administrator of Science and Technology finds that the private sector is unwilling or unable to provide the service; or

(B) the Administrator of Science and Technology finds that the service provides vital weather warnings and forecasts for the protection of lives and property of the general public.

(4) ORGANIC ACT AMENDMENTS.—

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

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

(ii) in section 9 (15 U.S.C. 317), by striking ''Department of'' and all that follows thereafter and inserting ''National Institute for Science and Technology.''.

(B) DEFINITION.—For purposes of this paragraph, the term ''Act of 1890'' means the Act entitled ''An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Bureau to the Department of Agriculture'', approved October 1, 1890 (26 Stat. 653).

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

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

(A) in section 702, by striking paragraph (3) and redesignating paragraphs (4) through (10) as paragraphs (3) through (9), respectively; and

(B) in section 703—

(i) by striking ''(a) NATIONAL IMPLEMENTATION PLAN.—'';

(ii) by striking paragraph (3) and redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively; and

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

(g) TERMINATION OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION CORPS OF COMMISSIONED OFFICERS.—

(1) NUMBER OF OFFICERS.—Notwithstanding section 8 of the Act of June 3, 1948 (33 U.S.C. 853g), the total number of commissioned officers on

the active list of the National Oceanic and Atmospheric Administration shall not exceed 358 for fiscal year 1996. No commissioned officers are authorized for any fiscal year after fiscal year 1996.

(2) SEPARATION PAY.—(A) Commissioned officers may be separated from the active list of the National Oceanic and Atmospheric Administration. Any officer so separated because of paragraph (1) shall, subject to subparagraph (B) and the availability of appropriations, be eligible for separation pay under section 9 of the Act of June 3, 1948 (33 U.S.C. 853h) to the same extent as if such officer had been separated under section 8 of such Act (33 U.S.C. 853g).

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

(C)(i) Any officer who receives separation pay under this paragraph shall be required to repay the amount received if, within 1 year after the date of the separation on which the payment is based, such officer is reemployed in a civil service position in the National Oceanic and Atmospheric Administration, the duties of which position would formerly have

been performed by a commissioned officer, as determined by the Administrator of the National Oceanic and Atmospheric Administration.

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

(D) In the case of any officer who makes a repayment under subparagraph (C)—

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

(ii) if the amount paid under clause (i) is less than the amount of the repayment under subparagraph (C), the National Oceanic and Atmospheric Administration shall pay into the Government Securities Investment Fund (established under section 8438(b)(1)(A) of title 5, United States Code), on such individual's behalf, an amount equal to the difference.

The provisions of paragraph (5)(C)(iv) shall apply with respect to any contribution to the Thrift Savings Plan made under clause (ii).

(3) PRIORITY PLACEMENT PROGRAM.—A priority placement program similar to the programs described in section 3329b of title 5, United States Code, as amended by section 17110, shall be established by the National Oceanic and Atmospheric Administration to assist commissioned officers who are separated from the active list of the National Oceanic and Atmospheric Administration because of paragraph (1).

(4) TRANSFER.—(A) Subject to the approval of the Secretary of Defense and under terms and conditions specified by the Secretary, commissioned officers subject to paragraph (1) may transfer to the Armed Forces under section 716 of title 10, United States Code.

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

(C) Subject to the approval of the Administrator of the National Oceanic and Atmospheric Administration and under terms and conditions specified by that Administrator, commissioned officers subject to paragraph (1) may be employed by the National Oceanic and Atmospheric Administration as members of the civil service.

(5) RETIREMENT PROVISIONS.—(A) For commissioned officers who transfer under paragraph (4)(A) to the Armed Forces, the National Oceanic and Atmospheric Administration shall pay into the Department of Defense Military Retirement Fund an amount, to be calculated by the Secretary of Defense in consultation with the Secretary of the Treasury, equal to the actuarial present value of any retired or retainer pay they will draw upon retirement, including full credit for service in the NOAA Corps. Any payment under this subparagraph shall, for purposes of paragraph (2) of section 17207(g), be considered to be an expenditure described in such paragraph.

(B) For commissioned officers who transfer under paragraph (4)(B) to the United States Coast Guard, full credit for service in the NOAA Corps shall be given for purposes of any annuity or other

similar benefit under the retirement system for members of the United States Coast Guard, entitlement to which is based on the separation of such officer.

(C)(i) For a commissioned officer who becomes employed in a civil service position pursuant to paragraph (4)(C) and thereupon becomes subject to the Federal Employees' Retirement System, the National Oceanic and Atmospheric Administration shall pay, on such officer's behalf—

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

(II) into the Government Securities Investment Fund, the amount required under clause (iii).

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

(II) To determine the amount required under this subclause, first determine, for each year of service with respect to which the deposit under subclause

(I) relates, the product of the normal-cost percentage for such year (as determined under the last sentence of this subclause) multiplied by basic pay received by the individual for any such service performed in such year. Second, take the sum of the amounts determined for the respective years under the first sentence. Finally, subtract from such sum the amount of the deposit under subclause (I). For purposes of the first sentence, the normal-cost percentage for any year shall be as determined for such year under the provisions of section 8423(a)(1) of title 5, United States Code, except that, in the case of any year before the first year for which any normal-cost percentage was determined under such provisions, the normal-cost percentage for such first year shall be used.

(iii) The amount required under this clause is the amount by which the separation pay to which the officer would have been entitled under the second sentence of paragraph (2)(A) (assuming the conditions for receiving such separation pay have been met) exceeds the amount of the deposit under clause (ii)(I), if at all.

(iv)(I) Any contribution made under this subparagraph to the Thrift Savings Plan shall not be

subject to any otherwise applicable limitation on contributions contained in the Internal Revenue Code of 1986, and shall not be taken into account in applying any such limitation to other contributions or benefits under the Thrift Savings Plan, with respect to the year in which the contribution is made.

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

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

(i) The Coast and Geodetic Survey Commissioned Officers' Act of 1948 (33 U.S.C. 853a–853o, 853p–853u).

(ii) The Act of February 16, 1929 (Chapter 221, section 5; 45 Stat. 1187; 33 U.S.C. 852a).

(iii) The Act of January 19, 1942 (Chapter 6; 56 Stat. 6).

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

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

(vi) The Act of December 3, 1942 (Chapter 670; 56 Stat. 1038.

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

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

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

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

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

(xii) All other Acts inconsistent with this subsection.

No repeal under this subparagraph shall affect any annuity or other similar benefit payable, under any provision of law so repealed, based on the separation of any individual from the NOAA Corps on or before September 30, 1996. Any authority exercised by the Secretary of Commerce or his designee with respect to any such benefits shall be exercised by the Administrator of the National Oceanic and Atmospheric Administration, and any authorization of appropriations relating to those benefits, which is in

effect as of September 30, 1996, shall be considered to have remained in effect.

(B) The effective date of the repeals under subparagraph (A) shall be October 1, 1996.

(7) CREDITABILITY OF NOAA SERVICE FOR PURPOSES RELATING TO REDUCTIONS IN FORCE.—A commissioned officer who is separated from the active list of the National Oceanic and Atmospheric Administration because of paragraph (1) shall, for purposes of any subsequent reduction in force, receive credit for any period of service performed as such an officer before separation from such list to the same extent and in the same manner as if it had been a period of active service in the Armed Forces.

(8) ABOLITION.—The Office of the National Oceanic and Atmospheric Administration Corps of Operations and the Commissioned Personnel Center are abolished effective September 30, 1996.

(h) NOAA FLEET.—

(1) SERVICE CONTRACTS.—Notwithstanding any other provision of law and subject to the availability of appropriations, the Administrator of the National Institute for Science and Technology shall enter into contracts, including multiyear contracts, subject to paragraph (3), for the use of vessels to

conduct oceanographic research and fisheries research, monitoring, enforcement, and management, and to acquire other data necessary to carry out the missions of the National Oceanic and Atmospheric Administration. The Administrator of the National Institute for Science and Technology shall enter into these contracts unless—

(A) the cost of the contract is more than the cost (including the cost of vessel operation, maintenance, and all personnel) to the National Oceanic and Atmospheric Administration of obtaining those services on vessels of the National Oceanic and Atmospheric Administration;

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

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

(2) VESSELS.—The Administrator of the National Institute for Science and Technology may not enter into any contract for the construction, lease-purchase, upgrade, or service life extension of any vessel.

(3) MULTIYEAR CONTRACTS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), and notwithstanding sec-

tion 1341 of title 31, United States Code, and section 11 of title 41, United States Code, the Administrator of the National Institute for Science and Technology may acquire data under multiyear contracts.

(B) REQUIRED FINDINGS.—The Administrator of the National Institute for Science and Technology may not enter into a contract pursuant to this paragraph unless such Administrator finds with respect to that contract that there is a reasonable expectation that throughout the contemplated contract period the Administrator will request from Congress funding for the contract at the level required to avoid contract termination.

(C) REQUIRED PROVISIONS.—The Administrator of the National Institute for Science and Technology may not enter into a contract pursuant to this paragraph unless the contract includes—

(i) a provision under which the obligation of the United States to make payments under the contract for any fiscal year is subject to the availability of appro-

priations provided in advance for those payments;

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

(iii) appropriate provisions under which, in case of any termination of the contract before the end of the term specified pursuant to clause (ii), the United States shall only be liable for the lesser of—

(I) an amount specified in the contract for such a termination; or

(II) amounts that were appropriated before the date of the termination for the performance of the contract or for procurement of the type of acquisition covered by the contract and are unobligated on the date of the termination.

(4) VESSEL AGREEMENTS.—The Administrator of the National Institute for Science and Technology shall use excess capacity of University National Oceanographic Laboratory System vessels where appropriate and may enter into memoranda of agree-

ment with the operators of these vessels to carry out this requirement.

(5) TRANSFER OF EXCESS VESSELS.—The Administrator of the National Institute for Science and Technology shall transfer any vessels that are excess to the needs of the National Oceanic and Atmospheric Administration to the National Defense Reserve Fleet. Notwithstanding any other provision of law, these vessels may be scrapped in accordance with section 510(i) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1160(i)).

(i) NATIONAL MARINE FISHERIES SERVICE.—(1) There are transferred to the National Institute for Science and Technology all functions that on the day before the effective date of this section were authorized by law to be performed by the National Marine Fisheries Service.

(2) Notwithstanding any other provision of law, the National Marine Fisheries Service may not affect on-land activities under the Endangered Species Act of 1973 for salmon recovery in the State of Idaho (16 U.S.C. 1531 et seq.).

(j) NATIONAL OCEAN SERVICE.—Except as otherwise provided in this title, there are transferred to the National Institute for Science and Technology all functions and assets of the National Oceanic and Atmospheric Administra-

tion that on the date immediately before the effective date of this section were authorized to be performed by the National Ocean Service (including the Coastal Ocean Program).

(k) TRANSFER OF COASTAL NONPOINT POLLUTION CONTROL FUNCTIONS.—There are transferred to the Administrator of the Environmental Protection Agency the functions under section 6217 of the Omnibus Budget Reconciliation Act of 1990 (16 U.S.C. 1455b) that on the day before the effective date of this section were vested in the Secretary of Commerce.

**SEC. 17207. NATIONAL INSTITUTE FOR SCIENCE AND TECHNOLOGY.**

(a) ESTABLISHMENT.—There is established as an independent agency in the Executive Branch the National Institute for Science and Technology (in this section referred to as the ''Institute''). The Institute, and all functions and offices transferred to it under this title, shall be administered under the supervision and direction of an Administrator of Science and Technology. The Administrator of Science and Technology shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive basic pay at the rate payable for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(b) PRINCIPAL OFFICERS.—There shall be in the Institute, on the transfer of functions and offices under this title—

(1) an Administrator of the National Oceanic and Atmospheric Administration, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive basic pay at the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code; and

(2) a Director of the National Bureau of Standards, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive basic pay at the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(c) ADDITIONAL OFFICERS.—There shall be in the Institute—

(1) a Chief Financial Officer of the Institute, to be appointed by the President, by and with the advice and consent of the Senate;

(2) a Chief of External Affairs, to be appointed by the President, by and with the advice and consent of the Senate;

(3) a General Counsel, to be appointed by the President, by and with the advice and consent of the Senate; and

(4) an Inspector General, to be appointed in accordance with the Inspector General Act of 1978.

Each Officer appointed under this subsection shall receive basic pay at the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(d) TRANSFER OF FUNCTIONS AND OFFICES.—Except as otherwise provided in this title, there are transferred to the Institute—

(1) the National Oceanic and Atmospheric Administration, along with its functions and offices, as provided in section 17206;

(2) the National Bureau of Standards, along with its functions and offices, as provided in section 17202; and

(3) the Office of Space Commerce, along with its functions and offices.

(e) ELIMINATION OF POSITIONS.—The Administrator of Science and Technology may eliminate positions that are no longer necessary because of the termination of functions under this section, section 17202, and section 17206.

(f) AGENCY TERMINATIONS.—

(1) TERMINATIONS.—On the date specified in section 17209(a), the following shall terminate:

(A) The Office of the Deputy Administrator and Assistant Secretary of the National Oceanic and Atmospheric Administration.

(B) The Office of the Deputy Under Secretary of the National Oceanic and Atmospheric Administration.

(C) The Office of the Chief Scientist of the National Oceanic and Atmospheric Administration.

(D) The position of Deputy Assistant Secretary for Oceans and Atmosphere.

(E) The position of Deputy Assistant Secretary for International Affairs.

(F) Any office of the National Oceanic and Atmospheric Administration or the National Bureau of Standards whose primary purpose is to perform high performance computing communications, legislative, personnel, public relations, budget, constituent, intergovernmental, international, policy and strategic planning, sustainable development, administrative, financial, educational, legal and coordination func-

tions. These functions shall, as necessary, be performed only by officers described in subsection (c).

(G) The position of Associate Director of the National Institute of Standards and Technology.

(2) TERMINATION OF EXECUTIVE SCHEDULE POSITIONS.—Each position which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rate prescribed for levels I through V of the Executive Schedule under sections 5312 through 5315 of title 5, United States Code, in an office terminated pursuant to this section, section 17202, and section 17206 shall also terminate.

(g) FUNDING REDUCTIONS RESULTING FROM REORGANIZATION.—

(1) FUNDING REDUCTIONS.—For each fiscal year that begins on or after the effective date of this section, the amount obligated or expended by the United States in performing all functions vested in the National Institute for Science and Technology pursuant to this subtitle may not exceed 75 percent of the total of the amounts obligated or expended by the United States in performing, during fiscal year

1995, all functions vested in the National Oceanic and Atmospheric Administration, the National Institute of Standards and Technology, and the Office of Space Commerce, except for those functions transferred under section 17206 to agencies or departments other than the National Institute for Science and Technology.

(2) EXCEPTION.—Paragraph (1) shall not apply to obligations or expenditures incurred as a direct consequence of the termination, transfer, or other disposition of functions described in paragraph (1) pursuant to this subtitle.

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

(4) RESPONSIBILITIES OF THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall—

(A) ensure compliance with the requirements of this subsection; and

(B) include in each report under section 17106 (a) and (b) of this title a description of

actions taken to comply with such requirements.

**SEC. 17208. MISCELLANEOUS TERMINATIONS; MORATORIUM ON PROGRAM ACTIVITIES.**

(a) TERMINATIONS.—The following agencies and programs of the Department of Commerce are terminated:

(1) The Minority Business Development Administration.

(2) The United States Travel and Tourism Administration.

(3) The programs and activities of the National Telecommunications and Information Administration referred to in section 17205(a).

(4) The Advanced Technology Program under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n).

(5) The Manufacturing Extension Programs under sections 25 and 26 of the National Institute of Standards and Technology Act (15 U.S.C. 278k and 278l).

(6) The National Institute of Standards and Technology METRIC Program.

(b) MORATORIUM ON PROGRAM ACTIVITIES.—The authority to make grants, enter into contracts, provide assistance, incur obligations, or provide commitments (in-

cluding any enlargement of existing obligations or commitments, except if required by law) with respect to the agencies and programs described in subsection (a) is terminated effective on the date of the enactment of this title.

**SEC. 17209. EFFECTIVE DATE.**

(a) IN GENERAL.—Except as provided in subsection (b), this subtitle shall take effect on the abolishment date specified in section 17101(c).

(b) PROVISIONS EFFECTIVE ON DATE OF ENACTMENT.—The following provisions of this subtitle shall take effect on the date of the enactment of this Act:

(1) Section 17201.

(2) Section 17206(g), except as otherwise provided in that section.

(3) Section 17208(b).

(4) This section.

# Subtitle C—Office of United States Trade Representative

## CHAPTER 1—GENERAL PROVISIONS

**SEC. 17301. DEFINITIONS.**

For purposes of this subtitle—

(1) the term ''Office'' means the Office of the United States Trade Representative;

(2) the term ''Federal agency'' has the meaning given to the term ''agency'' by section 551(1) of title 5, United States Code; and

(3) the term ''USTR'' means the United States Trade Representative as provided for under section 17311.

## CHAPTER 2—OFFICE OF UNITED STATES TRADE REPRESENTATIVE

### Subchapter A—Establishment

**SEC. 17311. ESTABLISHMENT OF THE OFFICE.**

(a) IN GENERAL.—The Office of the United States Trade Representative is established as an independent establishment in the executive branch of Government as defined under section 104 of title 5, United States Code. The United States Trade Representative shall be the head of the Office and shall be appointed by the President, by and with the advice and consent of the Senate.

(b) AMBASSADOR STATUS.—The USTR shall have the rank and status of Ambassador and shall represent the United States in all trade negotiations conducted by the Office.

(c) CONTINUED SERVICE OF CURRENT USTR.—The individual serving as United States Trade Representative on the date immediately preceding the effective date of

this subtitle may continue to serve as USTR under subsection (a).

(d) SUCCESSOR TO THE DEPARTMENT OF COMMERCE.—The Office shall be the successor to the Department of Commerce for purposes of protocol.

**SEC. 17312. FUNCTIONS OF THE USTR.**

(a) IN GENERAL.—In addition to the functions transferred to the USTR by this subtitle, such other functions as the President may assign or delegate to the USTR, and such other functions as the USTR may, after the effective date of this subtitle, be required to carry out by law, the USTR shall—

(1) serve as the principal advisor to the President on international trade policy and advise the President on the impact of other policies of the United States Government on international trade;

(2) exercise primary responsibility, with the advice of the interagency organization established under section 242 of the Trade Expansion Act of 1962, for developing and implementing international trade policy, including commodity matters and, to the extent related to international trade policy, direct investment matters and, in exercising such responsibility, advance and implement, as the primary

mandate of the Office, the goals of the United States to—

(A) maintain United States leadership in international trade liberalization and expansion efforts;

(B) reinvigorate the ability of the United States economy to compete in international markets and to respond flexibly to changes in international competition; and

(C) expand United States participation in international trade through aggressive promotion and marketing of goods and services that are products of the United States;

(3) exercise lead responsibility for the conduct of international trade negotiations, including negotiations relating to commodity matters and, to the extent that such negotiations are related to international trade, direct investment negotiations;

(4) exercise lead responsibility for the establishment of a national export strategy, including policies designed to implement such strategy;

(5) with the advice of the interagency organization established under section 242 of the Trade Expansion Act of 1962, issue policy guidance to other Federal agencies on international trade, commodity,

and direct investment functions to the extent necessary to assure the coordination of international trade policy;

(6) seek and promote new opportunities for United States products and services to compete in the world marketplace;

(7) assist small businesses in developing export markets;

(8) enforce the laws of the United States relating to trade;

(9) analyze economic trends and developments;

(10) report directly to the Congress—

(A) on the administration of, and matters pertaining to, the trade agreements program under the Omnibus Trade and Competitiveness Act of 1988, the Trade Act of 1974, the Trade Expansion Act of 1962, section 350 of the Tariff Act of 1930, and any other provision of law enacted after this Act; and

(B) with respect to other important issues pertaining to international trade;

(11) keep each official adviser to the United States delegations to international conferences, meetings, and negotiation sessions relating to trade agreements who is appointed from the Committee on

Finance of the Senate or the Committee on Ways and Means of the House of Representatives under section 161 of the Trade Act of 1974 currently informed on United States negotiating objectives with respect to trade agreements, the status of negotiations in progress with respect to such agreements, and the nature of any changes in domestic law or the administration thereof which the USTR may recommend to the Congress to carry out any trade agreement;

(12) consult and cooperate with State and local governments and other interested parties on international trade matters of interest to such governments and parties, and to the extent related to international trade matters, on investment matters, and, when appropriate, hold informal public hearings;

(13) serve as the principal advisor to the President on Government policies designed to contribute to enhancing the ability of United States industry and services to compete in international markets;

(14) develop recommendations for national strategies and specific policies intended to enhance the productivity and international competitiveness of United States industries;

(15) serve as the principal advisor to the President in identifying and assessing the consequences of any Government policies that adversely affect, or have the potential to adversely affect, the international competitiveness of United States industries and services;

(16) promote cooperation between business, labor, and Government to improve industrial performance and the ability of United States industries to compete in international markets and to facilitate consultation and communication between the Government and the private sector about domestic industrial performance and prospects and the performance and prospects of foreign competitors; and

(17) monitor and enforce foreign government compliance with international trade agreements to protect United States interests.

(b) INTERAGENCY ORGANIZATION.—The USTR shall be the chairperson of the interagency organization established under section 242 of the Trade Expansion Act of 1962.

(c) NATIONAL SECURITY COUNCIL.—The USTR shall be a member of the National Security Council.

(d) ADVISORY COUNCIL.—The USTR shall be Deputy Chairman of the National Advisory Council on Inter-

national Monetary and Financial Policies established under Executive Order 11269, issued February 14, 1966.

(e) AGRICULTURE.—(1) The USTR shall consult with the Secretary of Agriculture or the designee of the Secretary of Agriculture on all matters that potentially involve international trade in agricultural products.

(2) If an international meeting for negotiation or consultation includes discussion of international trade in agricultural products, the USTR or the designee of the USTR shall be Chairman of the United States delegation to such meeting and the Secretary of Agriculture or the designee of such Secretary shall be Vice Chairman. The provisions of this paragraph shall not limit the authority of the USTR under subsection (h) to assign to the Secretary of Agriculture responsibility for the conduct of, or participation in, any trade negotiation or meeting.

(f) TRADE PROMOTION.—The USTR shall be the chairperson of the Trade Promotion Coordinating Committee.

(g) NATIONAL ECONOMIC COUNCIL.—The USTR shall be a member of the National Economic Council established under Executive Order No. 12835, issued January 25, 1993.

(h) INTERNATIONAL TRADE NEGOTIATIONS.—Except where expressly prohibited by law, the USTR, at the

request or with the concurrence of the head of any other Federal agency, may assign the responsibility for conducting or participating in any specific international trade negotiation or meeting to the head of such agency whenever the USTR determines that the subject matter of such international trade negotiation is related to the functions carried out by such agency.

## Subchapter B—Officers

### SEC. 17321. DEPUTY ADMINISTRATOR OF THE OFFICE.

(a) ESTABLISHMENT.—There shall be in the Office the Deputy Administrator of the Office of the United States Trade Representative, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) ABSENCE, DISABILITY, OR VACANCY OF USTR.—The Deputy Administrator of the Office of the United States Trade Representative shall act for and exercise the functions of the USTR during the absence or disability of the USTR or in the event the office of the USTR becomes vacant. The Deputy Administrator shall act for and exercise the functions of the USTR until the absence or disability of the USTR no longer exists or a successor to the USTR has been appointed by the President and confirmed by the Senate.

(c) FUNCTIONS OF DEPUTY ADMINISTRATOR.—The Deputy Administrator of the Office of the United States Trade Representative shall exercise all functions, under the direction of the USTR, transferred to or established in the Office, except those functions exercised by the Deputy United States Trade Representatives, the Director General for Export Promotion, the Inspector General, and the General Counsel of the Office, as provided by this subtitle.

**SEC. 17322. DEPUTY UNITED STATES TRADE REPRESENTATIVES.**

(a) ESTABLISHMENT.—There shall be in the Office 2 Deputy United States Trade Representatives, who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy United States Trade Representatives shall exercise all functions under the direction of the USTR, and shall include—

(1) the Deputy United States Trade Representative for Negotiations; and

(2) the Deputy United States Trade Representative to the World Trade Organization.

(b) FUNCTIONS OF DEPUTY UNITED STATES TRADE REPRESENTATIVES.—(1) The Deputy United States Trade Representative for Negotiations shall exercise all

functions transferred under section 17331 and shall have the rank and status of Ambassador.

(2) The Deputy United States Trade Representative to the World Trade Organization shall exercise all functions relating to representation to the World Trade Organization and shall have the rank and status of Ambassador.

**SEC. 17323. ASSISTANT ADMINISTRATORS.**

(a) ESTABLISHMENT.—There shall be in the Office 3 Assistant Administrators, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Administrators shall exercise all functions under the direction of the Deputy Administrator of the Office of the United States Trade Representative and include—

(1) the Assistant Administrator for Export Administration;

(2) the Assistant Administrator for Import Administration; and

(3) the Assistant Administrator for Trade and Policy Analysis.

(b) FUNCTIONS OF ASSISTANT ADMINISTRATORS.—(1) The Assistant Administrator for Export Administration shall exercise all functions transferred under section 17332(1)(C).

(2) The Assistant Administrator for Import Administration shall exercise all functions transferred under section 17332(1)(D).

(3) The Assistant Administrator for Trade and Policy Analysis shall exercise all functions transferred under section 17332(1)(B) and all functions transferred under section 17332(2).

**SEC. 17324. DIRECTOR GENERAL FOR EXPORT PROMOTION.**

(a) ESTABLISHMENT.—There shall be a Director General for Export Promotion, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) FUNCTIONS.—The Director General for Export Promotion shall exercise, under the direction of the USTR, all functions transferred under sections 17332(1)(A) (relating to functions of the United States and Foreign Commercial Service) and 17333 and shall have the rank and status of Ambassador.

**SEC. 17325. GENERAL COUNSEL.**

There shall be in the Office a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate. The General Counsel shall provide legal assistance to the USTR concerning the activities, programs, and policies of the Office.

**SEC. 17326. INSPECTOR GENERAL.**

There shall be in the Office an Inspector General who shall be appointed in accordance with the Inspector General Act of 1978, as amended by section 17371(b) of this Act.

**SEC. 17327. CHIEF FINANCIAL OFFICER.**

There shall be in the Office a Chief Financial Officer who shall be appointed in accordance with section 901 of title 31, United States Code, as amended by section 17371(e) of this Act. The Chief Financial Officer shall perform all functions prescribed by the Deputy Administrator of the Office of the United States Trade Representative, under the direction of the Deputy Administrator.

## Subchapter C—Transfers to the Office

**SEC. 17331. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.**

There are transferred to the USTR all functions of the United States Trade Representative and the Office of the United States Trade Representative in the Executive Office of the President and all functions of any officer or employee of such Office.

**SEC. 17332. TRANSFERS FROM THE DEPARTMENT OF COMMERCE.**

There are transferred to the USTR the following functions:

(1) All functions of, and all functions performed under the direction of, the following officers and employees of the Department of Commerce:

(A) The Under Secretary of Commerce for International Trade, and the Director General of the United States and Foreign Commercial Service, relating to all functions exercised by the Service.

(B) The Assistant Secretary of Commerce for International Economic Policy and the Assistant Secretary of Commerce for Trade Development.

(C) The Under Secretary of Commerce for Export Administration.

(D) The Assistant Secretary of Commerce for Import Administration.

(2) All functions of the Secretary of Commerce relating to the National Trade Data Bank.

(3) All functions of the Secretary of Commerce under the Tariff Act of 1930, the Uruguay Round Agreements Act, the Trade Act of 1974, and other trade-related Acts for which responsibility is not otherwise assigned under this subtitle.

**SEC. 17333. TRADE AND DEVELOPMENT AGENCY.**

There are transferred to the Director General for Export Promotion all functions of the Director of the Trade and Development Agency. There are transferred to the Office of the Director General for Export Promotion all functions of the Trade and Development Agency.

**SEC. 17334. EXPORT-IMPORT BANK.**

(a) IN GENERAL.—(1) There are transferred to the USTR all functions of the Secretary of Commerce relating to the Export-Import Bank of the United States.

(2) Section 3(c)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(c)(1)) is amended to read as follows:

''(c)(1) There shall be a Board of Directors of the Bank consisting of the United States Trade Representative (who shall serve as Chairman), the President of the Export-Import Bank of the United States (who shall serve as Vice Chairman), the first Vice President, and 2 additional persons appointed by the President of the United States, by and with the advice and consent of the Senate.''.

(b) EX OFFICIO MEMBER OF EXPORT-IMPORT BANK BOARD OF DIRECTORS.—The Director General for Export Promotion shall serve as an ex officio nonvoting member of the Board of Directors of the Export-Import Bank.

(c) AMENDMENTS TO RELATED BANKING AND TRADE ACTS.—Section 2301(h) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4721(h)) is amended to read as follows:

''(h) ASSISTANCE TO EXPORT-IMPORT BANK.—The Commercial Service shall provide such services as the Director General for Export Promotion of the Office of the United States Trade Representative determines necessary to assist the Export-Import Bank of the United States to carry out the lending, loan guarantee, insurance, and other activities of the Bank.''.

**SEC. 17335. OVERSEAS PRIVATE INVESTMENT CORPORATION.**

(a) BOARD OF DIRECTORS.—The second and third sentences of section 233(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2193(b)) are amended to read as follows: ''The United States Trade Representative shall be the Chairman of the Board. The Administrator of the Agency for International Development (who shall serve as Vice Chairman) shall serve on the Board.''.

(b) EX OFFICIO MEMBER OF OVERSEAS PRIVATE INVESTMENT CORPORATION BOARD OF DIRECTORS.—The Director General for Export Promotion shall serve as an ex officio nonvoting member of the Board of Directors of the Overseas Private Investment Corporation.

**SEC. 17336. CONSOLIDATION OF EXPORT PROMOTION AND FINANCING ACTIVITIES.**

(a) SUBMISSION OF PLAN.—Within 180 days after the date of the enactment of this Act, the President shall transmit to the Congress a comprehensive plan to consolidate Federal nonagricultural export promotion activities and export financing activities and to transfer those functions to the Office. The plan shall provide for—

(1) the elimination of the overlap and duplication among all Federal nonagricultural export promotion activities and export financing activities;

(2) a unified budget for Federal nonagricultural export promotion activities which eliminates funding for the areas of overlap and duplication identified under paragraph (1); and

(3) a long-term agenda for developing better cooperation between local, State and Federal programs and activities designed to stimulate or assist United States businesses in exporting nonagricultural goods or services that are products of the United States, including sharing of facilities, costs, and export market research data.

(b) PLAN ELEMENTS.—The plan under subsection (a) shall—

(1) place all Federal nonagricultural export promotion activities and export financing activities within the Office;

(2) provide clear authority for the USTR to use the expertise and assistance of other United States Government agencies;

(3) achieve an overall 25 percent reduction in the amount of funding for all Federal nonagricultural export promotion activities within 2 years after the enactment of this Act; and

(4) include any functions of the Department of Commerce not transferred by this subtitle, or of other Federal departments the transfer of which to the Office would be necessary to the competitiveness of the United States in international trade.

(c) DEFINITION.—As used in this section, the term ''Federal nonagricultural export promotion activities'' means all programs or activities of any department or agency of the Federal Government (including, but not limited to, departments and agencies with representatives on the Trade Promotion Coordinating Committee established under section 2312 of the Export Enhancement Act of 1988 (15 U.S.C. 4727)) that are designed to stimulate or assist United States businesses in exporting non-

agricultural goods or services that are products of the United States, including trade missions.

**SEC. 17337. ADDITIONAL TRADE FUNCTIONS.**

(a) TERMINATION OF AUTHORIZATIONS OF APPROPRIATIONS.—

(1) NAFTA SECRETARIAT.—Section 105(b) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3315(b)) is amended by striking ''each fiscal year after fiscal year 1993'' and inserting ''each of fiscal years 1994 and 1995''.

(2) BORDER ENVIRONMENT COOPERATION COMMISSION.—Section 533(a)(2) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3473(a)(2)) is amended by striking ''and each fiscal year thereafter'' and inserting ''fiscal year 1995''.

(b) FUNCTIONS RELATED TO TEXTILE AGREEMENTS.—

(1) FUNCTIONS OF CITA.—(A) Subject to subparagraph (B), those functions delegated to the Committee for the Implementation of Textile Agreements established under Executive Order 11651 (7 U.S.C. 1854 note) (hereafter in this subsection referred to as ''CITA'') are transferred to the USTR.

(B) Those functions delegated to CITA that relate to the assessment of the impact of textile imports on domestic industry are transferred to the International Trade Commission.

(2) ABOLITION OF CITA.—CITA is abolished.

## Subchapter D—Administrative Provisions

### SEC. 17341. PERSONNEL PROVISIONS.

(a) APPOINTMENTS.—The USTR may appoint and fix the compensation of such officers and employees, including investigators, attorneys, and administrative law judges, as may be necessary to carry out the functions of the USTR and the Office. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code.

(b) POSITIONS ABOVE GS–15.—(1) At the request of the USTR, the Director of the Office of Personnel Management shall, under section 5108 of title 5, United States Code, provide for the establishment in a grade level above GS–15 of the General Service, and in the Senior Executive Service, of a number of positions in the Office equal to the number of positions in that grade level which were used primarily for the performance of functions and offices transferred by this subtitle and which were assigned

and filled on the day before the effective date of this subtitle.

(2) Appointments to positions provided for under this subsection may be made without regard to the provisions of section 3324 of title 5, United States Code, if the individual appointed in such position is an individual who is transferred in connection with the transfer of functions and offices under this subtitle and, on the day before the effective date of this subtitle, holds a position and has duties comparable to those of the position to which appointed under this subsection.

(3) The authority under this subsection with respect to any position established at a grade level above GS–15 shall terminate when the person first appointed to fill such position ceases to hold such position.

(4) For purposes of section 414(a)(3)(A) of the Civil Service Reform Act of 1978, an individual appointed under this subsection shall be deemed to occupy the same position as the individual occupied on the day before the effective date of this subtitle.

(c) EXPERTS AND CONSULTANTS.—The USTR may obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate such experts and consultants for each day (including traveltime) at rates not in excess of the maximum

rate of pay for a position above GS–15 of the General Schedule under section 5332 of such title. The USTR may pay experts and consultants who are serving away from their homes or regular place of business travel expenses and per diem in lieu of subsistence at rates authorized by sections 5702 and 5703 of such title for persons in Government service employed intermittently.

(d) VOLUNTARY SERVICES.—(1)(A) The USTR is authorized to accept voluntary and uncompensated services without regard to the provisions of section 1342 of title 31, United States Code, if such services will not be used to displace Federal employees employed on a full-time, part-time, or seasonal basis.

(B) The USTR is authorized to accept volunteer service in accordance with the provisions of section 3111 of title 5, United States Code.

(2) The USTR is authorized to provide for incidental expenses, including but not limited to transportation, lodging, and subsistence for individuals who provide voluntary services under subparagraph (A) or (B) of paragraph (1).

(3) An individual who provides voluntary services under paragraph (1)(A) shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code, relating to com-

pensation for work injuries, and chapter 171 of title 28, United States Code, relating to tort claims.

(e) FOREIGN SERVICE POSITIONS.—In order to assure United States representation in trade matters at a level commensurate with the level of representation maintained by industrial nations which are major trade competitors of the United States, the Secretary of State shall classify certain positions at Foreign Service posts as commercial minister positions and shall assign members of the Foreign Service performing functions of the Office, with the concurrence of the USTR, to such positions in nations which are major trade competitors of the United States. The Secretary of State shall obtain and use the recommendations of the USTR with respect to the number of positions to be so classified under this subsection.

**SEC. 17342. DELEGATION AND ASSIGNMENT.**

Except where otherwise expressly prohibited by law or otherwise provided by this subtitle, the USTR may delegate any of the functions transferred to the USTR by this subtitle and any function transferred or granted to the USTR after the effective date of this subtitle to such officers and employees of the Office as the USTR may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions by the USTR under this section or under

any other provision of this subtitle shall relieve the USTR of responsibility for the administration of such functions.

**SEC. 17343. SUCCESSION.**

(a) ORDER OF SUCCESSION.—Subject to the authority of the President, and except as provided in section 17321(b), the USTR shall prescribe the order by which officers of the Office who are appointed by the President, by and with the advice and consent of the Senate, shall act for, and perform the functions of, the USTR or any other officer of the Office appointed by the President, by and with the advice and consent of the Senate, during the absence or disability of the USTR or such other officer, or in the event of a vacancy in the office of the USTR or such other officer.

(b) CONTINUATION.—Notwithstanding any other provision of law, and unless the President directs otherwise, an individual acting for the USTR or another officer of the Office pursuant to subsection (a) shall continue to serve in that capacity until the absence or disability of the USTR or such other officer no longer exists or a successor to the USTR or such other officer has been appointed by the President and confirmed by the Senate.

**SEC. 17344. REORGANIZATION.**

(a) IN GENERAL.—Subject to subsection (b), the USTR is authorized to allocate or reallocate functions

among the officers of the Office, and to establish, consolidate, alter, or discontinue such organizational entities in the Office as may be necessary or appropriate.

(b) EXCEPTION.—The USTR may not exercise the authority under subsection (a) to establish, consolidate, alter, or discontinue any organizational entity in the Office or allocate or reallocate any function of an officer or employee of the Office that is inconsistent with any specific provision of this subtitle.

**SEC. 17345. RULES.**

The USTR is authorized to prescribe, in accordance with the provisions of chapters 5 and 6 of title 5, United States Code, such rules and regulations as the USTR determines necessary or appropriate to administer and manage the functions of the USTR or the Office.

**SEC. 17346. FUNDS TRANSFER.**

The USTR may, when authorized in an appropriation Act in any fiscal year, transfer funds from one appropriation to another within the Office, except that no appropriation for any fiscal year shall be either increased or decreased by more than 10 percent and no such transfer shall result in increasing any such appropriation above the amount authorized to be appropriated therefor.

**SEC. 17347. CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.**

(a) IN GENERAL.—Subject to the provisions of the Federal Property and Administrative Services Act of 1949, the USTR may make, enter into, and perform such contracts, leases, cooperative agreements, grants, or other similar transactions with public agencies, private organizations, and persons, and make payments (in lump sum or installments, and by way of advance or reimbursement, and, in the case of any grant, with necessary adjustments on account of overpayments and underpayments) as the USTR considers necessary or appropriate to carry out the functions of the USTR or the Office.

(b) EXCEPTION.—Notwithstanding any other provision of this subtitle, the authority to enter into contracts or to make payments under this subchapter shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. This subsection does not apply with respect to the authority granted under section 17349.

**SEC. 17348. USE OF FACILITIES.**

(a) USE BY USTR.—With their consent, the USTR, with or without reimbursement, may use the research, services, equipment, and facilities of—

(1) an individual,

(2) any public or private nonprofit agency or organization, including any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States,

(3) any political subdivision of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or

(4) any foreign government,

in carrying out any function of the USTR or the Office.

(b) USE OF USTR FACILITIES.—The USTR, under terms, at rates, and for periods that the USTR considers to be in the public interest, may permit the use by public and private agencies, corporations, associations or other organizations, or individuals, of any real property, or any facility, structure or other improvement thereon, under the custody of the USTR. The USTR may require permittees under this section to maintain or recondition, at their own expense, the real property, facilities, structures, and improvements used by such permittees.

**SEC. 17349. GIFTS AND BEQUESTS.**

(a) IN GENERAL.—The USTR is authorized to accept, hold, administer, and utilize gifts and bequests of property, both real and personal, for the purpose of aiding

or facilitating the work of the Office. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the United States Treasury in a separate fund and shall be disbursed on order of the USTR. Property accepted pursuant to this subsection, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.

(b) TAX TREATMENT.—For the purpose of Federal income, estate, and gift taxes, and State taxes, property accepted under subsection (a) shall be considered a gift or bequest to or for the use of the United States.

(c) INVESTMENT.—Upon the request of the USTR, the Secretary of the Treasury may invest and reinvest in securities of the United States or in securities guaranteed as to principal and interest by the United States any moneys contained in the fund provided for in subsection (a). Income accruing from such securities, and from any other property held by the USTR pursuant to subsection (a), shall be deposited to the credit of the fund, and shall be disbursed upon order of the USTR.

**SEC. 17350. WORKING CAPITAL FUND.**

(a) ESTABLISHMENT.—The USTR is authorized to establish for the Office a working capital fund, to be available without fiscal year limitation, for expenses necessary

for the maintenance and operation of such common administrative services as the USTR shall find to be desirable in the interest of economy and efficiency, including—

(1) a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Office and its components;

(2) central messenger, mail, and telephone service and other communications services;

(3) office space and central services for document reproduction and for graphics and visual aids;

(4) a central library service; and

(5) such other services as may be approved by the Director of the Office of Management and Budget.

(b) OPERATION OF FUND.—The capital of the fund shall consist of any appropriations made for the purpose of providing working capital and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the USTR may transfer to the fund, less the related liabilities and unpaid obligations. The fund shall be reimbursed in advance from available funds of agencies and offices in the Office, or from other sources, for supplies and services at rates which will

approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus of the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain the fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to those services which the USTR determines will be performed.

**SEC. 17351. SERVICE CHARGES.**

(a) AUTHORITY.—Notwithstanding any other provision of law, the USTR may establish reasonable fees and commissions with respect to applications, documents, awards, loans, grants, research data, services, and assistance administered by the Office, and the USTR may change and abolish such fees and commissions. Before establishing, changing, or abolishing any schedule of fees or commissions under this section, the USTR may submit such schedule to the Congress.

(b) DEPOSITS.—The USTR is authorized to require a deposit before the USTR provides any item, information,

service, or assistance for which a fee or commission is required under this section.

(c) DEPOSIT OF MONEYS.—Moneys received under this section shall be deposited in the Treasury in a special account for use by the USTR and are authorized to be appropriated and made available until expended.

(d) FACTORS IN ESTABLISHING FEES AND COMMISSIONS.—In establishing reasonable fees or commissions under this section, the USTR may take into account—

(1) the actual costs which will be incurred in providing the items, information, services, or assistance concerned;

(2) the efficiency of the Government in providing such items, information, services, or assistance;

(3) the portion of the cost that will be incurred in providing such items, information, services, or assistance which may be attributed to benefits for the general public rather than exclusively for the person to whom the items, information, services, or assistance is provided;

(4) any public service which occurs through the provision of such items, information, services, or assistance; and

(5) such other factors as the USTR considers appropriate.

(e) REFUNDS OF EXCESS PAYMENTS.—In any case in which the USTR determines that any person has made a payment which is not required under this section or has made a payment which is in excess of the amount required under this section, the USTR, upon application or otherwise, may cause a refund to be made from applicable funds.

**SEC. 17352. SEAL OF OFFICE.**

The USTR shall cause a seal of office to be made for the Office of such design as the USTR shall approve. Judicial notice shall be taken of such seal.

## Subchapter E—Related Agencies

**SEC. 17361. INTERAGENCY TRADE ORGANIZATION.**

Section 242(a)(3) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)(3)) is amended to read as follows:

''(3)(A) The interagency organization established under subsection (a) shall be composed of—

''(i) the United States Trade Representative, who shall be the chairperson,

''(ii) the Secretary of Agriculture,

''(iii) the Secretary of the Treasury,

''(iv) the Secretary of Labor,

''(v) the Secretary of State, and

''(vi) the representatives of such other departments and agencies as the United States Trade Representative shall designate.

''(B) The United States Trade Representative may invite representatives from other agencies, as appropriate, to attend particular meetings if subject matters of specific functional interest to such agencies are under consideration. It shall meet at such times and with respect to such matters as the President or the chairperson shall direct.''.

**SEC. 17362. NATIONAL SECURITY COUNCIL.**

The fourth paragraph of section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended—

(1) by redesignating clauses (5), (6), and (7) as clauses (6), (7), and (8), respectively; and

(2) by inserting after clause (4) the following new clause:

''(5) the United States Trade Representative;''.

**SEC. 17363. INTERNATIONAL MONETARY FUND.**

Section 3 of the Bretton Woods Agreement Act is amended by adding at the end the following new subsection:

''(e) The United States executive director of the Fund shall consult with the United States Trade Representative

with respect to matters under consideration by the Fund which relate to trade.''.

## Subchapter F—Conforming Amendments

### SEC. 17371. AMENDMENTS TO GENERAL PROVISIONS.

(a) INSPECTOR GENERAL.—The Inspector General Act of 1978 is amended—

(1) in subsection 9(a)(1) by inserting after subparagraph (W) the following:

''(X) of the United States Trade Representative, all functions of the Inspector General of the Department of Commerce and the Office of the Inspector General of the Department of Commerce relating to the functions transferred to the United States Trade Representative by section 17332 of the Department of Commerce Dismantling Act; and''; and

(2) in section 11—

(A) in paragraph (1) by inserting ''the United States Trade Representative;'' after ''the Attorney General;''; and

(B) in paragraph (2) by inserting ''the Office of the United States Trade Representative,'' after ''Treasury;''.

(b) AMENDMENT TO THE TRADE ACT OF 1974.—(1) Chapter 4 of title I of the Trade Act of 1974 is amended to read as follows:

## "CHAPTER 4—REPRESENTATION IN TRADE NEGOTIATIONS

### "SEC. 141. FUNCTIONS OF THE UNITED STATES TRADE REPRESENTATIVE.

''The United States Trade Representative established under section 17311 of the Department of Commerce Dismantling Act shall—

''(1) be the chief representative of the United States for each trade negotiation under this title or chapter 1 of title III of this Act, or subtitle A of title I of the Omnibus Trade and Competitiveness Act of 1988, or any other provision of law enacted after the Department of Commerce Dismantling Act;

''(2) report directly to the President and the Congress, and be responsible to the President and the Congress for the administration of trade agreements programs under this Act, the Omnibus Trade and Competitiveness Act of 1988, the Trade Expansion Act of 1962, section 350 of the Tariff Act of 1930, and any other provision of law enacted after the Department of Commerce Dismantling Act;

''(3) advise the President and the Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs; and

''(4) be responsible for making reports to Congress with respect to the matters set forth in paragraphs (1) and (2).''.

(2) The table of contents in the first section of the Trade Act of 1974 is amended by striking the items relating to chapter 4 and section 141 and inserting the following:

''CHAPTER 4—REPRESENTATION IN TRADE NEGOTIATIONS

''Sec. 141. Functions of the United States Trade Representative.''.

(d) FOREIGN SERVICE PERSONNEL.—The Foreign Service Act of 1980 is amended by striking paragraph (3) of section 202(a) (22 U.S.C. 3922(a)) and inserting the following:

''(3) The United States Trade Representative may utilize the Foreign Service personnel system in accordance with this Act—

''(A) with respect to the personnel performing functions—

''(i) which were transferred to the Department of Commerce from the Depart-

ment of State by Reorganization Plan No. 3 of 1979; and

''(ii) which were subsequently transferred to the United States Trade Representative by section 17332 of the Department of Commerce Dismantling Act; and

''(B) with respect to other personnel of the Office of United States Trade Representative to the extent the President determines to be necessary in order to enable the Office of the United States Trade Representative to carry out functions which require service abroad.''.

(e) CHIEF FINANCIAL OFFICERS.—Section 901(b)(1) of title 31, United States Code, is amended by adding at the end the following:

''(Q) The Office of the United States Trade Representative.''.

**SEC. 17372. REPEALS.**

Sections 1 and 2 of the Act of June 5, 1939 (15 U.S.C. 1502 and 1503; 53 Stat. 808), relating to the Under Secretary of Commerce, are repealed.

**SEC. 17373. CONFORMING AMENDMENTS RELATING TO EXECUTIVE SCHEDULE POSITIONS.**

(a) POSITIONS AT LEVEL I.—Section 5312 of title 5, United States Code, is amended by amending the item relating to the United States Trade Representative to read as follows:

''United States Trade Representative, Office of the United States Trade Representative.''.

(b) POSITIONS AT LEVEL II.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

''Deputy Administrator of the Office of the United States Trade Representative.

''Deputy United States Trade Representatives, Office of the United States Trade Representative (2).''.

(c) POSITIONS AT LEVEL III.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Administrators, Office of the United States Trade Representative (3).

''Director General for Export Promotion, Office of the United States Trade Representative.''.

(d) POSITIONS AT LEVEL IV.—Section 5315 of title 5, United States Code, is amended—

(1) by striking the item relating to the Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service; and

(2) by adding at the end the following:

''General Counsel, Office of the United States Trade Representative.

''Inspector General, Office of the United States Trade Representative.

''Chief Financial Officer, Office of the United States Trade Representative.''.

## Subchapter G—Miscellaneous

**SEC. 17381. EFFECTIVE DATE.**

(a) IN GENERAL.—This subtitle shall take effect on the effective date specified in section 17209(a), except that—

(1) section 17336 shall take effect on the date of the enactment of this Act; and

(2) at any time after the date of the enactment of this Act the officers provided for in subchapter B may be nominated and appointed, as provided in such subchapter.

(b) INTERIM COMPENSATION AND EXPENSES.—Funds available to the Department of Commerce or the Office of the United States Trade Representative (or any

official or component thereof), with respect to the functions transferred by this subtitle, may be used, with approval of the Director of the Office of Management and Budget, to pay the compensation and expenses of an officer appointed under subsection (a) who will carry out such functions until funds for that purpose are otherwise available.

**SEC. 17382. INTERIM APPOINTMENTS.**

(a) IN GENERAL.—If one or more officers required by this subtitle to be appointed by and with the advice and consent of the Senate have not entered upon office on the effective date of this subtitle and notwithstanding any other provision of law, the President may designate any officer who was appointed by and with the advice and consent of the Senate, and who was such an officer on the day before the effective date of this subtitle, to act in the office until it is filled as provided by this subtitle.

(b) COMPENSATION.—Any officer acting in an office pursuant to subsection (a) shall receive compensation at the rate prescribed by this subtitle for such office.

**SEC. 17383. FUNDING REDUCTIONS RESULTING FROM REORGANIZATION.**

(a) FUNDING REDUCTIONS.—Except as provided in subsection (b), for each fiscal year that begins on or after the effective date of this section, the total of amounts obli-

gated or expended by the United States in performing all functions vested in the USTR and the Office pursuant to this subtitle may not exceed 75 percent of the total amount obligated or expended by the United States in performing all such functions for fiscal year 1995.

(b) EXCEPTION.—Subsection (a) shall not apply to obligations or expenditures incurred as a direct consequence of the termination, transfer, or other disposition of functions described in subsection (a) pursuant to this title.

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

(d) RESPONSIBILITIES OF THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall—

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

(2) include in each report under sections 17106(a) and (b) a description of actions taken to comply with such requirements.

# Subtitle D—Patent and Trademark Office Corporation

**SEC. 17401. SHORT TITLE.**

This subtitle may be cited as the ''Patent and Trademark Office Corporation Act of 1995''.

## CHAPTER 1—PATENT AND TRADEMARK OFFICE

**SEC. 17411. ESTABLISHMENT OF PATENT AND TRADEMARK OFFICE AS A CORPORATION.**

Section 1 of title 35, United States Code, is amended to read as follows:

**''§ 1. Establishment**

''(a) ESTABLISHMENT.—The Patent and Trademark Office is established as a wholly owned Government corporation subject to chapter 91 of title 31, except as otherwise provided in this title.

''(b) OFFICES.—The Patent and Trademark Office shall maintain an office in the District of Columbia, or the metropolitan area thereof, for the service of process and papers and shall be deemed, for purposes of venue in civil actions, to be a resident of the district in which its principal office is located. The Patent and Trademark Office may establish offices in such other places as it considers necessary or appropriate in the conduct of its business.

''(c) REFERENCE.—For purposes of this title, the Patent and Trademark Office shall also be referred to as the 'Office'.''.

**SEC. 17412. POWERS AND DUTIES.**

Section 2 of title 35, United States Code, is amended to read as follows:

**"§ 2. Powers and Duties**

''(a) IN GENERAL.—The Patent and Trademark Office shall be responsible for—

''(1) the granting and issuing of patents and the registration of trademarks;

''(2) conducting studies, programs, or exchanges of items or services regarding domestic and international patent and trademark law or the administration of the Office, including programs to recognize, identify, assess, and forecast the technology of patented inventions and their utility to industry;

''(3) authorizing or conducting studies and programs cooperatively with foreign patent and trademark offices and international organizations, in connection with the granting and issuing of patents and the registration of trademarks; and

''(4) disseminating to the public information with respect to patents and trademarks.

''(b) SPECIFIC POWERS.—The Office—

''(1) shall have perpetual succession;

''(2) shall adopt and use a corporate seal, which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by the Office shall be authenticated;

''(3) may sue and be sued in its corporate name and be represented by its own attorneys in all judicial and administrative proceedings, subject to the provisions of section 8 of this title;

''(4) may indemnify the Commissioner of Patents and Trademarks, and other officers, attorneys, agents, and employees (including members of the Management Advisory Board established in section 5) of the Office for liabilities and expenses incurred within the scope of their employment;

''(5) may adopt, amend, and repeal bylaws, rules, and regulations, governing the manner in which its business will be conducted and the powers granted to it by law will be exercised;

''(6) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions;

''(7)(A) may make such purchases, contracts for the construction, maintenance, or management and operation of facilities, and contracts for supplies or services, without regard to section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759); and

''(B) may enter into and perform such purchases and contracts for printing services, including the process of composition, platemaking, presswork, silk screen processes, binding, microform, and the products of such processes, as it considers necessary to carry out the functions of the Office, without regard to sections 501 through 517 and 1101 through 1123 of title 44;

''(8) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government, on a reimbursable basis, and cooperate with such other departments, agencies, and instrumentalities in the establishment and use of services, equipment, and facilities of the Office;

''(9) may obtain from the Administrator of General Services such services as the Administrator is authorized to provide to other agencies of the

United States, on the same basis as those services are provided to other agencies of the United States;

''(10) may use, with the consent of the United States and the agency, government, or international organization concerned, the services, records, facilities, or personnel of any State or local government agency or instrumentality or foreign government or international organization to perform functions on its behalf;

''(11) may determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of this title and the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946');

''(12) may retain and use all of its revenues and receipts, including revenues from the sale, lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Office, in carrying out the functions of the Office, including for research and development and capital investment, subject to the provisions of section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note);

''(13) shall have the priority of the United States with respect to the payment of debts from bankrupt, insolvent, and decedents' estates;

''(14) may accept monetary gifts or donations of services, or of real, personal, or mixed property, in order to carry out the functions of the Office;

''(15) may execute, in accordance with its by-laws, rules, and regulations, all instruments necessary and appropriate in the exercise of any of its powers;

''(16) may provide for liability insurance and insurance against any loss in connection with its property, other assets, or operations either by contract or by self-insurance; and

''(17) shall pay any settlement or judgment entered against it from the funds of the Office and not from amounts available under section 1304 of title 31.''.

**SEC. 17413. ORGANIZATION AND MANAGEMENT.**

Section 3 of title 35, United States Code, is amended to read as follows:

**''§ 3. Officers and employees**

''(a) COMMISSIONER.—

''(1) IN GENERAL.—The management of the Patent and Trademark Office shall be vested in a

Commissioner of Patents and Trademarks (hereafter in this title referred to as the 'Commissioner'), who shall be a citizen of the United States and who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner shall be a person who, by reason of professional background and experience in patent and trademark law, is especially qualified to manage the Office.

''(2) DUTIES.—

''(A) IN GENERAL.—The Commissioner shall be responsible for the management and direction of the Office, including the issuance of patents and the registration of trademarks.

''(B) ADVISING THE PRESIDENT.—The Commissioner shall advise the President of all activities of the Patent and Trademark Office undertaken in response to obligations of the United States under treaties and executive agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for granting patents or registering trademarks. The Commissioner shall also recommend to the President changes in law or policy which may improve the ability of United States citizens to secure and enforce

patent rights or trademark rights in the United States or in foreign countries.

''(C) CONSULTING WITH THE MANAGEMENT ADVISORY BOARD.—The Commissioner shall consult with the Management Advisory Board established in section 5 on a regular basis on matters relating to the operation of the Patent and Trademark Office, and shall consult with the Board before submitting budgetary proposals to the Office of Management and Budget or changing or proposing to change patent or trademark user fees or patent or trademark regulations.

''(D) SECURITY CLEARANCES.—The Commissioner, in consultation with the Director of the Office of Personnel Management, shall maintain a program for identifying national security positions and providing for appropriate security clearances.

''(3) TERM.—The Commissioner shall serve a term of 5 years, and may continue to serve after the expiration of the Commissioner's term until a successor is appointed and assumes office. The Commissioner may be reappointed to subsequent terms.

"(4) OATH.—The Commissioner shall, before taking office, take an oath to discharge faithfully the duties of the Office.

"(5) COMPENSATION.—The Commissioner shall receive compensation at the rate of pay in effect for Level III of the Executive Schedule under section 5314 of title 5.

"(6) REMOVAL.—The Commissioner may be removed from office by the President only for cause.

"(7) DESIGNEE OF COMMISSIONER.—The Commissioner shall designate an officer of the Office who shall be vested with the authority to act in the capacity of the Commissioner in the event of the absence or incapacity of the Commissioner.

"(b) OFFICERS AND EMPLOYEES OF THE OFFICE.—

"(1) DEPUTY COMMISSIONERS.—The Commissioner shall appoint a Deputy Commissioner for Patents and a Deputy Commissioner for Trademarks for terms that shall expire on the date on which the Commissioner's term expires. The Deputy Commissioner for Patents shall be a person with demonstrated experience in patent law and the Deputy Commissioner for Trademarks shall be a person with demonstrated experience in trademark law. The Deputy Commissioner for Patents and the Deputy

Commissioner for Trademarks shall be the principal policy advisors to the Commissioner on all aspects of the activities of the Office that affect the administration of patent and trademark operations, respectively.

''(2) OTHER OFFICERS AND EMPLOYEES.—The Commissioner shall—

''(A) appoint an Inspector General and such other officers, employees (including attorneys), and agents of the Office as the Commissioner considers necessary to carry out its functions;

''(B) fix the compensation of such officers and employees; and

''(C) define the authority and duties of such officers and employees and delegate to them such of the powers vested in the Office as the Commissioner may determine.

The Office shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Office shall be taken into account for purposes of applying any such limitation, except to the extent otherwise specifically provided by statute with respect to the Office.

"(c) LIMITS ON COMPENSATION.—Except as otherwise provided in this title or any other provision of law, the basic pay of an officer or employee of the Office for any calendar year may not exceed the annual rate of basic pay in effect for level IV of the Executive Schedule under section 5315 of title 5. The Commissioner shall by regulation establish a limitation on the total compensation payable to officers or employees of the Office, which may not exceed the annual rate of basic pay in effect for level I of the Executive Schedule under section 5312 of title 5.

"(d) INAPPLICABILITY OF TITLE 5 GENERALLY.—Except as otherwise provided in this section, officers and employees of the Office shall not be subject to the provisions of title 5 relating to Federal employees.

"(e) CONTINUED APPLICABILITY OF CERTAIN PROVISION OF TITLE 5.—The following provisions of title 5 shall apply to the Office and its officers and employees:

"(1) Section 3110 (relating to employment of relatives; restrictions).

"(2) Subchapter II of chapter 55 (relating to withholding pay).

"(3) Subchapter II of chapter 73 (relating to employment limitations).

"(f) PROVISIONS OF TITLE 5 RELATING TO CERTAIN BENEFITS.—

''(1) RETIREMENT.—(A)(i) Any individual who becomes an officer or employee of the Office pursuant to subsection (h) shall, if such individual has at least 3 years of creditable service (within the meaning of section 8332 or 8411 of title 5) as of the effective date of the Patent and Trademark Office Corporation Act of 1995, remain subject to subchapter III of chapter 83 or chapter 84 of such title, as the case may be, so long as such individual continues to hold an office or position in or under the Office without a break in service.

''(ii)(I) Except as provided in subclause (II), with respect to an individual described in clause (i), the Office shall make the appropriate withholding from pay and shall pay the contributions required of an employing agency into the Civil Service Retirement and Disability Fund and, if applicable, the Thrift Savings Fund in accordance with applicable provisions of subchapter III of chapter 83 or chapter 84 of title 5, as the case may be.

''(II) In the case of an officer or employee who remains subject to subchapter III of chapter 83 of such title by virtue of this subparagraph, the Office shall, instead of the amount which would otherwise be required under the second sentence of section

8334(a)(1) of title 5, contribute an amount equal to the normal-cost percentage (determined with respect to officers and employees of the Office using dynamic assumptions, as defined by section 8401(9) of such title) of the individual's basic pay, minus the amount required to be withheld from such pay under such section 8334(a)(1).

''(B)(i) Notwithstanding subsection (d), the provisions of subchapter III of chapter 83 or chapter 84 of title 5 (as applicable) which relate to disability shall be considered to remain in effect, with respect to an individual who becomes an officer or employee of the Office pursuant to subsection (h), until the end of the 2-year period beginning on the effective date of the Patent and Trademark Office Corporation Act of 1995 or, if earlier, until such individual satisfies the prerequisites for coverage under any program offered by the Office to replace the disability retirement program under chapter 83 or 84 of title 5.

''(ii) This clause applies with respect to any officer or employee of the Office who is receiving disability coverage under this subparagraph and has completed the service requirement specified in the first sentence of section 8337(a) or 8451(a)(1)(A) of

title 5 (as applicable), but who is not described in subparagraph (A)(i). In the case of any individual to whom this clause applies, the Office shall pay into the Civil Service Retirement and Disability Fund an amount equal to that portion of the normal-cost percentage (determined in the same manner as under subparagraph (A)(ii)(II)) of the basic pay of such individual (for service performed during the period during which such individual is receiving such coverage) allocable to such coverage. Any amounts payable under this clause shall be paid at such time and in such manner as mutually agreed to by the Office and the Office of Personnel Management, and shall be in lieu of any individual or agency contributions otherwise required.

''(2) HEALTH BENEFITS.—(A) Officers and employees of the Office shall not become ineligible to participate in the health benefits program under chapter 89 of title 5 by reason of subsection (d) until the effective date of elections made during the first election period (under section 8905(f) of title 5) beginning after the end of the 2-year period beginning on the effective date of the the Patent and Trademark Office Corporation Act of 1995.

''(B)(i) With respect to any individual who becomes an officer or employee of the Office pursuant to subsection (h), the eligibility of such individual to participate in such program as an annuitant (or of any other person to participate in such program as an annuitant based on the death of such individual) shall be determined disregarding the requirements of section 8905(b) of title 5. The preceding sentence shall not apply if the individual ceases to be an officer or employee of the Office for any period of time after becoming an officer or employee of the Office pursuant to subsection (h) and before separation.

''(ii) The Government contributions authorized by section 8906 for health benefits for anyone participating in the health benefits program pursuant to this subparagraph shall be made by the Office in the same manner as provided under section 8906(g)(2) of title 5 with respect to the United States Postal Service for individuals associated therewith.

''(iii) For purposes of this subparagraph, the term 'annuitant' has the meaning given such term by section 8901(3) of title 5.

''(3) LIFE INSURANCE.—(A) Officers and employees of the Office shall not become ineligible to participate in the life insurance program under

chapter 87 of title 5 by reason of subsection (d) until the first day after the end of the 2-year period beginning on the effective date of the the Patent and Trademark Office Corporation Act of 1995.

''(B)(i) Eligibility for life insurance coverage after retirement or while in receipt of compensation under subchapter I of chapter 81 of title 5 shall be determined, in the case of any individual who becomes an officer or employee of the Office pursuant to subsection (h), without regard to the requirements of section 8706(b) (1) or (2), but subject to the condition specified in the last sentence of paragraph (2)(B)(i) of this subsection.

''(ii) Government contributions under section 8708(d) on behalf of any such individual shall be made by the Office in the same manner as provided under paragraph (3) thereof with respect to the United States Postal Service for individuals associated therewith.

''(4) EMPLOYEES' COMPENSATION FUND.—The Office shall remain responsible for reimbursing the Employees' Compensation Fund, pursuant to section 8147 of title 5, for compensation paid or payable after the effective date of the Patent and Trademark Office Corporation Act of 1995 in accordance with

chapter 81 of title 5 with regard to any injury, disability, or death due to events arising before such date, whether or not a claim has been filed or is final on such date.

''(5) REQUIREMENT THAT THE OFFICE OFFER CERTAIN MINIMUM NUMBER OF LIFE AND HEALTH INSURANCE POLICIES.—The Office shall offer at least 1 life insurance policy and at least 3 health insurance policies to its officers and employees, comparable to existing Federal benefits, beginning on the first day after the end of the 2-year period beginning on the effective date of the Patent and Trademark Office Corporation Act of 1995.

''(g) LABOR-MANAGEMENT RELATIONS.—

''(1) LABOR RELATIONS AND EMPLOYEE RELATIONS PROGRAMS.—The Office shall develop labor relations and employee relations programs with the objective of improving productivity and efficiency, incorporating the following principles:

''(A) Such programs shall be consistent with the merit principles in section 2301(b) of title 5.

''(B) Such programs shall provide veterans preference protections equivalent to those estab-

lished by sections 2801, 3308–3318, and 3320 of title 5.

''(C)(i) In order to maximize individual freedom of choice in the pursuit of employment and to encourage an economic climate conducive to economic growth, the right to work shall not be subject to undue restraint or coercion. The right to work shall not be infringed or restricted in any way based on membership in, affiliation with, or financial support of a labor organization.

''(ii) No person shall be required, as a condition of employment or continuation of employment:

''(I) To resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization.

''(II) To become or remain a member of a labor organization.

''(III) To pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization.

''(IV) To pay to any charity or other third party, in lieu of such payments, any

amount equivalent to or a pro-rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization.

''(V) To be recommended, approved, referred, or cleared by or through a labor organization.

''(iii) This subparagraph shall not apply to a person described in section 7103(a)(2)(v) of title 5 or a 'supervisor', 'management official', or 'confidential employee' as those terms are defined in 7103(a)(10), (11), and (13) of such title.

''(iv) Any labor organization recognized by the Office as the exclusive representative of a unit of employees of the Office shall represent the interests of all employees in that unit without discrimination and without regard to labor organization membership.

''(2) ADOPTION OF EXISTING LABOR AGREEMENTS.—The Office shall adopt all labor agreements which are in effect, as of the day before the effective date of the Patent and Trademark Office Corporation Act of 1995, with respect to such Office (as then in effect). Each such agreement shall remain in

effect for the 2-year period commencing on such date, unless the agreement provides for a shorter duration or the parties agree otherwise before such period ends.

''(h) CARRYOVER OF PERSONNEL.—

''(1) FROM PTO.—Effective as of the effective date of the Patent and Trademark Office Corporation Act of 1995, all officers and employees of the Patent and Trademark Office on the day before such effective date shall become officers and employees of the Office, without a break in service.

''(2) OTHER PERSONNEL.—Any individual who, on the day before the effective date of the Patent and Trademark Office Corporation Act of 1995, is an officer or employee of the Department of Commerce (other than an officer or employee under paragraph (1)) shall be transferred to the Office if—

''(A) such individual serves in a position for which a major function is the performance of work reimbursed by the Patent and Trademark Office, as determined by the Secretary of Commerce;

''(B) such individual serves in a position that performed work in support of the Patent and Trademark Office during at least half of

the incumbent's work time, as determined by the Secretary of Commerce; or

''(C) such transfer would be in the interest of the Office, as determined by the Secretary of Commerce in consultation with the Commissioner of Patents and Trademarks.

Any transfer under this paragraph shall be effective as of the same effective date as referred to in paragraph (1), and shall be made without a break in service.

''(3) ACCUMULATED LEAVE.—The amount of sick and annual leave and compensatory time accumulated under title 5 before the effective date described in paragraph (1), by officers or employees of the Patent and Trademark Office who so become officers or employees of the Office, are obligations of the Office.

''(4) TERMINATION RIGHTS.—Any employee referred to in paragraph (1) or (2) of this subsection whose employment with the Office is terminated during the 2-year period beginning on the effective date of the Patent and Trademark Office Corporation Act of 1995 shall be entitled to rights and benefits, to be afforded by the Office, similar to those such employee would have had under Federal law if

termination had occurred immediately before such date. An employee who would have been entitled to appeal any such termination to the Merit Systems Protection Board, if such termination had occurred immediately before such effective date, may appeal any such termination occurring within this 2-year period to the Board under such procedures as it may prescribe.

''(5) CONTINUATION IN OFFICE OF CERTAIN OFFICERS.—(A) The individual serving as the Commissioner of Patents and Trademarks on the day before the effective date of the Patent and Trademark Office Corporation Act of 1995 may serve as the Commissioner until the earlier of 1 year after the effective date of that Act or the date on which a Commissioner is appointed under subsection (a).

''(B) The individual serving as the Assistant Commissioner for Patents on the day before the effective date of the Patent and Trademark Office Corporation Act of 1995 may serve as the Deputy Commissioner for Patents until the earlier of 1 year after the effective date of that Act or the date on which a Deputy Commissioner for Patents is appointed under subsection (b).

''(C) The individual serving as the Assistant Commissioner for Trademarks on the day before the effective date of the Patent and Trademark Office Corporation Act of 1995 may serve as the Deputy Commissioner for Trademarks until the earlier of 1 year after the effective date of that Act or the date on which a Deputy Commissioner for Trademarks is appointed under subsection (b).

''(i) COMPETITIVE STATUS.—For purposes of appointment to a position in the competitive service for which an officer or employee of the Office is qualified, such officer or employee shall not forfeit any competitive status, acquired by such officer or employee before the effective date of the Patent and Trademark Office Corporation Act of 1995, by reason of becoming an officer or employee of the Office pursuant to subsection (h).

''(j) SAVINGS PROVISIONS.—All orders, determinations, rules, and regulations regarding compensation and benefits and other terms and conditions of employment, in effect for the Office and its officers and employees immediately before the effective date of the Patent and Trademark Office Corporation Act of 1995, shall continue in effect with respect to the Office and its officers and employees until modified, superseded, or set aside by the

Office or a court of appropriate jurisdiction or by operation of law.''.

**SEC. 17414. MANAGEMENT ADVISORY BOARD.**

Chapter 1 of part I of title 35, United States Code, is amended by inserting after section 4 the following:

**"§ 5. Patent and Trademark Office Management Advisory Board**

''(a) ESTABLISHMENT OF MANAGEMENT ADVISORY BOARD.—

''(1) APPOINTMENT.—The Patent and Trademark Office shall have a Management Advisory Board (hereafter in this title referred to as the 'Board') of 12 members, 4 of whom shall be appointed by the President, 4 of whom shall be appointed by the Speaker of the House of Representatives, and 4 of whom shall be appointed by the President pro tempore of the Senate. Not more than 3 of the 4 members appointed by each appointing authority shall be members of the same political party.

''(2) TERMS.—Members of the Board shall be appointed for a term of 4 years each, except that of the members first appointed by each appointing authority, 1 shall be for a term of 1 year, 1 shall be

for a term of 2 years, and 1 shall be for a term of 3 years. No member may serve more than 1 term.

''(3) CHAIR.—The President shall designate the chair of the Board, whose term as chair shall be for 3 years.

''(4) TIMING OF APPOINTMENTS.—Initial appointments to the Board shall be made within 3 months after the effective date of the Patent and Trademark Office Corporation Act of 1995, and vacancies shall be filled within 3 months after they occur.

''(5) VACANCIES.—Vacancies shall be filled in the manner in which the original appointment was made under this subsection. Members appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor is appointed.

''(b) BASIS FOR APPOINTMENTS.—Members of the Board shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the Patent and Trademark Office, and shall include in-

dividuals with substantial background and achievement in corporate finance and management.

''(c) APPLICABILITY OF CERTAIN ETHICS LAWS.—Members of the Board shall be special Government employees within the meaning of section 202 of title 18.

''(d) MEETINGS.—The Board shall meet at the call of the chair to consider an agenda set by the chair.

''(e) DUTIES.—The Board shall—

''(1) review the policies, goals, performance, budget, and user fees of the Patent and Trademark Office, and advise the Commissioner on these matters; and

''(2) within 60 days after the end of each fiscal year, prepare an annual report on the matters referred to in paragraph (1), transmit the report to the President and the Committees on the Judiciary of the Senate and the House of Representatives, and publish the report in the Patent and Trademark Office Official Gazette.

''(f) STAFF.—The Board shall employ a staff of not more than 10 members and shall procure support services for the staff adequate to enable the Board to carry out its functions, using funds available to the Commissioner under section 42 of this title. The Board shall ensure that members of the staff, other than clerical staff, are espe-

cially qualified in the areas of patents, trademarks, or management of public agencies. Persons employed by the Board shall receive compensation as determined by the Board, which may not exceed the limitations set forth in section 3(c) of this title, shall serve in accordance with terms and conditions of employment established by the Board, and shall be subject solely to the direction of the Board, notwithstanding any other provision of law.

''(g) COMPENSATION.—Members of the Board shall be compensated for each day (including travel time) during which they are attending meetings or conferences of the Board or otherwise engaged in the business of the Board, at the rate which is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

''(h) ACCESS TO INFORMATION.—Members of the Board shall be provided access to records and information in the Patent and Trademark Office, except for personnel or other privileged information and information concerning patent applications required to be kept in confidence by section 122 of this title.''.

**SEC. 17415. INDEPENDENCE FROM DEPARTMENT OF COMMERCE.**

(a) DUTIES OF COMMISSIONER.—Section 6 of title 35, United States Code, is amended—

(1) by striking ‘‘, under the direction of the Secretary of Commerce,’’ each place it appears; and

(2) by striking ‘‘, subject to the approval of the Secretary of Commerce,’’.

(b) REGULATIONS FOR AGENTS AND ATTORNEYS.—Section 31 of title 35, United States Code, is amended by striking ‘‘, subject to the approval of the Secretary of Commerce,’’.

**SEC. 17416. TRADEMARK TRIAL AND APPEAL BOARD.**

Section 17 of the Act of July 5, 1946 (commonly referred to as the ‘‘Trademark Act of 1946’’) (15 U.S.C. 1067) is amended to read as follows:

‘‘SEC. 17. (a) In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

‘‘(b) The Trademark Trial and Appeal Board shall include the Commissioner, the Deputy Commissioner for Patents, the Deputy Commissioner for Trademarks, and

members competent in trademark law who are appointed by the Commissioner.''.

**SEC. 17417. BOARD OF PATENT APPEALS AND INTERFERENCES.**

Section 7 of title 35, United States Code, is amended to read as follows:

**''§ 7. Board of Patent Appeals and Interferences**

''(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the Patent and Trademark Office a Board of Patent Appeals and Interferences. The Commissioner, the Deputy Commissioner for Patents, the Deputy Commissioner for Trademarks, and the examiners-in-chief shall constitute the Board. The examiners-in-chief shall be persons of competent legal knowledge and scientific ability.

''(b) DUTIES.—The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared under section 135(a) of this title. Each appeal and interference shall be heard by at least 3 members of the Board, who shall be designated by the Commissioner. Only the Board of Patent Appeals and Interferences may grant rehearings.''.

**SEC. 17418. SUITS BY AND AGAINST THE CORPORATION.**

Chapter 1 of part I of title 35, United States Code, is amended—

(1) by redesignating sections 8 through 14 as sections 9 through 15; and

(2) by inserting after section 7 the following new section:

**"§ 8. Suits by and against the Corporation**

''(a) IN GENERAL.—

''(1) ACTIONS UNDER UNITED STATES LAW.—Any civil action or proceeding to which the Patent and Trademark Office is a party is deemed to arise under the laws of the United States. The Federal courts shall have exclusive jurisdiction over all civil actions by or against the Office.

''(2) CONTRACT CLAIMS.—Any action or proceeding against the Office in which any claim is cognizable under the Contract Disputes Act of 1978 (41 U.S.C. 601 and following) shall be subject to that Act. For purposes of that Act, the Commissioner shall be deemed to be the agency head with respect to contract claims arising with respect to the Office. Any other action or proceeding against the Office founded upon contract may be brought in an appropriate district court, notwithstanding any provision of title 28.

"(3) TORT CLAIMS.—(A) Any action or proceeding against the Office in which any claim is cognizable under the provisions of section 1346(b) and chapter 171 of title 28, shall be governed by those provisions.

"(B) Any other action or proceeding against the Office founded upon tort may be brought in an appropriate district court without regard to the provisions of section 1346(b) and chapter 171 of title 28.

"(4) PROHIBITION ON ATTACHMENT, LIENS, ETC.—No attachment, garnishment, lien, or similar process, intermediate or final, in law or equity, may be issued against property of the Office.

"(5) SUBSTITUTION OF OFFICE AS PARTY.—The Office shall be substituted as defendant in any civil action or proceeding against an officer or employee of the Office, if the Office determines that the officer or employee was acting within the scope of his or her employment with the Office. If the Office refuses to certify scope of employment, the officer or employee may at any time before trial petition the court to find and certify that the officer or employee was acting within the scope of his or her employment. Upon certification by the court, the Office shall be substituted as the party defendant. A copy

of the petition shall be served upon the Office. In any such civil action or proceeding to which paragraph (3)(A) applies, the provisions of section 1346(b) and chapter 171 of title 28 shall apply in lieu of this paragraph.

''(b) RELATIONSHIP WITH JUSTICE DEPARTMENT.—

''(1) EXERCISE BY OFFICE OF ATTORNEY GENERAL'S AUTHORITIES.—Except as provided in this section, with respect to any action or proceeding in which the Office is a party or an officer or employee thereof is a party in his or her official capacity, the Office, officer, or employee may exercise, without prior authorization from the Attorney General, the authorities and duties that otherwise would be exercised by the Attorney General on behalf of the Office, officer, or employee under title 28 and other laws.

''(2) APPEARANCES BY ATTORNEY GENERAL.—Notwithstanding paragraph (1), at any time the Attorney General may, in any action or proceeding described in paragraph (1), file an appearance on behalf of the Office or the officer or employee involved, without the consent of the Office or the officer or employee. Upon such filing, the Attorney General shall represent the Office or such officer or employee

with exclusive authority in the conduct, settlement, or compromise of that action or proceeding.

''(3) CONSULTATIONS WITH AND ASSISTANCE BY ATTORNEY GENERAL.—The Office may consult with the Attorney General concerning any legal matter, and the Attorney General shall provide advice and assistance to the Office, including representing the Office in litigation, if requested by the Office.

''(4) REPRESENTATION BEFORE SUPREME COURT.—The Attorney General shall represent the Office in all cases before the United States Supreme Court.

''(5) QUALIFICATIONS OF ATTORNEYS.—An attorney admitted to practice to the bar of the highest court of at least one State in the United States or the District of Columbia and employed by the Office may represent the Office in any legal proceeding in which the Office or an officer or employee of the Office is a party or interested, regardless of whether the attorney is a resident of the jurisdiction in which the proceeding is held and notwithstanding any other prerequisites of qualification or appearance required by the court or administrative body before which the proceeding is conducted.''.

**SEC. 17419. ANNUAL REPORT OF COMMISSIONER.**

Section 15 of title 35, United States Code, as redesignated by section 17418 of this Act, is amended to read as follows:

**"§ 15. Annual report to Congress**

''The Commissioner shall report to the Congress, not later than 180 days after the end of each fiscal year, the moneys received and expended by the Office, the purposes for which the moneys were spent, the quality and quantity of the work of the Office, and other information relating to the Office. The report under this section shall also meet the requirements of section 9106 of title 31, to the extent that such requirements are not inconsistent with the preceding sentence. The report required under this section shall be deemed to be the report of the Patent and Trademark Office under section 9106 of title 31, and the Commissioner shall not file a separate report under such section.''.

**SEC. 17420. SUSPENSION OR EXCLUSION FROM PRACTICE.**

Section 32 of title 35, United States Code, is amended by inserting before the last sentence the following: ''The Commissioner shall have the discretion to designate any attorney who is an officer or employee of the Patent and Trademark Office to conduct the hearing required by this section.''.

**SEC. 17421. FUNDING.**

Section 42 of title 35, United States Code, is amended to read as follows:

**"§ 42. Patent and Trademark Office funding**

''(a) FEES PAYABLE TO THE OFFICE.—All fees for services performed by or materials furnished by the Patent and Trademark Office shall be payable to the Office.

''(b) USE OF MONEYS.—Moneys of the Patent and Trademark Office not otherwise used to carry out the functions of the Office shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed by the United States, or in obligations or other instruments which are lawful investments for fiduciary, trust, or public funds. Fees available to the Commissioner under this title shall be used exclusively for the processing of patent applications and for other services and materials relating to patents. Fees available to the Commissioner under section 31 of the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946'; 15 U.S.C. 1113), shall be used exclusively for the processing of trademark registrations and for other services and materials relating to trademarks.

''(c) BORROWING AUTHORITY.—The Patent and Trademark Office is authorized to issue from time to time for purchase by the Secretary of the Treasury its debentures, bonds, notes, and other evidences of indebtedness

(hereafter in this subsection referred to as 'obligations') to assist in financing its activities. Borrowing under this subsection shall be subject to prior approval in appropriation Acts. Such borrowing shall not exceed amounts approved in appropriation Acts. Any such borrowing shall be repaid only from fees paid to the Office and surcharges appropriated by the Congress. Such obligations shall be redeemable at the option of the Office before maturity in the manner stipulated in such obligations and shall have such maturity as is determined by the Office with the approval of the Secretary of the Treasury. Each such obligation issued to the Treasury shall bear interest at a rate not less than the current yield on outstanding marketable obligations of the United States of comparable maturity during the month preceding the issuance of the obligation as determined by the Secretary of the Treasury. The Secretary of the Treasury shall purchase any obligations of the Office issued under this subsection and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include such purpose. Payment under this subsection of the purchase price of such obligations of the

Patent and Trademark Office shall be treated as public debt transactions of the United States.''.

**SEC. 17422. AUDITS.**

Chapter 4 of part I of title 35, United States Code, is amended by adding at the end the following new section:

**"§ 43. Audits**

''(a) IN GENERAL.—Financial statements of the Patent and Trademark Office shall be prepared on an annual basis in accordance with generally accepted accounting principles. Such statements shall be audited by an independent certified public accountant chosen by the Commissioner. The audit shall be conducted in accordance with standards that are consistent with generally accepted Government auditing standards and other standards established by the Comptroller General, and with the generally accepted auditing standards of the private sector, to the extent feasible. The Commissioner shall transmit to the Committees on the Judiciary of the House of Representatives and the Senate the results of each audit under this subsection.

''(b) REVIEW BY COMPTROLLER GENERAL.—The Comptroller General may review any audit of the financial statement of the Patent and Trademark Office that is conducted under subsection (a). The Comptroller General shall report to the Congress and the Office the results of

any such review and shall include in such report appropriate recommendations.

''(c) AUDIT BY COMPTROLLER GENERAL.—The Comptroller General may audit the financial statements of the Office and such audit shall be in lieu of the audit required by subsection (a). The Office shall reimburse the Comptroller General for the cost of any audit conducted under this subsection.

''(d) ACCESS TO OFFICE RECORDS.—All books, financial records, report files, memoranda, and other property that the Comptroller General deems necessary for the performance of any audit shall be made available to the Comptroller General.

''(e) APPLICABILITY IN LIEU OF TITLE 31 PROVISIONS.—This section applies to the Office in lieu of the provisions of section 9105 of title 31.''.

**SEC. 17423. TRANSFERS.**

(a) TRANSFER OF FUNCTIONS.—Except as otherwise provided in this Act, there are transferred to, and vested in, the Patent and Trademark Office all functions, powers, and duties vested by law in the Secretary of Commerce or the Department of Commerce or in the officers or components in the Department of Commerce with respect to the authority to grant patents and register trademarks, and in the Patent and Trademark Office, as in effect on

the day before the effective date of this subtitle, and in the officers and components of such Office.

(b) TRANSFER OF FUNDS AND PROPERTY.—The Secretary of Commerce shall transfer to the Patent and Trademark Office, on the effective date of this subtitle, so much of the assets, liabilities, contracts, property, records, and unexpended and unobligated balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Department of Commerce, including funds set aside for accounts receivable which are related to functions, powers, and duties which are vested in the Patent and Trademark Office by this subtitle.

## CHAPTER 2—EFFECTIVE DATE; TECHNICAL AMENDMENTS

### SEC. 17431. EFFECTIVE DATE.

This subtitle shall take effect 6 months after the date of the enactment of this Act.

### SEC. 17432. TECHNICAL AND CONFORMING AMENDMENTS.

(a) AMENDMENTS TO TITLE 35.—

(1) The table of contents for part I of title 35, United States Code, is amended by amending the item relating to chapter 1 to read as follows:

"1. Establishment, Officers and Employees, Functions ..... 1."

(2) The table of sections for chapter 1 of title 35, United States Code, is amended to read as follows:

## "CHAPTER 1—ESTABLISHMENT, OFFICERS AND EMPLOYEES, FUNCTIONS

"Sec.
"1. Establishment.
"2. Powers and duties.
"3. Officers and employees.
"4. Restrictions on officers and employees as to interest in patents.
"5. Patent and Trademark Office Management Advisory Board.
"6. Duties of Commissioner.
"7. Board of Patent Appeals and Interferences.
"8. Suits by and against the Corporation.
"9. Library.
"10. Classification of patents.
"11. Certified copies of records.
"12. Publications.
"13. Exchange of copies of patents with foreign countries.
"14. Copies of patents for public libraries.
"15. Annual report to Congress.".

(3) The table of contents for chapter 4 of part I of title 35, United States Code, is amended by adding at the end the following new item:

"43. Audits.".

(b) OTHER PROVISIONS OF LAW.—

(1) Section 9101(3) of title 31, United States Code, is amended by adding at the end the following:

"(O) the Patent and Trademark Office.".

(2) Section 500(e) of title 5, United States Code, is amended by striking "Patent Office" and inserting "Patent and Trademark Office".

(3) Section 5102(c)(23) of title 5, United States Code, is amended by striking ''Department of Commerce''.

(4) Section 5316 of title 5, United States Code (5 U.S.C. 5316) is amended by striking ''Commissioner of Patents, Department of Commerce.'', ''Deputy Commissioner of Patents and Trademarks.'', ''Assistant Commissioner for Patents.'', and ''Assistant Commissioner for Trademarks.''.

(5) Section 12 of the Act of February 14, 1903 (15 U.S.C. 1511) is amended by striking ''(d) Patent and Trademark Office;'' and redesignating subsections (a) through (g) as paragraphs (1) through (6), respectively.

(6) The Act of April 12, 1892 (27 Stat. 395; 20 U.S.C. 91) is amended by striking ''Patent Office'' and inserting ''Patent and Trademark Office''.

(7) Sections 505(m) and 512(o) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(m) and 360b(o)) are each amended by striking ''of the Department of Commerce''.

(8) Section 105(e) of the Federal Alcohol Administration Act (27 U.S.C. 205(e)) is amended by striking ''Patent Office'' and inserting ''Patent and Trademark Office''.

(9) Section 1744 of title 28, United States Code is amended—

(A) by striking ''Patent Office'' each place it appears and inserting ''Patent and Trademark Office''; and

(B) by striking ''Commissioner of Patents'' and inserting ''Commissioner of Patents and Trademarks''.

(10) Section 1745 of title 28, United States Code, is amended by striking ''United States Patent Office'' and inserting ''Patent and Trademark Office''.

(11) Section 1928 of title 28, United States Code, is amended by striking ''Patent Office'' and inserting ''Patent and Trademark Office''.

(12) Section 160 of the Atomic Energy Act of 1954 (42 U.S.C. 2190) is amended—

(A) by striking ''United States Patent Office'' and inserting ''Patent and Trademark Office''; and

(B) by striking ''Commissioner of Patents'' and inserting ''Commissioner of Patents and Trademarks''.

(13) Section 305(c) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(c)) is

amended by striking ''Commissioner of Patents'' and inserting ''Commissioner of Patents and Trademarks''.

(14) Section 12(a) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5510(a)) is amended by striking ''Commissioner of the Patent Office'' and inserting ''Commissioner of Patents and Trademarks''.

(15) Section 1111 of title 44, United States Code, is amended by striking ''the Commissioner of Patents,''.

(16) Section 1114 of title 44, United States Code, is amended by striking ''the Commissioner of Patents,''.

(17) Section 1123 of title 44, United States Code, is amended by striking ''the Patent Office.''.

(18) Sections 1337 and 1338 of title 44, United States Code, and the items relating to those sections in the table of contents for chapter 13 of such title, are repealed.

(19) Section 10(i) of the Trading With the Enemy Act (50 U.S.C. App. 10(i)) is amended by striking ''Commissioner of Patents'' and inserting ''Commissioner of Patents and Trademarks''.

(20) Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting ''the Patent and Trademark Office,'', after ''the Panama Canal Commission,''.

## Subtitle E—Miscellaneous Provisions

**SEC. 17501. REFERENCES.**

Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a department or office from which a function is transferred by this title—

(1) to the head of such department or office is deemed to refer to the head of the department or office to which such function is transferred; or

(2) to such department or office is deemed to refer to the department or office to which such function is transferred.

**SEC. 17502. EXERCISE OF AUTHORITIES.**

Except as otherwise provided by law, a Federal official to whom a function is transferred by this title may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function

immediately before the effective date of the transfer of the function under this title.

**SEC. 17503. SAVINGS PROVISIONS.**

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Secretary of Commerce, the United States Trade Representative, any officer or employee of any office transferred by this title, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this title, and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date),

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

(b) PROCEEDINGS.—This title shall not affect any proceedings or any application for any benefits, service,

license, permit, certificate, or financial assistance pending on the date of the enactment of this Act before an office transferred by this title, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) SUITS.—This title shall not affect suits commenced before the date of the enactment of this Act, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Commerce or the Secretary of Commerce, or by or against any individual in the official capacity of such individual as an officer or employee of an office trans-

ferred by this title, shall abate by reason of the enactment of this title.

(e) CONTINUANCE OF SUITS.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and under this title such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred by this title shall apply to the exercise of such function by the head of the Federal agency, and other officers of the agency, to which such function is transferred by this title.

**SEC. 17504. TRANSFER OF ASSETS.**

Except as otherwise provided in this title, so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with a function transferred to an official or agency by this title shall be available to the official or the head of that agency, respectively, at such time or times

as the Director of the Office of Management and Budget directs for use in connection with the functions transferred.

**SEC. 17505. DELEGATION AND ASSIGNMENT.**

Except as otherwise expressly prohibited by law or otherwise provided in this title, an official to whom functions are transferred under this title (including the head of any office to which functions are transferred under this title) may delegate any of the functions so transferred to such officers and employees of the office of the official as the official may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this section or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

**SEC. 17506. AUTHORITY OF DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET WITH RESPECT TO FUNCTIONS TRANSFERRED.**

(a) DETERMINATIONS.—If necessary, the Director shall make any determination of the functions that are transferred under this title.

(b) INCIDENTAL TRANSFERS.—The Director, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to

the functions transferred by this title, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this title. The Director shall provide for the termination of the affairs of all entities terminated by this title and for such further measures and dispositions as may be necessary to effectuate the purposes of this title.

**SEC. 17507. CERTAIN VESTING OF FUNCTIONS CONSIDERED TRANSFERS.**

For purposes of this title, the vesting of a function in a department or office pursuant to reestablishment of an office shall be considered to be the transfer of the function.

**SEC. 17508. AVAILABILITY OF EXISTING FUNDS.**

Existing appropriations and funds available for the performance of functions, programs, and activities terminated pursuant to this title shall remain available, for the duration of their period of availability, for necessary expenses in connection with the termination and resolution of such functions, programs, and activities.

**SEC. 17509. DEFINITIONS.**

For purposes of this title—

(1) the term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

(2) the term 'office' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

# TITLE XVIII—WELFARE REFORM

**SEC. 18001. ENACTMENT OF THE PERSONAL RESPONSIBILITY ACT OF 1995.**

H.R. 4, as passed by the House of Representatives on March 24, 1995, is hereby enacted with the following amendments:

(1) In section 101, insert

''(a) IN GENERAL.—'' before ''Title IV of the Social Security Act''.

(2) At the end of section 101, add the following:

(b) SUBMISSION OF STATE PLAN FOR FISCAL YEAR 1996 DEEMED ACCEPTANCE OF GRANT LIMITATIONS AND FORMULA.—The submission of a plan by a State under section 402(a) of the Social Security Act (as in effect pursuant to the amendment made by subsection (a) of this section) for fiscal year 1996 is deemed to constitute the State's acceptance of the grant limitations under sec-

tion 403(a)(1)(A)(i) of such Act (as so in effect) for fiscal year 1996 (including the formula for computing the amount of the grant).

(3) Strike section 403(a)(1)(A) of the Social Security Act, as proposed to be added by section 101, and insert the following:

''(A) IN GENERAL.—Each eligible State shall be entitled to receive from the Secretary—

''(i) for fiscal year 1996, a grant in an amount equal to—

''(I) the State family assistance grant for fiscal year 1996; minus

''(II) the total amount of obligations to the State under part A of this title (as in effect before the effective date of this part) for fiscal year 1996, other than with respect to amounts expended for child care pursuant to subsection (g) or (i) of section 402 of this title (as so in effect); and

''(ii) for each of fiscal years 1997, 1998, 1999, and 2000, a grant in an amount equal to the State family assistance grant for the fiscal year.

(4) In section 201, insert

''(a) IN GENERAL.—'' before ''Part B of title IV of the Social Security Act''.

(5) At the end of section 201, add the following:

(b) SUBMISSION OF STATE PLAN FOR FISCAL YEAR 1996 DEEMED ACCEPTANCE OF GRANT LIMITATIONS AND FORMULA.—The submission of a plan by a State under section 422(a) of the Social Security Act (as in effect pursuant to the amendment made by subsection (a) of this section) for fiscal year 1996 is deemed to constitute the State's acceptance of the grant limitations under section 423(a)(1)(A) of such Act (as so in effect) for fiscal year 1996 (including the formula for computing the amount of the grant).

(6) Strike section 423(a)(1) of the Social Security Act, as proposed to be added by section 201, and insert the following:

''(1) IN GENERAL.—Each eligible State shall be entitled to receive from the Secretary—

''(A) for fiscal year 1996, a grant in an amount equal to—

''(i) the State share of the child protection amount for fiscal year 1996; minus

''(ii) the total amount of obligations to the State under parts B and E of this title

(as in effect before the effective date of this part) for fiscal year 1996; and

''(B) for each subsequent fiscal year specified in subsection (b)(1), a grant in an amount equal to the State share of the child protection amount for the fiscal year.

(7) Strike section 301(b) and insert the following:

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 658B of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858B) is amended to read as follows:

**''SEC. 658B. AUTHORIZATION OF APPROPRIATIONS.**

''There are authorized to be appropriated to carry out this subchapter $1,804,000,000 for fiscal year 1996 and $2,093,000,000 for each of the fiscal years 1997, 1998, 1999, 2000, 2001, and 2002.''.

(8) In the matter preceding paragraph (1) of section 3 of the Child Nutrition Act of 1966, as proposed to be amended by section 321, strike ''The Secretary'' and insert ''(a) IN GENERAL.—The Secretary''.

(9) At the end of section 3 of the Child Nutrition Act of 1966, as proposed to be amended by section 321, add the following:

''(b) ADDITIONAL REQUIREMENTS.—

''(1) RESTRICTION ON ALLOTMENTS.—

''(A) COMPUTATION.—The Secretary shall provide for the computation of State obligation allotments in accordance with this section for each of the fiscal years 1996 through 2000.

''(B) LIMITATION ON OBLIGATIONS.—The Secretary shall not enter into obligations with any State under this Act for a fiscal year in excess of the obligation allotment for that State for the fiscal year, as determined under subsection (a). The sum of such obligation allotments for all States in any fiscal year shall not exceed the amount appropriated to carry out this Act for that fiscal year.

''(2) AGREEMENT.—The submission of an application by a State under section 4 is deemed to constitute the State's acceptance of the obligation allotment limitations under this section (including the formula for computing the amount of such obligation allotment).

(10) In the matter preceding paragraph (1) of section 3 of the National School Lunch Act, as proposed to be amended by section 341, strike ''The Secretary'' and insert ''(a) IN GENERAL.—The Secretary''.

(11) At the end of section 3 of the National School Lunch Act, as proposed to be amended by section 341, add the following:

''(b) ADDITIONAL REQUIREMENTS.—

''(1) RESTRICTION ON ALLOTMENTS.—

''(A) COMPUTATION.—The Secretary shall provide for the computation of State obligation allotments in accordance with this section for each of the fiscal years 1996 through 2000.

''(B) LIMITATION ON OBLIGATIONS.—

''(i) IN GENERAL.—Subject to clause (ii), the Secretary shall not enter into obligations with any State under this Act for a fiscal year in excess of the obligation allotment for that State for the fiscal year, as determined under subsection (a). The sum of such obligation allotments for all States in any fiscal year shall not exceed the school-based nutrition amount for that fiscal year.

''(ii) REDUCTION FOR POST-ENACTMENT NEW OBLIGATIONS IN FISCAL YEAR 1996.—

''(I) IN GENERAL.—The amount of the obligation allotment otherwise

provided under this section for fiscal year 1996 for a State under this Act (as in effect on and after the date of the enactment of the Personal Responsibility Act of 1995) shall be reduced by the amount of the obligations described in subclause (II) that are entered into under this Act or under the Child Nutrition Act of 1966 on or after October 1, 1995, but prior to the date of the enactment of the Personal Responsibility Act of 1995.

''(II) AMOUNT OF OBLIGATIONS DESCRIBED.—(aa) Except as provided in division (bb), the amount of the obligations described in this subclause are 100 percent of the amount of the obligations entered into under this Act and under the Child Nutrition Act of 1966 (except obligations entered into under section 17 of such Act).

''(bb) For purposes of obligations entered into under the summer food service program for children under section 13 of this Act, the child and

adult care food program under section 17 of this Act, and the special milk program under section 3 of the Child Nutrition Act of 1966, the amount of the obligations described in this subclause are 12.5 percent of the amount the obligations entered into under each such program.

''(2) AGREEMENT.—The submission of an application by a State under section 4 is deemed to constitute the State's acceptance of the obligation allotment limitations under this section (including the formula for computing the amount of such obligation allotment).

''(3) TERMINATION OF PROGRAMS; LIMITATION ON NEW OBLIGATION AUTHORITY.—

''(A) ELIMINATION OF INDIVIDUAL ENTITLEMENT.—Effective on the date of the enactment of the Personal Responsibility Act of 1995—

''(i) except as provided in subparagraph (B), the Federal Government has no obligation to provide payment with respect to items and services provided under this Act (as in effect on and after the date of

the enactment of the Personal Responsibility Act of 1995); and

''(ii) this Act (as in effect on and after the date of the enactment of the Personal Responsibility Act of 1995) shall not be construed as providing for an entitlement, under Federal law in relation to the Federal Government, in an individual or person at the time of provision or receipt of services.

''(B) LIMITATION ON OBLIGATION AUTHORITY.—Notwithstanding any other provision of this Act, the Secretary is authorized to enter into obligations with any State under this Act for expenses incurred after the date of the enactment of the Personal Responsibility Act and during fiscal year 1996, but not in excess of the obligation allotment for that State for fiscal year 1996, as determined under subsection (a).

# TITLE XIX—CONTRACT WITH AMERICA-TAX RELIEF

## SEC. 19001. ENACTMENT OF CONTRACT WITH AMERICA TAX RELIEF ACT OF 1995.

(a) IN GENERAL.—Title VI of H.R. 1215 of the 104th Congress, as passed by the House of Representa-

tives, is hereby enacted with the following modifications to such title:

(1) Strike subtitle E (relating to social security earnings test) and redesignate subtitles F and G as subtitles E and F, respectively.

(2) Strike subsections (c)(2) and (d)(2) of section 6201.

(3) Strike the amendment contained in paragraph (2) of section 6301(d) and insert the following: ''Subsection (h) of section 1 is amended by adding at the end the following new sentence: 'For purposes of this subsection, taxable income shall be computed without regard to the deduction allowed by section 1202.' ''

(4) Strike section 6321 (relating to depreciation adjustment for certain property placed in service after December 31, 1994).

(5) Strike part III of subtitle C (relating to alternative minimum tax relief).

(6) Strike subtitle F (as redesignated by paragraph (1)) and insert the following:

# "Subtitle F—Tax Reduction Contingent on Deficit Reduction

**"SEC. 6701. TAX REDUCTION CONTINGENT ON DEFICIT REDUCTION.**

''This title, which is contained within the Act that—

''(1) carries out the concurrent resolution on the budget for fiscal year 1996 that provides that the budget of the United States will be in balance by fiscal year 2002; and

''(2) achieves a level of deficit reduction pursuant to the reconciliation instructions of that concurrent resolution that will result in a budget of the United States that will be in balance by fiscal year 2002; and

''(B) is certified pursuant to the requirements set forth in section 210 of that concurrent resolution,

shall take effect as so provided by its effective date provisions.

**"SEC. 6702. MONITORING.**

''The Committees on the Budget of the House of Representatives and the Senate shall each monitor progress on achieving a balanced budget consistent with the most recently agreed to concurrent resolution on the budget for fiscal year 1996 or any subsequent fiscal year

(and the reconciliation Act for that resolution) or the most recently agreed to concurrent resolution on the budget that would achieve a balanced budget by fiscal year 2002 (and the reconciliation Act for that resolution). After consultation with the Director of the Congressional Budget Office, each such committee shall submit a report of its findings to its House and the President on or before December 15, 1995, and annually thereafter. Each such report shall contain the following:

''(1) Estimates of the deficit levels (based on legislation enacted through the date of the report) for each fiscal year through fiscal year 2002.

''(2) An analysis of the variance (if any) between those estimated deficit levels and the levels set forth in the concurrent resolution on the budget for fiscal year 1996 or the most recently agreed to concurrent resolution on the budget that would achieve a balanced budget by fiscal year 2002.

''(3) Policy options to achieve the additional levels of deficit reduction necessary to balance the budget of the United States by fiscal year 2002.

**''SEC. 6703. CONGRESSIONAL ACTION.**

''Each House of Congress shall incorporate the policy options included in the report of its Committee on the Budget under section 6702(a)(3) (or other policy options)

in developing a concurrent resolution on the budget for any fiscal year that achieves the additional levels of deficit reduction necessary to balance the budget of the United States by fiscal year 2002.

**"SEC. 6704. PRESIDENTIAL ACTION.**

''If the President submits a budget under section 1105(a) of title 31, United States Code, that does not provide for a balanced budget for the United States by fiscal year 2002, then the President shall include with that submission a complete budget that balances the budget by that fiscal year.''

(7) Conform the table of contents accordingly.

(b) TECHNICAL CORRECTION.—Effective with respect to taxable years ending after December 31, 1994, paragraph (1) of section 1201(b) of the Internal Revenue Code of 1986, as added by such title VI, is amended to read as follows:

''(1) IN GENERAL.—In the case of any taxable year ending after December 31, 1994, and beginning before January 1, 1996, in applying subsection (a), net capital gain for such taxable year shall not exceed such net capital gain determined by taking into account only gain or loss properly taken into account for the portion of the taxable year after December 31, 1994.''

**SEC. 19002. COMPLIANCE WITH CONCURRENT RESOLUTION ON THE BUDGET.**

(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, the taxpayer's net modified chapter 1 liability for any taxable year shall be such liability determined without regard to this section—

(1) increased by 27 percent of the excess (if any) of—

(A) the amount which would be the taxpayer's net modified chapter 1 liability for such year if such liability were determined without regard to the amendments made by subtitles A, B, C, and D of title VI of H.R. 1215 of the 104th Congress, as passed by the House of Representatives, over

(B) the taxpayer's net modified chapter 1 liability for such year determined without regard to this section, or

(2) reduced by 27 percent of the excess (if any) of the amount described in paragraph (1)(B) over the liability described in paragraph (1)(A).

(b) NET MODIFIED CHAPTER 1 LIABILITY.—For purposes of subsection (a), the term ''net modified chapter 1 liability'' means the liability for tax under chapter 1 of the Internal Revenue Code of 1986 determined—

(1) without regard to sections 1201 and 1202 of such Code, as amended by such title VI,

(2) without regard to the amendments made by sections 6103 and 6104 of such title VI,

(3) after the application of any credit against such tax other than the credits under sections 31, 33, and 34 of such Code, and

(4) before crediting any payment of estimated tax for the taxable year.

(c) CAPITAL GAINS.—

(1) CAPITAL GAINS DEDUCTION FOR TAXPAYERS OTHER THAN CORPORATIONS.—For purposes of applying section 1202 of the Internal Revenue Code of 1986, as added by such title VI—

(A) in the case of taxable years ending before January 1, 1996, ''42.5 percent'' shall be substituted for ''50 percent'' in subsection (a) thereof, and

(B) in the case of taxable years ending after December 31, 1995, ''34.5 percent'' shall be substituted for ''50 percent'' in subsection (a) thereof.

(2) ALTERNATIVE CAPITAL GAINS TAX FOR CORPORATIONS.—

(A) For purposes of applying section 1201 of such Code, as amended by such title VI—

(i) in the case of taxable years ending before January 1, 1996, ''26.5 percent'' shall be substituted for ''25 percent'' in subsection (a)(2) thereof, and

(ii) in the case of taxable years ending after December 31, 1995, ''31.9 percent'' shall be substituted for ''25 percent'' in subsection (a)(2) thereof.

(B) For purposes of applying section 852(b)(3)(D)(iii) of such Code, as amended by such title VI—

(i) in the case of taxable years ending before January 1, 1996, ''73.5 percent'' shall be substituted for ''75 percent'' in subsection (a)(2) thereof, and

(ii) in the case of taxable years ending after December 31, 1995, ''68.1 percent'' shall be substituted for ''75 percent'' in subsection (a)(2) thereof.

(3) INDEXING.—For purposes of applying section 1022 of such Code, as added by such title VI, only 69 percent of the applicable inflation adjust-

ment under subsection (c)(2) of such section 1022 shall be taken into account.

(4) CONFORMING CHANGES.—Proper adjustments shall be made to the percentages and fractions in the following provisions to reflect the percentages in paragraphs (1) and (2):

(A) Sections 170(c), 1445(e), and 7518(g)(6)(A) of such Code.

(B) Section 607(h)(6)(A) of the Merchant Marine Act, 1936.

(d) AMERICAN DREAM SAVINGS ACCOUNTS.—For purposes of applying section 408A of such Code, as added by such title VI—

(1) only 69 percent of the income on the assets held in an American Dream Savings Account (which would otherwise be includible in gross income) shall be excludible from gross income,

(2) only 69 percent of any distribution attributable to amounts not previously included in gross income shall be entitled to the treatment described in subsection (d)(1) of such section 408A, and

(3) only 69 percent of any payment or distribution referred to in subsection (d)(3)(B) of such section 408A shall be entitled to the treatment described in such subsection.

(e) SPOUSAL INDIVIDUAL RETIREMENT ACCOUNTS.—For purposes of applying sections 219 and 408 of such Code—

(1) only 69 percent of the contributions to an individual retirement plan which are allowable as a deduction solely by reason of the amendments made by section 6104 of such title VI shall be allowed as a deduction, and

(2) only 69 percent of the income on the assets held in an individual retirement plan which are attributable to contributions permitted solely by reason of the amendments made by section 6104 of such title VI (which would otherwise be includible in gross income) shall be excludible from gross income.

(f) ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—In the case of taxable years beginning after December 31, 1994—

(A) in the case of a taxpayer other than a corporation, the tax imposed by section 55 of such Code shall be determined without regard to paragraph (1) of section 56(a) of such Code, and

(B) in the case of a corporation, the tentative minimum tax under section 55 of such Code shall be zero.

(2) DELAY IN BENEFIT OF REPEAL FOR TAXABLE YEARS 1995 AND 1996.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any taxable year beginning before January 1, 1997, but there shall be allowed as a credit against the tax imposed by subtitle A of such Code for each taxable year referred to in subparagraph (C) an amount equal to the credit determined under subparagraph (B).

(B) AMOUNT OF CREDIT.—The credit determined under this subparagraph for any taxable year to which this paragraph applies is an amount equal to ⅓ of the excess (if any) of—

(i) the aggregate tax paid under section 55 of such Code for taxable years beginning after December 31, 1994, and before January 1, 1997, over

(ii) the amount of tax which would have been imposed by such section 55 for such taxable years had paragraph (1) applied to such taxable years.

(C) YEARS CREDIT ALLOWED.—The taxable years referred to in this subparagraph are the first 3 taxable years of the taxpayer beginning after December 31, 1996.

(D) COORDINATION WITH OTHER PROVISIONS.—For purposes of the Internal Revenue Code of 1986, the credit allowed under paragraph (1) shall be treated as a credit allowed under subpart C of part IV of subchapter A of chapter 1 of such Code and as referred to in paragraph (2) of 1324(b) of title 31, United States Code, immediately before the period at the end thereof.

(g) COMPARABLE TREATMENT FOR ESTATE AND GIFT TAX CHANGES.—A rule similar to the rule of subsection (a) shall apply to any reduction in liability for tax under subtitle B of such Code by reason of the amendments made by section 6351 of such title VI.

# TITLE XX—BUDGET ENFORCEMENT

**SEC. 20001. SHORT TITLE; PURPOSE.**

(a) SHORT TITLE.—This title may be cited as the ''Seven-Year Balanced Budget Enforcement Act of 1995''.

(b) PURPOSE.—This title extends and reduces the discretionary spending limits and extends the pay-as-you-go requirements.

**SEC. 20002. DISCRETIONARY SPENDING LIMITS.**

(a) LIMITS.—Section 601(a)(2) of the Congressional Budget Act of 1974 is amended by striking subparagraphs

(A), (B), (C), (D), and (F), by redesignating subparagraph (E) as subparagraph (A) and by striking ''and'' at the end of that subparagraph, and by inserting after subparagraph (A) the following new subparagraphs:

''(B) with respect to fiscal year 1996, for the discretionary category: $485,074,000,000 in new budget authority and $531,768,000,000 in outlays;

''(C) with respect to fiscal year 1997, for the discretionary category: $482,430,000,000 in new budget authority and $520,295,000,000 in outlays;

''(D) with respect to fiscal year 1998, for the discretionary category: $490,692,000,000 in new budget authority and $512,632,000,000 in outlays;

''(E) with respect to fiscal year 1999, for the discretionary category: $482,207,000,000 in new budget authority and $510,482,000,000 in outlays;

''(F) with respect to fiscal year 2000, for the discretionary category: $489,379,000,000 in new budget authority and $514,234,000,000 in outlays;

''(G) with respect to fiscal year 2001, for the discretionary category: $496,601,000,000 in new budget authority and $516,403,000,000 in outlays; and

''(H) with respect to fiscal year 2002, for the discretionary category: $498,837,000,000 in new budget authority and $515,075,000,000 in outlays;''.

(b) COMMITTEE ALLOCATIONS AND ENFORCEMENT.—Section 602 of the Congressional Budget Act of 1974 is amended—

(1) in subsection (c), by striking ''1995'' and inserting ''2002'' and by striking the last sentence; and

(2) in subsection (d), by striking ''1992 TO 1995'' in the side heading and inserting ''1996 TO 2002'' and by striking ''1992 through 1995'' and inserting ''1996 through 2002''.

(c) TERM OF BUDGET RESOLUTIONS.—Section 606 of the Congressional Budget Act of 1974 is amended—

(1) in its section heading by striking ''**5-year**'' and inserting ''**term of**'';

(2) in the sideheading of subsection (a), by striking ''5-YEAR'' and inserting ''TERM OF'';

(3) in subsection (a), by striking ''1992, 1993, 1994, or 1995'' and inserting ''1996 or any fiscal year thereafter through 2002'' and by inserting ''at least'' before ''each''; and

(4) in subsection (d)(1), by striking ''1992, 1993, 1994, and 1995'' and inserting ''1996 or any fiscal year thereafter through 2002'', and by striking ''(i) and (ii)''.

(d) EFFECTIVE DATE.—Section 607 of the Congressional Budget Act of 1974 is amended by striking ''1991 to 1998'' and inserting ''1996 to 2002''.

(e) SEQUESTRATION REGARDING VIOLENT CRIME REDUCTION TRUST FUND.—(1) Section 251A(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking subparagraphs (B), (C), and (D) and its last sentence and inserting the following:

''(B) For fiscal year 1996, $2,227,000,000.

''(C) For fiscal year 1997, $3,846,000,000.

''(D) For fiscal year 1998, $4,901,000,000.

''(E) For fiscal year 1999, $5,639,000,000.

''(F) For fiscal year 2000, $6,225,000,000.''.

(2) Section 310002 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14212) is repealed.

(f) CONFORMING AMENDMENT.—The item relating to section 606 in the table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by striking ''5-year'' and inserting ''Term of''.

**SEC. 20003. GENERAL STATEMENT AND DEFINITIONS.**

(a) GENERAL STATEMENT.—Section 250(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking the first two sentences and inserting the following: ''This part provides for the enforcement of deficit reduction by reducing and extending the discretionary spending limits though fiscal year 2002 and permanently extending pay-as-you-go requirements.''.

(b) DEFINITIONS.—Section 250(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) by striking paragraph (4) and inserting the following:

''(4) The term 'category' means:

''(A) For fiscal years 1996 through 2000, all discretionary appropriations except those subject to section 251A; and

''(B) For fiscal year 2001 and any subsequent fiscal year, all discretionary appropriations.'';

(2) by striking paragraph (6) and inserting the following:

''(6) The term 'budgetary resources' means new budget authority, unobligated balances, direct spending authority, and obligation limitations.'';

(3) in paragraph (9), by striking ''1992'' and inserting ''1996''; and

(4) in paragraph (14), by striking ''through fiscal year 1995''.

**SEC. 20004. ENFORCING DISCRETIONARY SPENDING LIMITS.**

Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in the side heading of subsection (a), by striking ''1991–1998'' and inserting ''1996–2002'';

(2) in the first sentence of subsection (b)(1), by striking ''1992, 1993, 1994, 1995, 1996, 1997 or 1998'' and inserting ''1997 or any fiscal year thereafter through 2002'' and by striking ''through 1998'' and inserting ''through 2002'';

(3) in subsection (b)(1), by striking ''the following:'' and all that follows through ''The adjust-

ments'' and inserting ''the following: the adjustments'' and by striking subparagraphs (B) and (C);

(4) in subsection (b)(2), by striking ''1991, 1992, 1993, 1994, 1995, 1996, 1997, or 1998'' and inserting ''1996 or any fiscal year thereafter through 2002'' and by striking ''through 1998'' and inserting ''through 2002'';

(5) in subsection (b)(2)(E), by striking clauses (i), (ii), and (iii) and by striking ''(iv) if, for fiscal years 1994, 1995, 1996, 1997, and 1998'' and inserting ''If, for fiscal years 1996 through 2002''; and

(6) in subsection (b)(2)(F), by striking everything after ''the adjustment in outlays'' and inserting ''for a category for a fiscal year is the amount of the excess but not to exceed 0.5 percent of the adjusted discretionary spending limit on outlays for that fiscal year in fiscal year 1996 or any fiscal year thereafter through 2002.''.

**SEC. 20005. ENFORCING PAY-AS-YOU-GO.**

(a) EXTENSION.—(1) Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(A) in the side heading of subsection (a), by striking ''FISCAL YEARS 1992–1998''; and

(B) in subsection (e), by striking ‘‘, for any fiscal year from 1991 through 1998,’’ and by striking ‘‘through 1995’’.

(b) ROLLING PAY-AS-YOU-GO SCORECARD.—Section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking ‘‘each fiscal year through fiscal year 1998’’ each place it appears and inserting ‘‘the current year (if applicable), the budget year, and each of the first 4 outyears’’.

**SEC. 20006. REPORTS AND ORDERS.**

Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in subsection (d)(2), by striking ‘‘1998’’ and inserting ‘‘2002’’; and

(2)(A) in subsection (g)(2)(A), by striking ‘‘1998’’ and inserting ‘‘2002’’; and

(B) in subsection (g)(3), by striking ‘‘in each outyear through 1998’’ and inserting ‘‘in each of the 4 ensuing outyears’’.

**SEC. 20007. TECHNICAL CORRECTION.**

Section 258 of the Balanced Budget and Emergency Deficit Control Act of 1985, entitled ‘‘Modification of Presidential Order’’, is repealed.

**SEC. 20008. SPECIAL RULE ON INTERRELATIONSHIP BETWEEN CHANGES IN DISCRETIONARY SPENDING LIMITS AND PAY-AS-YOU-GO REQUIREMENTS.**

(a)(1) Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new subsection:

''(f) SPECIAL RULE ON INTERRELATIONSHIP BETWEEN SECTIONS 251, 251A, and 252.—Whenever legislation is enacted during the 104th Congress that decreases the discretionary spending limits for budget authority and outlays for a fiscal year under section 601(a)(2) of the Congressional Budget Act of 1974 or in section 251A(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, or both, then, for purposes of subsection (b), an amount equal to that decrease in the discretionary spending limit for outlays shall be treated as direct spending legislation decreasing the deficit for that fiscal year.''.

(2) Section 310(a) of the Congressional Budget Act of 1974 is amended by striking ''or'' at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5) and by striking ''and (3)'' in such redesignated paragraph (5) and inserting ''(3), and (4)'', and by inserting after paragraph (3) the following new paragraph:

''(4) carry out section 252(f) of the Balanced Budget and Emergency Deficit Control Act of 1985; or''.

(b) For purposes of section 252(f) of the Balanced Budget and Emergency Deficit Control Act of 1985 (as amended by subsection (a)(1))—

(1) reductions in the discretionary spending limit for outlays under section 601(a)(2) of the Congressional Budget Act of 1974 for each of fiscal years 1999 through 2002 under section 20002 shall be measured as reductions from the discretionary spending limit for outlays for fiscal year 1998 as in effect immediately before the enactment of this Act; and

(2) reductions in the discretionary spending limit for outlays under section 251A(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 for each of fiscal years 1996 through 2000 under section 20002 shall be measured as reductions in outlays for that fiscal year under section 251A(b) as in effect immediately before the enactment of this Act.

**SEC. 20009. MEDICARE SAVINGS CANNOT BE USED TO PAY FOR TAX CUTS.**

Any net savings in direct spending and receipts in the Medicare program for any fiscal year resulting from the enactment of this Act or H.R. 2425 (as applicable) shall not be counted for purposes of section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

**SEC. 20010. EFFECTIVE DATE.**

(a) EXPIRATION.—Section 275(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) by striking ''Part C of this title, section'' and inserting ''Sections 251, 253, 258B, and''; and

(2) by striking ''1995'' and inserting ''2002''.

(b) EXPIRATION.—Section 14002(c)(3) of the Omnibus Budget Reconciliation Act of 1993 (2 U.S.C. 900 note) is repealed.

**SEC. 20011. APPLICATION OF SECTION 251 ADJUSTMENTS.**

Section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new subparagraph:

''(H) SPECIAL ALLOWANCE FOR WELFARE REFORM.—If, for any fiscal year, appropriations are enacted for accounts specified in clauses (i) and (ii), the adjustment shall be the sum of:

''(i) the excess of the appropriation for the fiscal year for the Child Care and Development Block Grant over $1,082,000,000, but not to exceed $722,000,000 in fiscal year 1996 or $1,011,000,000 in fiscal year 1997 through 2002; and

''(ii) the excess of the appropriation for the fiscal year for the Family Nutrition Block Grant Program over $3,470,000,000, but not to exceed $692,000,000 in fiscal year 1996, $1,307,000,000 in fiscal year 1997, $1,466,000,000 in fiscal year 1998, $1,650,000,000 in fiscal year 1999, $1,838,000,000 in fiscal year 2000, $2,075,000,000 in fiscal year 2001, or $2,324,000,000 in fiscal year 2002;

and the outlays flowing in all years from such excess appropriations (as reduced pursuant to the limitations in clauses (i) and (ii).''.

**SEC. 20012. SPECIAL RULES APPLICABLE TO DEPARTMENT OF DEFENSE SEQUESTRATION.**

Section 255 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking subsection (h) (relating to optional exemption of military per-

sonnel) and adding at the end the following new subsection:

''(j) OPTIONAL EXEMPTION FOR MILITARY PERSONNEL.—

''(1) AUTHORITY FOR EXEMPTION.—The President may, with respect to any military personnel account, exempt that account from sequestration or provide for a lower uniform percentage reduction than would otherwise apply.

''(B) The President may not use the authority provided by subparagraph (A) unless he notifies the Congress of the manner in which such authority will be exercised on or before the initial snapshot date for the budget year.

''(2) AUTHORITY FOR MILITARY TECHNICIANS AND MEDICAL PERSONNEL.—

''(A) Whenever the President exempts a military personnel account from sequestration under paragraph (1) and after all other sequestrations to Department of Defense account have been made, the Secretary of Defense may transfer amounts to any appropriation for operation and maintenance for the current fiscal year from amounts available under any other appropriation to the Department of Defense, but—

''(i) amounts so transferred shall be available only for the pay of military technicians, the pay of medical personnel, and other expenses of medical programs (including CHAMPUS); and

''(ii) the total amount transferred to any operations and maintenance appropriation shall not exceed the amount sequestered from such appropriation.

''(C) The authority to make transfers pursuant to subparagraph (A) is in addition to any authority of the Secretary of Defense to make transfers of appropriated funds under any other provision of law.

''(D) The Secretary of Defense may carry out a transfer of funds under subparagraph (A) only after notifying the Committees on Appropriations of the Senate and House of Representatives of the proposed transfer and a period of 20 calendar days in session has elapsed after such notice is received.''.

**SEC. 20013. TREATMENT OF DIRECT STUDENT LOANS.**

Section 504 of the Federal Credit Reform Act of 1990 is amended by adding at the end the following new subsection:

"(h) TREATMENT OF DIRECT STUDENT LOANS.—The cost of a direct loan under the Federal direct student loan program shall be the net present value, at the time when the direct loan is disbursed, of the following cash flows for the estimated life of the loan:

"(1) Loan disbursements.

"(2) Repayments of principal.

"(3) Payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries.

"(4) Direct expenses, including—

"(A) activities related to credit extension, loan origination, loan servicing, management of contractors, and payments to contractors, other government entities, and program participants;

"(B) collection of delinquent loans; and

"(C) writeoff and closeout of loans.".

**SEC. 20014. DEFINITION OF PROGRAMS, PROJECTS, AND ACTIVITIES FOR DEPARTMENT OF DEFENSE APPROPRIATIONS.**

For purposes of the Balanced Budget and Emergency Deficit Control Act of 1985, the term program, project, and activity for appropriations contained in any Department of Defense appropriation Act shall be defined as the

most specific level of budget items identified in the most recent Department of Defense appropriation Act, the accompanying House and Senate Committee reports, the conference report and accompanying joint explanatory statement of the managers of the committee of conference, the related classified annexes and reports, and the P–1 and R–1 budget justification documents as subsequently modified by congressional action: *Provided,* That the following exception to the above definition shall apply:

For the Military Personnel and the Operation and Maintenance accounts, the term ''program, project, and activity'' is defined as the appropriation accounts contained in the most recent Department of Defense appropriation Act: *Provided further,* That at the time the President submits his budget for any fiscal year, the Department of Defense shall transmit to the Committees on Appropriations and the Committees on Armed Services of the Senate and the House of Representatives a budget justification document to be known as the ''O–1'' which shall identify, at the budget activity, activity group, and subactivity group level, the amounts requested by the President to be appropriated to the Department of Defense for operation and maintenance in any budget request, or amended budget request, for that fiscal year.

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