

105TH CONGRESS
1ST SESSION

S. 1226

To dismantle the Department of Commerce.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 1997

Mr. ABRAHAM (for himself, Mr. BROWNBACK, Mr. KYL, Mr. HAGEL, Mr. ALLARD, Mr. FAIRCLOTH, Mr. HUTCHINSON, Mr. NICKLES, and Mr. GRAMM) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To dismantle the Department of Commerce.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Department of Com-
5 merce Dismantling Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—ABOLISHMENT OF DEPARTMENT OF COMMERCE

Sec. 101. Definitions.

Sec. 102. Abolishment of Department of Commerce.

Sec. 103. Resolution and termination of Department functions.

- Sec. 104. Responsibilities of the Director of the Office of Management and Budget.
- Sec. 105. Personnel.
- Sec. 106. Plans and reports.
- Sec. 107. General Accounting Office audit and access to records.
- Sec. 108. Conforming amendments.
- Sec. 109. Privatization framework.
- Sec. 110. Priority placement programs for Federal employees affected by a reduction in force attributable to this Act.
- Sec. 111. Funding reductions for transferred functions.

TITLE II—DISPOSITION OF PROGRAMS, FUNCTIONS, AND
AGENCIES OF DEPARTMENT OF COMMERCE

- Sec. 201. Economic development.
- Sec. 202. Technology Administration.
- Sec. 203. Reorganization of the Bureau of the Census and the Bureau of Economic Analysis.
- Sec. 204. Terminated functions of National Telecommunications and Information Administration.
- Sec. 205. Terminations and transfers.
- Sec. 206. National Oceanic and Atmospheric Administration.
- Sec. 207. Miscellaneous terminations; moratorium on program activities.
- Sec. 208. Effective date.

TITLE III—ESTABLISHMENT OF UNITED STATES TRADE
ADMINISTRATION

Subtitle A—General Provisions

- Sec. 301. Definitions.

Subtitle B—United States Trade Administration

CHAPTER 1—ESTABLISHMENT

- Sec. 311. Establishment of the United States Trade Administration.
- Sec. 312. Functions of the Trade Representative.

CHAPTER 2—OFFICERS

- Sec. 321. Deputy United States Trade Representatives.
- Sec. 322. Assistant Administrators.
- Sec. 323. General Counsel.
- Sec. 324. Inspector General.
- Sec. 325. Chief Financial Officer.

CHAPTER 3—TRANSFERS TO THE TRADE ADMINISTRATION

- Sec. 331. Office of the United States Trade Representative.
- Sec. 332. Transfers from the Department of Commerce.
- Sec. 333. Trade and Development Agency.
- Sec. 334. Export-Import Bank.
- Sec. 335. Overseas Private Investment Corporation.
- Sec. 336. Consolidation of export promotion and financing activities.
- Sec. 337. Functions related to textile agreements.

CHAPTER 4—ADMINISTRATIVE PROVISIONS

- Sec. 341. Personnel provisions.
- Sec. 342. Delegation and assignment.
- Sec. 343. Succession.
- Sec. 344. Reorganization.
- Sec. 345. Rules.
- Sec. 346. Funds transfer.
- Sec. 347. Contracts, grants, and cooperative agreements.
- Sec. 348. Use of facilities.
- Sec. 349. Gifts and bequests.
- Sec. 350. Working capital fund.
- Sec. 351. Service charges.
- Sec. 352. Seal of office.

CHAPTER 5—RELATED AGENCIES

- Sec. 361. Interagency trade organization.
- Sec. 362. National Security Council.
- Sec. 363. International Monetary Fund.

CHAPTER 6—CONFORMING AMENDMENTS

- Sec. 371. Amendments to general provisions.
- Sec. 372. Repeals.
- Sec. 373. Conforming amendments relating to Executive Schedule positions.

CHAPTER 7—MISCELLANEOUS

- Sec. 381. Effective date.
- Sec. 382. Interim appointments.
- Sec. 383. Funding reductions resulting from reorganization.

TITLE IV—UNITED STATES PATENT AND TRADEMARK ORGANIZATION

Subtitle A—United States Patent and Trademark Organization

- Sec. 401. Short title.

CHAPTER 1—ESTABLISHMENT OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION

- Sec. 411. Establishment of the United States Patent and Trademark Organization as a Government corporation.
- Sec. 412. Powers and duties.
- Sec. 413. Organization and management.
- Sec. 414. United States Patent Office.
- Sec. 415. United States Trademark Office.
- Sec. 416. Suits by and against the Organization.
- Sec. 417. Funding.
- Sec. 418. Transfers.
- Sec. 419. Use of Organization name.

CHAPTER 2—EFFECTIVE DATE; TECHNICAL AMENDMENTS

- Sec. 431. Effective date.
- Sec. 432. Technical and conforming amendments.

Subtitle B—Early Publication of Patent Applications

- Sec. 441. Short title.
- Sec. 442. Early publication.
- Sec. 443. Time for claiming benefit of earlier filing date.
- Sec. 444. Provisional rights.
- Sec. 445. Prior art effect of published applications.
- Sec. 446. Cost recovery for publication.
- Sec. 447. Conforming changes.
- Sec. 448. Last day of pendency of provisional application.
- Sec. 449. Effective date.

Subtitle C—Patent Term Restoration

- Sec. 451. Patent term restoration authority.
- Sec. 452. Further examination of patent applications.
- Sec. 453. Technical clarification.
- Sec. 454. Effective date.

Subtitle D—Prior Domestic Commercial Use

- Sec. 461. Short title.
- Sec. 462. Defense to patent infringement based on prior domestic commercial use.
- Sec. 463. Effective date and applicability.

Subtitle E—Patent Reexamination Reform

- Sec. 471. Short title.
- Sec. 472. Definitions.
- Sec. 473. Reexamination procedures.
- Sec. 474. Conforming amendments.
- Sec. 475. Report to Congress.
- Sec. 476. Effective date.

Subtitle F—Miscellaneous Patent Provisions

- Sec. 481. Provisional applications.
- Sec. 482. International applications.
- Sec. 483. Access to electronic patent information.
- Sec. 484. Certain limitations on damages for patent infringement not applicable.
- Sec. 485. Plant patents.
- Sec. 486. Electronic filing.
- Sec. 487. Study and report on biological deposits in support of biotechnology patents.

TITLE V—STATISTICAL CONSOLIDATION

Subtitle A—General Provisions

- Sec. 501. Findings.
- Sec. 502. Sense of Congress.
- Sec. 503. Definitions.

Subtitle B—Establishment of the Federal Statistical Service

- Sec. 511. Establishment.
- Sec. 512. Principal officers.
- Sec. 513. Federal Council on Statistical Policy.

Subtitle C—Transfers of Functions and Offices

- Sec. 521. Transfer of the Bureau of Labor Statistics.
 Sec. 522. Transfer date.

Subtitle D—Administrative Provisions

- Sec. 531. Officers and employees.
 Sec. 532. Experts and consultants.
 Sec. 533. Acceptance of voluntary services.
 Sec. 534. General authority.
 Sec. 535. Delegation.
 Sec. 536. Reorganization.
 Sec. 537. Contracts.
 Sec. 538. Regulations.
 Sec. 539. Seal.
 Sec. 540. Annual report.

Subtitle E—Miscellaneous

- Sec. 541. Incidental transfers.
 Sec. 542. References.
 Sec. 543. Proposed changes in law.
 Sec. 544. Transition.
 Sec. 545. Interim appointments.
 Sec. 546. Conforming amendments.

TITLE VI—MISCELLANEOUS PROVISIONS

- Sec. 601. References.
 Sec. 602. Exercise of authorities.
 Sec. 603. Savings provisions.
 Sec. 604. Transfer of assets.
 Sec. 605. Delegation and assignment.
 Sec. 606. Authority of Director of the Office of Management and Budget with
 respect to functions transferred.
 Sec. 607. Certain vesting of functions considered transfers.
 Sec. 608. Availability of existing funds.
 Sec. 609. Definitions.
 Sec. 610. Conforming amendments.

1 **TITLE I—ABOLISHMENT OF**
 2 **DEPARTMENT OF COMMERCE**

3 **SEC. 101. DEFINITIONS.**

4 For purposes of this title, the following definitions
 5 apply:

- 6 (1) DEPARTMENT.—The term “Department”
 7 means the Department of Commerce.

1 (2) DIRECTOR.—The term “Director” means
2 the Director of the Office of Management and Budg-
3 et.

4 (3) OFFICE.—The term “Office” means the Of-
5 fice of Management and Budget.

6 **SEC. 102. ABOLISHMENT OF DEPARTMENT OF COMMERCE.**

7 (a) ABOLISHMENT OF DEPARTMENT.—Effective on
8 the applicable date specified in subsection (c), the Depart-
9 ment of Commerce is abolished.

10 (b) TRANSFER OF DEPARTMENT FUNCTIONS TO OF-
11 FICE OF MANAGEMENT AND BUDGET.—Except as other-
12 wise provided in this Act, all functions that on the day
13 before the applicable date specified in subsection (c) are
14 authorized to be performed by the Secretary of Commerce,
15 any other officer or employee of the Department acting
16 in that capacity, or any agency or office of the Depart-
17 ment, are transferred to the Director effective on that
18 date.

19 (c) ABOLISHMENT DATE.—The date of abolishment
20 of the Department is the earlier of—

21 (1) the last day of the 6-month period begin-
22 ning on the date of enactment of this Act; or

23 (2) September 30, 1998.

1 **SEC. 103. RESOLUTION AND TERMINATION OF DEPART-**
 2 **MENT FUNCTIONS.**

3 (a) RESOLUTION OF FUNCTIONS.—During the period
 4 beginning on the date of enactment of this Act and ending
 5 on the date specified in subsection (c)—

6 (1) the disposition and resolution of functions
 7 of the Department shall be completed in accordance
 8 with this Act; and

9 (2) the Director shall resolve all functions that
 10 are transferred to the Director under section 102(b)
 11 and are not otherwise continued under this Act.

12 (b) TERMINATION OF FUNCTIONS.—All functions
 13 that are transferred to the Director under section 102(b)
 14 that are not otherwise continued by this Act shall termi-
 15 nate on the date specified in subsection (c).

16 (c) FUNCTIONS TERMINATION DATE.—The date of
 17 termination of functions referred to in subsections (a) and
 18 (b) is the last day of the 3-year period beginning on the
 19 date of enactment of this Act.

20 **SEC. 104. RESPONSIBILITIES OF THE DIRECTOR OF THE OF-**
 21 **FICE OF MANAGEMENT AND BUDGET.**

22 (a) IN GENERAL.—The Director shall be responsible
 23 for the implementation of this title, including—

24 (1) the administration, during the period speci-
 25 fied in section 103(c), of all functions transferred to
 26 the Director under section 102(b);

1 (2) the administration, during the period speci-
2 fied in section 103(a), of any outstanding obligations
3 of the Federal Government under any programs ter-
4 minated by this Act; and

5 (3) taking any other action that may be nec-
6 essary to complete any outstanding affairs of the
7 Department before the end of the period specified in
8 section 103(a).

9 (b) DELEGATION OF FUNCTIONS.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), the Director may, to the extent that the
12 Director determines that such delegation is appro-
13 priate to carry out this title, delegate to any officer
14 of the Office or to any other Federal department or
15 agency head the performance of the functions of the
16 Director under this title.

17 (2) EXCEPTION.—The Director may not dele-
18 gate the planning and reporting responsibilities
19 under section 106.

20 (c) TRANSFER OF ASSETS AND PERSONNEL.—In
21 connection with any delegation of functions under sub-
22 section (b), the Director may transfer, within the Office
23 or to the department or agency concerned, such assets,
24 funds, personnel, records, and other property relating to

1 the delegated function as the Director determines to be
2 appropriate.

3 (d) **AUTHORITIES OF THE DIRECTOR.**—For purposes
4 of performing the functions of the Director under this
5 title, the Director may—

6 (1) enter into contracts;

7 (2) employ experts and consultants in accord-
8 ance with section 3109 of title 5, United States
9 Code, at rates for individuals not to exceed the per
10 diem rate equivalent to the rate for level IV of the
11 Executive Schedule; and

12 (3) utilize, on a reimbursable basis, the services,
13 facilities, and personnel of other Federal agencies.

14 **SEC. 105. PERSONNEL.**

15 Effective on the date specified in section 102(c), there
16 is transferred to the Office any individual who—

17 (1) on the day before that date, was an officer
18 or employee of the Department; and

19 (2) in the capacity as an officer or employee of
20 the Department, performed functions that are trans-
21 ferred to the Director under section 102(b).

22 **SEC. 106. PLANS AND REPORTS.**

23 (a) **INITIAL IMPLEMENTATION PLAN.**—

24 (1) **IN GENERAL.**—Not later than 90 days after
25 the date of enactment of this Act, the Director shall

1 submit a report to Congress and the President that
2 specifies actions that have been taken and actions
3 that have not been taken but are necessary—

4 (A) to resolve the programs and functions
5 terminated in this Act on the date of enactment
6 of this Act; and

7 (B) to implement the additional transfers
8 and other program dispositions provided for in
9 this Act.

10 (2) CONTENTS.—The report in paragraph (1)
11 shall include—

12 (A) recommendations for any legislation
13 necessary for the implementation of the
14 abolishments, transfers, terminations, and other
15 dispositions of programs and functions under
16 this Act; and

17 (B) a description of actions planned and
18 taken to comply with limitations imposed by
19 this Act on spending for continued functions.

20 (b) ANNUAL STATUS REPORTS.—At the end of the
21 first full fiscal year following the date of enactment of this
22 Act and at the end of each of the 2 following fiscal years,
23 the Director shall submit a report, through the President,
24 to Congress that—

1 (1) specifies the status and progress of actions
2 taken to implement this Act and to wind up the af-
3 fairs of the Department of Commerce by the func-
4 tions termination date specified in section 103(c);

5 (2) includes any recommendations for legisla-
6 tion that the Director considers appropriate; and

7 (3) describes actions taken to comply with limi-
8 tations imposed by this Act on spending for contin-
9 ued functions.

10 (c) GAO REPORTS.—Not later than 60 days after the
11 issuance of a report under subsection (a) or (b), the Comp-
12 troller General of the United States shall submit to Con-
13 gress a report that—

14 (1) evaluates the report; and

15 (2) includes any recommendations the Comp-
16 troller General considers appropriate.

17 **SEC. 107. GENERAL ACCOUNTING OFFICE AUDIT AND AC-**
18 **CESS TO RECORDS.**

19 (a) AUDIT OF PERSONS PERFORMING FUNCTIONS
20 PURSUANT TO THIS ACT.—All agencies, corporations, or-
21 ganizations, and other persons of any description that,
22 under the authority of the United States, perform any
23 function or activity covered under this Act shall be subject
24 to an audit by the Comptroller General of the United
25 States with respect to that function or activity.

1 (b) AUDIT OF PERSONS PROVIDING CERTAIN GOODS
2 OR SERVICES.—All persons and organizations that, by
3 contract, grant, or otherwise, provide goods or services to,
4 or receive financial assistance from, any agency or other
5 person performing functions or activities covered under
6 this Act shall be subject to an audit by the Comptroller
7 General of the United States with respect to the provision
8 of such goods or services or the receipt of such financial
9 assistance.

10 (c) PROVISIONS APPLICABLE TO AUDITS UNDER
11 THIS SECTION.—

12 (1) NATURE AND SCOPE OF AUDIT.—The
13 Comptroller General of the United States shall de-
14 termine the nature, scope, terms, and conditions of
15 audits conducted under this section.

16 (2) COORDINATION WITH OTHER PROVISIONS
17 OF LAW.—The authority of the Comptroller General
18 of the United States under this section shall be in
19 addition to any audit authority available to the
20 Comptroller General under any other provision of
21 law (including any other provision of this Act).

22 (3) RIGHTS OF ACCESS, EXAMINATION, AND
23 COPYING.—The Comptroller General of the United
24 States, and any duly authorized representative of the
25 Comptroller General, shall have access to, and the

1 right to examine and copy, all records and other re-
2 corded information in any form, and to examine any
3 property within the possession or control of any
4 agency or person that—

5 (A) is subject to audit under this section;

6 and

7 (B) the Comptroller General considers rel-
8 evant to an audit conducted under this section.

9 (4) ENFORCEMENT OF RIGHT OF ACCESS.—The
10 right of access of the Comptroller General of the
11 United States to information under this section shall
12 be enforceable under section 716 of title 31, United
13 States Code.

14 (5) MAINTENANCE OF CONFIDENTIAL
15 RECORDS.—Section 716(e) of title 31, United States
16 Code, shall apply to information obtained by the
17 Comptroller General under this section.

18 **SEC. 108. CONFORMING AMENDMENTS.**

19 (a) PRESIDENTIAL SUCCESSION.—Section 19(d)(1)
20 of title 3, United States Code, is amended by striking
21 “Secretary of Commerce,”.

22 (b) EXECUTIVE DEPARTMENTS.—Section 101 of title
23 5, United States Code, is amended by striking the follow-
24 ing item:

25 “The Department of Commerce.”.

1 (c) SECRETARY'S COMPENSATION.—Section 5312 of
2 title 5, United States Code, is amended by striking the
3 following item:

4 “Secretary of Commerce.”.

5 (d) COMPENSATION FOR POSITIONS AT LEVEL III.—
6 Section 5314 of title 5, United States Code, is amended—

7 (1) by striking the following item:

8 “Under Secretary of Commerce, Under Sec-
9 retary of Commerce for Economic Affairs, Under
10 Secretary of Commerce for Export Administration
11 and Under Secretary of Commerce for Travel and
12 Tourism.”;

13 (2) by striking the following item:

14 “Under Secretary of Commerce for Oceans and
15 Atmosphere, the incumbent of which also serves as
16 Administrator of the National Oceanic and Atmos-
17 pheric Administration.”; and

18 (3) by striking the following item:

19 “Under Secretary of Commerce for Tech-
20 nology.”.

21 (e) COMPENSATION FOR POSITIONS AT LEVEL IV.—
22 Section 5315 of title 5, United States Code, is amended—

23 (1) by striking the following item:

24 “Assistant Secretaries of Commerce (11).”;

25 (2) by striking the following item:

1 “General Counsel of the Department of Com-
2 merce.”;

3 (3) by striking the following item:

4 “Assistant Secretary of Commerce for Oceans
5 and Atmosphere, the incumbent of which also serves
6 as Deputy Administrator of the National Oceanic
7 and Atmospheric Administration.”;

8 (4) by striking the following item:

9 “Director, National Institute of Standards and
10 Technology, Department of Commerce.”;

11 (5) by striking the following item:

12 “Inspector General, Department of Com-
13 merce.”;

14 (6) by striking the following item:

15 “Chief Financial Officer, Department of Com-
16 merce.”;

17 (7) by striking the item relating to the Director
18 of the Bureau of the Census and inserting “Director
19 of the Census, Federal Statistical Service”; and

20 (8) by striking the following item:

21 “Chief Information Officer, Department of
22 Commerce.”.

23 (f) COMPENSATION FOR POSITIONS AT LEVEL V.—
24 Section 5316 of title 5, United States Code, is amended—

25 (1) by striking the following item:

1 “Director, United States Travel Service, De-
2 partment of Commerce.”; and

3 (2) by striking the following item:

4 “National Export Expansion Coordinator, De-
5 partment of Commerce.”.

6 (g) INSPECTOR GENERAL ACT OF 1978.—The In-
7 specter General Act of 1978 (5 U.S.C. App.) is amend-
8 ed—

9 (1) in section 9(a)(1)—

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

11 (B) by redesignating subparagraphs (C)
12 through (W) as subparagraphs (B) through
13 (V), respectively;

14 (2) in section 11(1), by striking “Commerce,”;

15 and

16 (3) in section 11(2), by striking “Commerce,”.

17 (h) EFFECTIVE DATE.—The amendments made by
18 this section shall be effective on the applicable date speci-
19 fied in section 102(e).

20 **SEC. 109. PRIVATIZATION FRAMEWORK.**

21 (a) IN GENERAL.—

22 (1) PRIVATIZATION.—Not later than 18 months
23 after a function designated for privatization under
24 title II is transferred to the Office, the Director shall
25 privatize that function. The Director shall pursue

1 such forms of privatization arrangements as the Di-
2 rector considers appropriate to best serve the inter-
3 ests of the United States.

4 (2) REPORT.—If, by the date specified in para-
5 graph (1), the Director is unable to privatize a func-
6 tion, the Director shall submit a report that states
7 that inability to Congress, together with rec-
8 ommendations concerning the appropriate disposi-
9 tion of the function involved and the assets of the
10 function.

11 (b) ROLE OF THE FEDERAL GOVERNMENT.—No pri-
12 vatization arrangement made under subsection (a) shall
13 include any role for, or accountability to, the Federal Gov-
14 ernment unless the role or accountability is necessary to
15 ensure the continued accomplishment of a specific Federal
16 objective. The Federal role should be the minimum role
17 necessary to accomplish Federal objectives.

18 (c) ASSETS.—In privatizing a function, the Director
19 shall take any action necessary—

20 (1) to preserve the value of the assets of a func-
21 tion during the period during which the Office holds
22 such assets; and

23 (2) to continue the performance of the function
24 to the extent necessary—

25 (A) to preserve the value of the assets; or

1 (B) to accomplish core Federal objectives
2 (as that term is defined by the Director).

3 **SEC. 110. PRIORITY PLACEMENT PROGRAMS FOR FEDERAL**
4 **EMPLOYEES AFFECTED BY A REDUCTION IN**
5 **FORCE ATTRIBUTABLE TO THIS ACT.**

6 (a) IN GENERAL.—Subchapter I of chapter 33 of title
7 5, United States Code, is amended by inserting after sec-
8 tion 3329 the following:

9 **“§ 3329a. Priority placement programs for employees**
10 **affected by a reduction in force attrib-**
11 **utable to the Department of Commerce**
12 **Dismantling Act**

13 “(a)(1) For the purpose of this section, the term ‘af-
14 fected agency’—

15 “(A) except as provided in subparagraph (B),
16 means an Executive agency to which personnel are
17 transferred in connection with a transfer of function
18 under the Department of Commerce Dismantling
19 Act, and

20 “(B) with respect to employees of the Depart-
21 ment of Commerce in general administration, the In-
22 spector General’s office, or the General Counsel’s of-
23 fice, or who provided overhead support to other com-
24 ponents of the Department on a reimbursable basis,
25 means all agencies to which functions of those em-

1 employees are transferred under the Department of
2 Commerce Dismantling Act.

3 “(2) This section applies with respect to any reduc-
4 tion in force that—

5 “(A) occurs within 12 months after the date of
6 enactment of this section; and

7 “(B) is due to—

8 “(i) the termination of any function of the
9 Department of Commerce; or

10 “(ii) the agency’s having excess personnel
11 as a result of a transfer of function described
12 in paragraph (1), as determined by—

13 “(I) the Director of the Office of
14 Management and Budget, in the case of a
15 function transferred to the Office of Man-
16 agement and Budget; or

17 “(II) the head of the agency, in the
18 case of any function transferred to an
19 agency other than the Office of Manage-
20 ment and Budget.

21 “(b) As soon as practicable after the date of enact-
22 ment of this section, each affected agency shall establish
23 an agencywide priority placement program to facilitate
24 employment placement for employees who, due to a reduc-
25 tion in force described in subsection (a)(2)—

1 “(1) are scheduled to be separated from service;

2 or

3 “(2) are separated from service.

4 “(c)(1) Each agencywide priority placement program
5 shall include provisions under which a vacant position
6 shall not be filled by the appointment or transfer of any
7 individual from outside of that agency if—

8 “(A) an individual described in paragraph (2)
9 who is qualified for the position is available for the
10 position at the time of the occurrence of the va-
11 cancy; and

12 “(B) the position—

13 “(i) is at the same grade (or pay level) or
14 not more than 1 grade (or pay level) below that
15 of the position last held by such individual be-
16 fore placement in the new position; and

17 “(ii) is within the same commuting area as
18 the individual’s last-held position (as referred to
19 in clause (i)) or residence.

20 “(2) For purposes of an agencywide priority place-
21 ment program, an individual shall be considered to be de-
22 scribed in this paragraph if the most recent performance
23 evaluation of the individual was at least fully successful
24 (or the equivalent), and such individual is either—

1 “(A) an employee of the agency who is sched-
2 uled to be separated, as described in subsection
3 (b)(1); or

4 “(B) an individual who became a former em-
5 ployee of the agency as a result of a separation, as
6 described in subsection (b)(2).

7 “(d)(1) Nothing in this section shall affect any prior-
8 ity placement program of the Department of Defense that
9 is in operation as of the date of enactment of this section.

10 “(2) Nothing in this section shall impair any place-
11 ment program within an agency subject to a reduction in
12 force resulting from a cause other than the Department
13 of Commerce Dismantling Act.

14 “(e) An individual shall cease to be eligible to partici-
15 pate in a program under this section on the earlier of—

16 “(1) the conclusion of the 12-month period be-
17 ginning on the date on which the individual first be-
18 came eligible to participate under subsection (c)(2);

19 or

20 “(2) the date on which the individual declines
21 a bona fide offer (or if the individual does not act
22 on the offer, the last date on which the individual
23 could accept the offer) from the affected agency of
24 a position described in subsection (c)(1)(B).”.

1 (b) CONFORMING AMENDMENT.—The chapter analy-
 2 sis for chapter 33 of title 5, United States Code, is amend-
 3 ed by inserting after the item relating to section 3329 the
 4 following:

“3329a. Priority placement programs for employees affected by a reduction in
 force attributable to the Department of Commerce Dismantling
 Act.”.

5 **SEC. 111. FUNDING REDUCTIONS FOR TRANSFERRED**
 6 **FUNCTIONS.**

7 (a) FUNDING REDUCTIONS.—Except as provided in
 8 subsection (b), the total amount authorized to be appro-
 9 priated by the United States for accounts related to the
 10 performance of functions transferred under this Act to the
 11 Director or to the Office from the Department, or any of
 12 its officers or components, shall not exceed—

13 (1) for the first fiscal year that begins after the
 14 date specified in section 102(c), 75 percent of the
 15 total amount appropriated to the Department for
 16 the performance of those functions for fiscal year
 17 1997; and

18 (2) for the second fiscal year that begins after
 19 the date specified in section 102(c) and for each fis-
 20 cal year thereafter, 65 percent of the total amount
 21 appropriated to the Department for the performance
 22 of those functions for fiscal year 1997.

23 (b) EXCEPTION.—Subsection (a) shall not apply to
 24 obligations or expenditures incurred as a direct con-

1 sequence of the termination, transfer, or other disposition
 2 of functions described in subsection (a) pursuant to this
 3 Act.

4 (c) RULE OF CONSTRUCTION.—This section shall su-
 5 perseede any other provision of law that does not explic-
 6 itly—

7 (1) refer to this section; and

8 (2) create an exemption from this section.

9 (d) RESPONSIBILITIES OF THE DIRECTOR.—The Di-
 10 rector shall—

11 (1) ensure compliance with the requirements of
 12 this section; and

13 (2) include in each report under subsections (a)
 14 and (b) of section 106 a description of actions taken
 15 to comply with the requirements referred to in para-
 16 graph (1).

17 **TITLE II—DISPOSITION OF PRO-**
 18 **GRAMS, FUNCTIONS, AND**
 19 **AGENCIES OF DEPARTMENT**
 20 **OF COMMERCE**

21 **SEC. 201. ECONOMIC DEVELOPMENT.**

22 (a) TERMINATED FUNCTIONS.—The Public Works
 23 and Economic Development Act of 1965 (42 U.S.C. 3121
 24 et seq.) is repealed.

1 (b) TRANSFER OF FINANCIAL OBLIGATIONS OWED
2 TO THE DEPARTMENT.—There are transferred to the Sec-
3 retary of the Treasury the loans, notes, bonds, debentures,
4 securities, and other financial obligations owned by the
5 Department of Commerce under the Public Works and
6 Economic Development Act of 1965, together with all as-
7 sets or other rights (including security interests) incident
8 thereto, and all liabilities related thereto. There are as-
9 signed to the Secretary of the Treasury the functions,
10 powers, and abilities vested in or delegated to the Sec-
11 retary of Commerce or the Department of Commerce to
12 manage, service, collect, sell, dispose of, or otherwise real-
13 ize proceeds on obligations owed to the Department of
14 Commerce under authority of such Act with respect to any
15 loans, obligations, or guarantees made or issued by the
16 Department of Commerce pursuant to such Act.

17 (c) AUDIT.—Not later than 18 months after the date
18 of enactment of this Act, the Comptroller General shall—

19 (1) conduct an audit of all grants made or is-
20 sued by the Department of Commerce under the
21 Public Works and Economic Development Act of
22 1965 in fiscal year 1997 and all loans, obligations,
23 and guarantees; and

24 (2) transmit to Congress a report on the results
25 of the audit referred to in paragraph (1).

1 **SEC. 202. TECHNOLOGY ADMINISTRATION.**

2 (a) TECHNOLOGY ADMINISTRATION.—

3 (1) GENERAL RULE.—Except as otherwise pro-
4 vided in this section, the Technology Administration
5 of the Department of Commerce is terminated.

6 (2) OFFICE OF TECHNOLOGY POLICY.—The Of-
7 fice of Technology Policy of the Department of Com-
8 merce is terminated.

9 (b) NATIONAL INSTITUTE OF STANDARDS AND
10 TECHNOLOGY.—

11 (1) REDESIGNATION.—The National Institute
12 of Standards and Technology of the Department of
13 Commerce is hereby redesignated as the National
14 Bureau of Standards, and all references to the Na-
15 tional Institute of Standards and Technology in
16 Federal law or regulations are deemed to be ref-
17 erences to the National Bureau of Standards.

18 (2) GENERAL RULE.—The National Bureau of
19 Standards (in this subsection referred to as the
20 “Bureau”) is transferred from the Department of
21 Commerce to the National Oceanic and Atmospheric
22 Administration, established in section 206.

23 (3) FUNCTIONS OF DIRECTOR.—Except as oth-
24 erwise provided in this section or section 207, upon
25 the transfer under paragraph (2), the Director of
26 the Bureau shall perform all functions relating to

1 the Bureau that, immediately before the effective
2 date specified in section 208(a), were functions of
3 the Secretary of Commerce or the Under Secretary
4 of Commerce for Technology.

5 (c) NATIONAL TECHNICAL INFORMATION SERV-
6 ICE.—

7 (1) PRIVATIZATION.—All functions of the Na-
8 tional Technical Information Service of the Depart-
9 ment of Commerce are transferred to the Director of
10 the Office of Management and Budget for privatiza-
11 tion in accordance with section 109 by the date spec-
12 ified in subsection (a) of that section.

13 (2) TRANSFER TO NATIONAL OCEANIC AND AT-
14 MOSPHERIC ADMINISTRATION.—If, by the date speci-
15 fied in section 109(a), an appropriate arrangement
16 for the privatization of functions of the National
17 Technical Information Service under paragraph (1)
18 has not been made, the National Technical Informa-
19 tion Service shall be transferred to the National
20 Oceanic and Atmospheric Administration established
21 in section 206.

22 (3) GOVERNMENT CORPORATION.—If, by the
23 date specified in section 109(a), an appropriate ar-
24 rangement for the privatization of functions of the
25 National Technical Information Service under para-

1 graph (1) has not been made, the Director of the
2 Office of Management and Budget shall, not later
3 than 180 days after the date specified in section
4 109(a), submit to Congress recommended legislation
5 to establish the National Technical Information
6 Service as a wholly owned Government corporation.
7 The recommended legislation shall provide for the
8 corporation to perform substantially the same func-
9 tions that, as of the date of enactment of this Act,
10 are performed by the National Technical Informa-
11 tion Service.

12 (4) FUNDING.—No funds are authorized to be
13 appropriated for the National Technical Information
14 Service or any successor corporation established pur-
15 suant to recommended legislation under paragraph
16 (3).

17 (d) AMENDMENTS.—

18 (1) NATIONAL INSTITUTE OF STANDARDS AND
19 TECHNOLOGY ACT.—The National Institute of
20 Standards and Technology Act (15 U.S.C. 271 et
21 seq.) is amended—

22 (A) in section 2(b), by striking paragraph
23 (1) and redesignating paragraphs (2) through
24 (11) as paragraphs (1) through (10), respec-
25 tively;

1 (B) in section 2(d), by striking “, including
2 the programs established under sections 25, 26,
3 and 28 of this Act”;

4 (C) in section 10—

5 (i) in the section heading, by striking
6 “Advanced” and inserting “Standards
7 and”; and

8 (ii) in subsection (a), by striking “Ad-
9 vanced” and inserting “Standards and”;
10 and

11 (D) by striking sections 24, 25, 26, and
12 28.

13 (2) STEVENSON-WYDLER TECHNOLOGY INNOVA-
14 TION ACT OF 1980.—The Stevenson-Wydler Tech-
15 nology Innovation Act of 1980 (15 U.S.C. 3701 et
16 seq.) is amended—

17 (A) in section 3, by striking paragraph (2)
18 and redesignating paragraphs (3) through (5)
19 as paragraphs (2) through (4), respectively;

20 (B) in section 4, by striking paragraphs
21 (1), (4), and (13) and redesignating paragraphs
22 (2), (3), (5), (6), (7), (8), (9), (10), (11), and
23 (12) as paragraphs (1) through (10), respec-
24 tively;

25 (C) by striking sections 5 through 10;

1 (D) in section 11—

2 (i) in subsection (e)(3), by striking “,
3 the Federal Laboratory Consortium for
4 Technology Transfer,”;

5 (ii) in subsection (d)—

6 (I) in paragraph (2), by striking
7 “and the Federal Laboratory Consor-
8 tium for Technology Transfer”; and

9 (II) in paragraph (3), by striking
10 “, and refer such requests” and all
11 that follows through “available to the
12 Service”; and

13 (iii) by striking subsection (e); and

14 (E) in section 17—

15 (i) in subsection (c)—

16 (I) in paragraph (1), by striking
17 “Subject to paragraph (2), separate”
18 and inserting “Separate”; and

19 (II) by striking paragraph (2)
20 and redesignating paragraph (3) as
21 paragraph (2);

22 (ii) in subsection (f), by striking
23 “funds to carry out” and inserting “funds
24 only to pay the salary of the Director of

1 the Office of Quality Programs, who shall
2 be responsible for carrying out”; and

3 (iii) by adding at the end the follow-
4 ing new subsection:

5 “(h) VOLUNTARY AND UNCOMPENSATED SERV-
6 ICES.—The Director of the Office of Quality Programs
7 may accept voluntary and uncompensated services not-
8 withstanding the provisions of section 1342 of title 31,
9 United States Code.”.

10 (3) MISCELLANEOUS AMENDMENTS.—Section 3
11 of Public Law 94–168 (15 U.S.C. 205b) is amend-
12 ed—

13 (A) by striking paragraph (2);

14 (B) by redesignating paragraphs (3) and
15 (4) as paragraphs (2) and (3), respectively; and

16 (C) in paragraph (3), as redesignated by
17 subparagraph (B) of this paragraph, by striking
18 “in nonbusiness activities”.

19 **SEC. 203. REORGANIZATION OF THE BUREAU OF THE CEN-**
20 **SUS AND THE BUREAU OF ECONOMIC ANALY-**
21 **SIS.**

22 (a) TRANSFER OF FUNCTIONS.—All functions of the
23 Secretary of Commerce relating to the Bureau of the Cen-
24 sus and the Bureau of Economic Analysis of the Depart-

1 ment of Commerce are transferred to the Federal Statis-
2 tical Service established under title V.

3 (b) TRANSFER OF BUREAUS.—The Bureau of the
4 Census and Bureau of Economic Analysis of the Depart-
5 ment of Commerce are transferred to the Federal Statis-
6 tical Service established under title V.

7 (c) REFERENCES TO SECRETARY.—Section 1(2) of
8 the title 13, United States Code, is amended by striking
9 “Secretary of Commerce” and inserting “Administrator of
10 the Federal Statistical Service”.

11 (d) REFERENCES TO DEPARTMENT.—Section 2 of
12 title 13, United States Code, is amended by striking “De-
13 partment of Commerce” and inserting “Federal Statistical
14 Service”.

15 (e) GENERAL REFERENCES TO SECRETARY AND DE-
16 PARTMENT.—Title 13, United States Code, is further
17 amended—

18 (1) by striking “Secretary of Commerce” each
19 place it appears and inserting “Administrator of the
20 Federal Statistical Service”; and

21 (2) by striking “Department of Commerce”
22 each place it appears and inserting “Federal Statis-
23 tical Service”.

1 **SEC. 204. TERMINATED FUNCTIONS OF NATIONAL TELE-**
2 **COMMUNICATIONS AND INFORMATION AD-**
3 **MINISTRATION.**

4 (a) **REPEALS.**—The following provisions of law are
5 repealed:

6 (1) Subpart A of part IV of title III of the
7 Communications Act of 1934 (47 U.S.C. 390 et
8 seq.), relating to assistance for public telecommuni-
9 cations facilities.

10 (2) Subpart B of part IV of title III of the
11 Communications Act of 1934 (47 U.S.C. 394), relat-
12 ing to the Endowment for Children’s Educational
13 Television.

14 (3) Subpart C of part IV of title III of the
15 Communications Act of 1934 (47 U.S.C. 395), relat-
16 ing to Telecommunications Demonstration grants.

17 (b) **DISPOSAL OF NATIONAL TELECOMMUNICATIONS**
18 **AND INFORMATION ADMINISTRATION LABORATORIES.**—

19 (1) **PRIVATIZATION.**—All laboratories of the
20 National Telecommunications and Information Ad-
21 ministration are transferred to the Director of the
22 Office of Management and Budget for privatization
23 in accordance with section 109 by the date specified
24 in subsection (a) of that section.

25 (2) **TRANSFER TO NATIONAL OCEANIC AND AT-**
26 **MOSPHERIC ADMINISTRATION.**—If an appropriate

1 arrangement for the privatization of functions of the
2 laboratories of the National Telecommunications and
3 Information Administration under paragraph (1) has
4 not been made by the date specified in section
5 109(a), the laboratories of the National Tele-
6 communications and Information Administration
7 shall be transferred as of the end of such period to
8 the National Oceanic and Atmospheric Administra-
9 tion established in section 206.

10 (3) TRANSFER OF FUNCTIONS.—The functions
11 of the National Telecommunications and Informa-
12 tion Administration concerning research and analy-
13 sis of the electromagnetic spectrum described in sec-
14 tion 5112(b) of the Omnibus Trade and Competi-
15 tiveness Act of 1988 (15 U.S.C. 1532) are trans-
16 ferred to the Director of the National Bureau of
17 Standards.

18 (c) TRANSFER OF NATIONAL TELECOMMUNICATIONS
19 AND INFORMATION ADMINISTRATION FUNCTIONS.—

20 (1) TRANSFER TO FEDERAL COMMUNICATIONS
21 COMMISSION.—Except as provided in subsection
22 (b)(2), the functions of the National Telecommuni-
23 cations and Information Administration, and of the
24 Secretary of Commerce and the Assistant Secretary
25 for Communications and Information of the Depart-

1 ment of Commerce with respect to the National
2 Telecommunications and Information Administra-
3 tion, are transferred to the Federal Communications
4 Commission. The functions transferred by this para-
5 graph shall be placed in an organizational compo-
6 nent that is independent from all Federal Commu-
7 nications Commission functions directly related to
8 the negotiation of trade agreements. Such functions
9 shall be supervised by an individual whose principal
10 professional expertise is in the area of telecommuni-
11 cations. The position to which such individual is ap-
12 pointed shall be graded at a level sufficiently high to
13 attract a highly qualified individual, while ensuring
14 autonomy in the conduct of such functions from all
15 activities and influences associated with trade nego-
16 tiations.

17 (2) REFERENCES.—References in any provision
18 of law (including the National Telecommunications
19 and Information Administration Organization Act)
20 to the Secretary of Commerce or the Assistant Sec-
21 retary for Communications and Information of the
22 Department of Commerce—

23 (A) with respect to a function vested pur-
24 suant to this section in the Federal Commu-

1 communications Commission shall be deemed to refer
2 to the United States Trade Representative; and

3 (B) with respect to a function vested pur-
4 suant to this section in the Director of the Na-
5 tional Bureau of Standards shall be deemed to
6 refer to the Director of the National Bureau of
7 Standards.

8 (3) TERMINATION OF NTIA.—Effective on the
9 applicable date specified in section 102(c), the Na-
10 tional Telecommunications and Information Admin-
11 istration is abolished.

12 **SEC. 205. TERMINATIONS AND TRANSFERS.**

13 (a) TERMINATION OF MISCELLANEOUS RESEARCH
14 PROGRAMS AND ACCOUNTS.—

15 (1) IN GENERAL.—No funds may be appro-
16 priated for any fiscal year for the following pro-
17 grams and accounts of the National Oceanic and At-
18 mospheric Administration:

19 (A) The National Undersea Research Pro-
20 gram.

21 (B) The Fleet Modernization Program.

22 (C) The Charleston, South Carolina, Spe-
23 cial Management Plan.

24 (D) Chesapeake Bay Observation Buoys
25 (as of September 30, 1996).

1 (E) Federal/State Weather Modification
2 Grants.

3 (F) The Southeast Storm Research Ac-
4 count.

5 (G) The Southeast United States Carib-
6 bean Fisheries Oceanographic Coordinated In-
7 vestigations Program.

8 (H) National Institute for Environmental
9 Renewal.

10 (I) The Lake Champlain Study.

11 (J) The Maine Marine Research Center.

12 (K) The South Carolina Cooperative Geo-
13 detic Survey Account.

14 (L) Pacific Island Technical Assistance.

15 (M) Sea Grant Oyster Disease Account.

16 (O) National Weather Service non-Federal,
17 non-wildfire Weather Service.

18 (P) National Weather Service Regional Cli-
19 mate Centers.

20 (Q) National Weather Service Samoa
21 Weather Forecast Office Repair and Upgrade
22 Account.

23 (R) Dissemination of Weather Charts (Ma-
24 rine Facsimile Service).

1 (S) The Climate and Global Change Ac-
2 count.

3 (T) The Global Learning and Observations
4 to Benefit the Environment Program.

5 (U) Mussel watch.

6 (2) REPEALS.—The following provisions of law
7 are repealed:

8 (A) The Ocean Thermal Conversion Act of
9 1980 (42 U.S.C. 9101 et seq.).

10 (B) Title IV of the Marine Protection, Re-
11 search, and Sanctuaries Act of 1972 (16 U.S.C.
12 1447 et seq.).

13 (C) Title V of the Marine Protection, Re-
14 search, and Sanctuaries Act of 1972 (33 U.S.C.
15 2801 et seq.).

16 (D) The Great Lakes Fish and Wildlife
17 Tissue Bank Act (16 U.S.C. 943 et seq.).

18 (E) Section 208(c) of the National Sea
19 Grant College Program Act (33 U.S.C.
20 1127(c)).

21 (F) Section 305 of the Coastal Zone Man-
22 agement Act of 1972 (16 U.S.C. 1454) is re-
23 pealed effective October 1, 2000.

24 (G) The NOAA Fleet Modernization Act
25 (33 U.S.C. 891 et seq.).

1 (H) Public Law 85–342 (72 Stat. 35; 16
2 U.S.C. 778 et seq.), relating to fish research
3 and experimentation.

4 (I) The first section of the Act of August
5 8, 1956 (70 Stat. 1126, chapter 1039; 16
6 U.S.C. 760d), relating to grants for commercial
7 fishing education.

8 (J) Public Law 86–359 (16 U.S.C. 760e et
9 seq.), relating to the study of migratory marine
10 gamefish.

11 (b) AERONAUTICAL MAPPING AND CHARTING.—

12 (1) IN GENERAL.—The aeronautical mapping
13 and charting functions of the National Oceanic and
14 Atmospheric Administration are transferred to the
15 Transportation Administrative Services Center at
16 the Department of Transportation.

17 (2) TERMINATION OF CERTAIN FUNCTIONS.—
18 The Transportation Administrative Services Center
19 shall terminate any functions transferred under
20 paragraph (1) that are performed by the private sec-
21 tor or obtain by contract from the private sector
22 those activities that are commercial in nature and
23 necessary to carry out inherently governmental func-
24 tions.

1 (3) FUNCTIONS REQUESTED BY FEDERAL AVIA-
2 TION ADMINISTRATION.—

3 (A) IN GENERAL.—Notwithstanding para-
4 graph (2), the Director of the Transportation
5 Administrative Services Center (referred to in
6 this paragraph as the “Director”) shall carry
7 out such aeronautical charting functions as may
8 be requested by the Administrator of the Fed-
9 eral Aviation Administration.

10 (B) AERONAUTICAL MAPPING.—In carry-
11 ing out aeronautical mapping functions re-
12 quested by the Administrator under subpara-
13 graph (A), the Director shall in such manner
14 and including such information as the Adminis-
15 trator determines is necessary for, or will pro-
16 mote, the safe and efficient movement of air-
17 craft in air commerce—

18 (i) publish and distribute to the public
19 and to the Administrator any aeronautical
20 charts requested by the Administrator; and

21 (ii) provide to the Administrator such
22 other air traffic control products and serv-
23 ices as may be requested by the Adminis-
24 trator.

25 (4) CONTINUING APPLICABILITY.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), the requirements of section
3 1307 of title 44, United States Code, shall con-
4 tinue to apply with respect to all aeronautical
5 products created or published by the Director in
6 carrying out the functions transferred to the
7 Director under this paragraph.

8 (B) EXCEPTIONS.—The prices for products
9 referred to in subparagraph (A) shall be estab-
10 lished jointly by the Director and the Secretary
11 of Transportation on an annual basis.

12 (c) TRANSFER OF MAPPING, CHARTING, AND GEOD-
13 ESY FUNCTIONS TO THE ARMY CORPS OF ENGINEERS.—

14 (1) IN GENERAL.—Except as provided in sub-
15 section (b), there are transferred to the Army Corps
16 of Engineers the functions relating to mapping,
17 charting, and geodesy authorized under the Act of
18 August 7, 1947 (61 Stat. 787, chapter 504; 33
19 U.S.C. 883a).

20 (2) TERMINATION OF CERTAIN FUNCTIONS.—
21 The Secretary of the Army, acting through the Chief
22 of Engineers of Army Corps of Engineers, shall ter-
23minate any functions transferred under paragraph
24 (1) that are performed by the private sector or ob-
25tain by contract from the private sector those func-

1 tions that are commercial in nature and are nec-
2 essary to carry out inherently governmental func-
3 tions.

4 (d) NATIONAL ENVIRONMENTAL SATELLITE, DATA,
5 AND INFORMATION.—There are transferred to the Na-
6 tional Oceanic and Atmospheric Administration estab-
7 lished in section 206 all functions and assets of the Na-
8 tional Oceanic and Atmospheric Administration that on
9 the date immediately before the effective date of this sec-
10 tion are authorized to be performed by the National Envi-
11 ronmental Satellite, Data, and Information System.

12 (e) OCEANIC AND ATMOSPHERIC ADMINISTRA-
13 TION.—There are transferred to the National Oceanic and
14 Atmospheric Administration established in section 206 all
15 functions and assets of the National Oceanic and Atmos-
16 pheric Administration (including global programs) that on
17 the date immediately before the effective date of this sec-
18 tion were authorized to be performed by the Office of Oce-
19 anic and Atmospheric Research.

20 (f) NATIONAL WEATHER SERVICE.—

21 (1) IN GENERAL.—There are transferred to the
22 National Oceanic and Atmospheric Administration
23 established in section 206 all functions and assets of
24 the National Oceanic and Atmospheric Administra-
25 tion that on the date immediately before the effec-

1 tive date of this section are authorized to be per-
2 formed by the National Weather Service.

3 (2) DUTIES.—Except as provided in paragraph
4 (3), to protect life and property and enhance the na-
5 tional economy, the Administrator of Oceans and At-
6 mosphere, through the National Weather Service,
7 shall be responsible for the following:

8 (A) Forecasts. (The Administrator shall
9 serve as the sole and official sources of weather
10 and flood warnings for the Federal Govern-
11 ment.)

12 (B) The issuance of storm warnings.

13 (C) The collection, exchange, and distribu-
14 tion of meteorological, hydrological, climatic,
15 and oceanographic data and information.

16 (D) The preparation of hydro-meteorologi-
17 cal guidance and core forecast information.

18 (3) LIMITATIONS ON COMPETITION.—The Na-
19 tional Weather Service may not compete, or assist
20 other entities in competing, with the private sector
21 to provide a service in any case in which that service
22 is provided by a private sector commercial enterprise
23 or a private sector commercial enterprise is able to
24 provide that service, unless—

1 (A) the Administrator of Oceans and At-
2 mosphere finds that private sector commercial
3 enterprises are unwilling or unable to provide
4 the service; and

5 (B) the Administrator of Oceans and At-
6 mosphere finds that the service provides vital
7 weather warnings and forecasts for the protec-
8 tion of lives and property of the general public.

9 (4) ORGANIC ACT AMENDMENTS.—The Act en-
10 titled “An Act to increase the efficiency and reduce
11 the expenses of the Signal Corps of the Army, and
12 to transfer the Weather Bureau to the Department
13 of Agriculture”, approved October 1, 1890 (26 Stat.
14 653, chapter 1266) is amended—

15 (A) by striking section 3 (15 U.S.C. 313);
16 and

17 (B) in section 9 (15 U.S.C. 317), by strik-
18 ing “Department of” and all that follows there-
19 after and inserting “National Oceanic and At-
20 mospheric Administration.”.

21 (5) REPEAL.—Sections 706 and 707 of the
22 Weather Service Modernization Act (15 U.S.C. 313
23 note) are repealed.

1 (6) CONFORMING AMENDMENTS.—The Weather
2 Service Modernization Act (15 U.S.C. 313 note) is
3 amended—

4 (A) in section 702, by striking paragraph
5 (3) and redesignating paragraphs (4) through
6 (10) as paragraphs (3) through (9), respec-
7 tively; and

8 (B) in section 703—

9 (i) by striking “(a) NATIONAL IMPLE-
10 MENTATION PLAN.—”;

11 (ii) by striking paragraph (3) and re-
12 designating paragraphs (4) through (6) as
13 paragraphs (3) through (5), respectively;
14 and

15 (iii) by striking subsections (b) and
16 (c).

17 (g) TERMINATION OF THE NATIONAL OCEANIC AND
18 ATMOSPHERIC ADMINISTRATION CORPS OF COMMIS-
19 SIONED OFFICERS.—

20 (1) NUMBER OF OFFICERS.—Notwithstanding
21 section 8 of the Act of June 3, 1948 (62 Stat. 298,
22 chapter 390; 33 U.S.C. 853g), no funding may be
23 provided for a commissioned officer of the National
24 Oceanic and Atmospheric Administration Corps
25 after fiscal year 1997 and no individual may serve

1 as such a commissioned officer after fiscal year
2 1997.

3 (2) SEPARATION PAY.—

4 (A) IN GENERAL.—Commissioned officers
5 may be separated from the active list of the Na-
6 tional Oceanic and Atmospheric Administration.
7 Any officer so separated because of paragraph
8 (1) shall, subject to subparagraph (B) and the
9 availability of appropriations, be eligible for sep-
10 aration pay under section 9 of the Act of June
11 3, 1948 (62 Stat. 299, chapter 390; 33 U.S.C.
12 853h) to the same extent as if such officer had
13 been separated under section 8 of such Act (62
14 Stat. 298, chapter 390; 33 U.S.C. 853g).

15 (B) TRANSFEREES.—Any officer who,
16 under paragraph (4), transfers to another of
17 the uniformed services or becomes employed in
18 a civil service position shall not be eligible for
19 separation pay under this paragraph.

20 (C) REPAYMENT.—

21 (i) IN GENERAL.—Any officer who re-
22 ceives separation pay under this paragraph
23 shall be required to repay the amount re-
24 ceived if, within 1 year after the date of
25 the separation on which the payment is

1 based, such officer is reemployed in a civil
2 service position in the National Oceanic
3 and Atmospheric Administration, the du-
4 ties of which position would formerly have
5 been performed by a commissioned officer,
6 as determined by the Administrator of
7 Oceans and Atmosphere.

8 (ii) LUMP SUM.—A repayment under
9 this subparagraph shall be made in a lump
10 sum or in such installments as the Admin-
11 istrator may specify.

12 (D) REPAYMENTS.—

13 (i) IN GENERAL.—In the case of any
14 officer who makes a repayment under sub-
15 paragraph (C)—

16 (I) the National Oceanic and At-
17 mospheric Administration shall pay
18 into the Civil Service Retirement and
19 Disability Fund, on such officer's be-
20 half, any deposit required under sec-
21 tion 8422(e)(1) of title 5, United
22 States Code, with respect to any prior
23 service performed by that individual
24 as such an officer; and

1 (II) if the amount paid under
2 subclause (I) is less than the amount
3 of the repayment under subparagraph
4 (C), the National Oceanic and Atmos-
5 pheric Administration shall pay into
6 the Government Securities Investment
7 Fund (established under section
8 8438(b)(1)(A) of title 5, United
9 States Code), on such individual's be-
10 half, an amount equal to the dif-
11 ference.

12 (ii) APPLICABILITY.—The provisions
13 of paragraph (5)(C)(iv) shall apply with re-
14 spect to any contribution to the Thrift
15 Savings Plan made under clause (ii).

16 (3) PRIORITY PLACEMENT PROGRAM.—A prior-
17 ity placement program similar to the programs de-
18 scribed in section 3329a of title 5, United States
19 Code (as added by section 110 of this Act) shall be
20 established by the National Oceanic and Atmos-
21 pheric Administration to assist commissioned offi-
22 cers who are separated from the active list of the
23 National Oceanic and Atmospheric Administration
24 because of paragraph (1).

25 (4) TRANSFER.—

1 (A) TRANSFERS TO ARMED FORCES.—Sub-
2 ject to the approval of the Secretary of Defense
3 and under terms and conditions specified by the
4 Secretary, commissioned officers subject to
5 paragraph (1) may transfer to the Armed
6 Forces under section 716 of title 10, United
7 States Code.

8 (B) TRANSFERS TO UNITED STATES COAST
9 GUARD.—Subject to the approval of the Sec-
10 retary of Transportation and under terms and
11 conditions specified by the Secretary, commis-
12 sioned officers subject to paragraph (1) may
13 transfer to the United States Coast Guard
14 under section 716 of title 10, United States
15 Code.

16 (C) TRANSFERS TO NATIONAL OCEANIC
17 AND ATMOSPHERIC ADMINISTRATION.—Subject
18 to the approval of the Administrator of Oceans
19 and Atmosphere and under terms and condi-
20 tions specified by that Administrator, commis-
21 sioned officers subject to paragraph (1) may be
22 employed by the National Oceanic and Atmos-
23 pheric Administration as members of the civil
24 service.

25 (5) RETIREMENT PROVISIONS.—

1 (A) IN GENERAL.—For commissioned offi-
2 cers who transfer under paragraph (4)(A) to
3 the Armed Forces, the National Oceanic and
4 Atmospheric Administration shall pay into the
5 Department of Defense Military Retirement
6 Fund an amount, to be calculated by the Sec-
7 retary of Defense in consultation with the Sec-
8 retary of the Treasury, equal to the actuarial
9 present value of any retired or retainer pay they
10 will draw upon retirement, including full credit
11 for service in the National Oceanic and Atmos-
12 pheric Administration (referred to in this title
13 as the “NOAA Corps”). Any payment under
14 this subparagraph shall, for purposes of para-
15 graph (2) of section 206(g), be considered to be
16 an expenditure described in such paragraph.

17 (B) OTHER TRANSFERS.—For commis-
18 sioned officers who transfer under paragraph
19 (4)(B) to the United States Coast Guard, full
20 credit for service in the NOAA Corps shall be
21 given for purposes of any annuity or other simi-
22 lar benefit under the retirement system for
23 members of the United States Coast Guard, en-
24 titlement to which is based on the separation of
25 such officer.

1 (C) PAYMENT TO CERTAIN COMMISSIONED
2 OFFICERS WHO TRANSFER TO CIVIL SERVICE
3 POSITIONS.—(i) For a commissioned officer
4 who becomes employed in a civil service position
5 pursuant to paragraph (4)(C) and thereupon
6 becomes subject to the Federal Employees' Re-
7 tirement System, the National Oceanic and At-
8 mospheric Administration shall pay, on such of-
9 ficer's behalf—

10 (I) into the Civil Service Retirement
11 and Disability Fund, the amounts required
12 under clause (ii); and

13 (II) into the Government Securities
14 Investment Fund, the amount required
15 under clause (iii).

16 (ii)(I) The amount required under this
17 subclause is the amount of any deposit required
18 under section 8422(e)(1) of title 5, United
19 States Code, with respect to any prior service
20 performed by the individual as a commissioned
21 officer of the National Oceanic and Atmos-
22 pheric Administration.

23 (II) To determine the amount required
24 under this subclause, first determine, for each
25 year of service with respect to which the deposit

1 under subclause (I) relates, the product of the
2 normal-cost percentage for such year (as deter-
3 mined under the last sentence of this subclause)
4 multiplied by basic pay received by the individ-
5 ual for any such service performed in such year.
6 Second, take the sum of the amounts deter-
7 mined for the respective years under the first
8 sentence. Finally, subtract from such sum the
9 amount of the deposit under subclause (I). For
10 purposes of the first sentence, the normal-cost
11 percentage for any year shall be as determined
12 for such year under the provisions of section
13 8423(a)(1) of title 5, United States Code, ex-
14 cept that, in the case of any year before the
15 first year for which any normal-cost percentage
16 was determined under such provisions, the nor-
17 mal-cost percentage for such first year shall be
18 used.

19 (iii) The amount required under this clause
20 is the amount by which the separation pay to
21 which the officer would have been entitled
22 under the second sentence of paragraph (2)(A)
23 (assuming the conditions for receiving such sep-
24 aration pay have been met) exceeds the amount
25 of the deposit under clause (ii)(I), if at all.

1 (iv)(I) Any contribution made under this
2 subparagraph to the Thrift Savings Plan shall
3 not be subject to any otherwise applicable limi-
4 tation on contributions contained in the Inter-
5 nal Revenue Code of 1986, and shall not be
6 taken into account in applying any such limita-
7 tion to other contributions or benefits under the
8 Thrift Savings Plan, with respect to the year in
9 which the contribution is made.

10 (II) A plan referred to in subclause (I)
11 shall not be treated as failing to meet any non-
12 discrimination requirement by reason of the
13 making of such contribution.

14 (6) REPEALS.—

15 (A) IN GENERAL.—The following provi-
16 sions of law are repealed:

17 (i) The Coast and Geodetic Survey
18 Commissioned Officers' Act of 1948 (33
19 U.S.C. 853a–853o, 853p–853u).

20 (ii) Section 5 of the Act of February
21 16, 1929 (45 Stat. 1187, chapter 221; 33
22 U.S.C. 852a).

23 (iii) The Act of January 19, 1942 (56
24 Stat. 6, chapter 6).

1 (iv) Section 9(c) of Public Law 87–
2 649 (76 Stat. 495).

3 (v) Section 16 of the Act of May 22,
4 1917 (40 Stat. 87, chapter 20; 33 U.S.C.
5 854).

6 (vi) The Act of December 3, 1942 (56
7 Stat. 1038, chapter 670).

8 (vii) Sections 1 through 5 of Public
9 Law 91–621 (33 U.S.C. 857–1 through
10 857–5).

11 (viii) Section 3 of the Act of August
12 10, 1956 (70A Stat. 619, chapter 1041; 33
13 U.S.C. 857a).

14 (ix) Section 11 of the Act of May 18,
15 1920 (41 Stat. 603, chapter 190; 33
16 U.S.C. 864).

17 (x) The Act of July 22, 1947 (61
18 Stat. 400, chapter 286; 33 U.S.C. 873 and
19 874).

20 (xi) The Act of August 3, 1956 (70
21 Stat. 988, chapter 932; 33 U.S.C. 875 and
22 876).

23 (B) RULE OF CONSTRUCTION.—No repeal
24 under this subparagraph shall affect any annu-
25 ity or other similar benefit payable, under any

1 provision of law so repealed, based on the separa-
2 tion of any individual from the NOAA Corps
3 on or before September 30, 2000. Any author-
4 ity exercised by the Secretary of Commerce or
5 the designee of the Secretary with respect to
6 any such benefits shall be exercised by the Ad-
7 ministrator of Oceans and Atmosphere, and any
8 authorization of appropriations relating to those
9 benefits, which is in effect as of September 30,
10 2000, shall be considered to have remained in
11 effect.

12 (C) EFFECTIVE DATE OF REPEALS.—The
13 effective date of the repeals under subpara-
14 graph (A) shall be October 1, 2000.

15 (D) APPLICABILITY OF RETIREMENT
16 LAWS.—

17 (i) IN GENERAL.—All laws relating to
18 the retirement of commissioned officers of
19 the Navy shall apply to commissioned offi-
20 cers of the former Commissioned Officers
21 Corps of the National Oceanic and Atmos-
22 pheric Administration and its predecessors.

23 (ii) ACTIVE MILITARY SERVICE.—Ac-
24 tive service of officers of the former Com-
25 missioned Officers Corps of the National

1 Oceanic and Atmospheric Administration
2 and its predecessors who have retired from
3 the Commissioned Officers Corps shall be
4 deemed to be active military service in the
5 United States Navy for purposes of all
6 rights, privileges, immunities, and benefits
7 provided to retired commissioned officers
8 of the Navy by the laws and regulations of
9 the United States and any agency thereof.
10 In the Administration of those laws (in-
11 cluding regulations) with respect to retired
12 officers of the former Commissioned Offi-
13 cers Corps of the National Oceanic and At-
14 mospheric Administration and its prede-
15 cessors, the authority of the Secretary of
16 the Navy shall be exercised by the Admin-
17 istrator of Oceans and Atmosphere.

18 (iii) ITS PREDECESSORS DEFINED.—

19 For purposes of this subparagraph, the
20 term “its predecessors” means the former
21 Commissioned Officers Corps of the Envi-
22 ronmental Science Services Administration
23 and the former Commissioned Officers
24 Corps of the Coast and Geodetic Survey.

1 (7) CREDITABILITY OF NATIONAL OCEANIC AND
2 ATMOSPHERIC ADMINISTRATION SERVICE FOR PUR-
3 POSES RELATING TO REDUCTIONS IN FORCE.—A
4 commissioned officer who is separated from the ac-
5 tive list of the National Oceanic and Atmospheric
6 Administration or its successor by reason of para-
7 graph (1) shall, for purposes of any subsequent re-
8 duction in force, receive credit for any period of
9 service performed as such an officer before separa-
10 tion from such list to the same extent and in the
11 same manner as if the period had been a period of
12 active service in the Armed Forces.

13 (8) ABOLITION.—Effective September 30,
14 2000, the Office of the National Oceanic and Atmos-
15 pheric Administration Corps of Operations or its
16 successor and the Commissioned Personnel Center
17 are abolished.

18 (g) NATIONAL OCEANIC AND ATMOSPHERIC ADMIN-
19 ISTRATION FLEET.—

20 (1) SERVICE CONTRACTS.—Notwithstanding
21 any other provision of law, the Administrator of
22 Oceans and Atmosphere shall enter into contracts,
23 including multiyear contracts, subject to paragraph
24 (3), for the use of vessels to conduct oceanographic
25 research and fisheries research, monitoring, enforce-

1 ment, and management, and to acquire other data
2 necessary to carry out the missions of the National
3 Oceanic and Atmospheric Administration. The Ad-
4 ministrator of Oceans and Atmosphere shall enter
5 into these contracts unless—

6 (A) the cost of the contract is more than
7 the cost (including the cost of vessel operation,
8 maintenance, and all personnel) to the National
9 Oceanic and Atmospheric Administration of ob-
10 taining those services on vessels of the National
11 Oceanic and Atmospheric Administration;

12 (B) the contract is for a period greater
13 than 7 years; or

14 (C) the data is acquired through a vessel
15 agreement pursuant to paragraph (4).

16 (2) VESSELS.—The Administrator of Oceans
17 and Atmosphere may not enter into any contract for
18 the construction, lease-purchase, upgrade, or service
19 life extension of any vessel.

20 (3) MULTIYEAR CONTRACTS.—

21 (A) IN GENERAL.—Subject to subpara-
22 graphs (B) and (C), and notwithstanding sec-
23 tion 1341 of title 31, United States Code, and
24 section 11 of title 41, United States Code, the

1 Administrator of Oceans and Atmosphere may
2 acquire data under multiyear contracts.

3 (B) REQUIRED FINDINGS.—The Adminis-
4 trator of Oceans and Atmosphere may not enter
5 into a contract pursuant to this paragraph un-
6 less the Administrator finds, with respect to
7 that contract, that there is a reasonable expect-
8 ation that throughout the contemplated con-
9 tract period the Administrator will request from
10 Congress funding for the contract at the level
11 required to avoid the termination of that con-
12 tract.

13 (C) REQUIRED PROVISIONS.—The Admin-
14 istrator of Oceans and Atmosphere may not
15 enter into a contract under this paragraph un-
16 less the contract includes—

17 (i) a provision under which the obliga-
18 tion of the United States to make pay-
19 ments under the contract for any fiscal
20 year is subject to the availability of appro-
21 priations provided in advance for those
22 payments;

23 (ii) a provision that specifies the term
24 of effectiveness of the contract; and

1 (iii) appropriate provisions under
2 which, in case of any termination of the
3 contract before the end of the term speci-
4 fied pursuant to clause (ii), the United
5 States shall only be liable for the lesser
6 of—

7 (I) an amount specified in the
8 contract for such a termination; or

9 (II) amounts that were appro-
10 priated before the date of the termi-
11 nation for the performance of the con-
12 tract or for procurement of the type
13 of acquisition covered by the contract
14 and are unobligated on the date of the
15 termination.

16 (4) VESSEL AGREEMENTS.—The Administrator
17 of Oceans and Atmosphere—

18 (A) shall, if appropriate, use excess capac-
19 ity of University National Oceanographic Lab-
20 oratory System vessels; and

21 (B) may enter into memoranda of agree-
22 ment with the operators of the vessels referred
23 to in subparagraph (A) to carry out the require-
24 ment under that subparagraph.

1 (5) TRANSFER OF EXCESS VESSELS.—The Ad-
2 ministrators of Oceans and Atmosphere shall transfer
3 any vessel that weighs more than 1,500 gross tons
4 that are excess to the needs of the National Oceanic
5 and Atmospheric Administration to the National De-
6 fense Reserve Fleet. Notwithstanding any other pro-
7 vision of law, these vessels may be scrapped in ac-
8 cordance with section 510(i) of the Merchant Marine
9 Act, 1936 (46 U.S.C. App. 1160(i)).

10 (i) NATIONAL MARINE FISHERIES SERVICE.—There
11 are transferred to the National Oceanic and Atmospheric
12 Administration all functions that on the day before the
13 effective date of this section are authorized by law to be
14 performed by the National Marine Fisheries Service.

15 (h) NATIONAL OCEAN SERVICE.—Except as other-
16 wise provided in this Act, there are transferred to the Na-
17 tional Oceanic and Atmospheric Administration estab-
18 lished under section 206 all functions and assets of the
19 National Oceanic and Atmospheric Administration that on
20 the date immediately before the effective date of this sec-
21 tion are authorized to be performed by the National Ocean
22 Service (including the Coastal Ocean Program).

23 (k) TRANSFER OF COASTAL NONPOINT POLLUTION
24 CONTROL FUNCTIONS.—There are transferred to the Ad-
25 ministrators of the Environmental Protection Agency the

1 functions under section 6217 of the Omnibus Budget Rec-
2 onciliation Act of 1990 (16 U.S.C. 1455b) that on the day
3 before the effective date of this section are vested in the
4 Secretary of Commerce.

5 **SEC. 206. NATIONAL OCEANIC AND ATMOSPHERIC ADMIN-**
6 **ISTRATION.**

7 (a) ESTABLISHMENT.—

8 (1) IN GENERAL.—There is established as an
9 independent agency in the executive branch the Na-
10 tional Oceanic and Atmospheric Administration (in
11 this section referred to as “NOAA”). NOAA, and all
12 functions and offices transferred to NOAA under
13 this Act, shall be administered under the supervision
14 and direction of an Administrator of Oceans and At-
15 mosphere.

16 (2) ADMINISTRATOR OF OCEANS AND ATMOS-
17 PHERE.—The Administrator of Oceans and Atmos-
18 phere shall—

19 (A) be appointed by the President, by and
20 with the advice and consent of the Senate; and

21 (B) receive basic pay at the rate payable
22 for level II of the Executive Schedule under sec-
23 tion 5313 of title 5, United States Code.

24 (3) FUNCTIONS.—The Administrator of Oceans
25 and Atmosphere shall perform the functions per-

1 formed by the Administrator of the National Ocea-
2 nic and Atmospheric Administration, except as oth-
3 erwise provided in this Act.

4 (b) PRINCIPAL OFFICER.—There shall be in NOAA,
5 on the transfer of functions and offices under this Act,
6 a Director of the National Bureau of Standards, who—

7 (1) shall be appointed by the President, by and
8 with the advice and consent of the Senate; and

9 (2) shall receive basic pay at the rate payable
10 for level IV of the Executive Schedule under section
11 5315 of title 5, United States Code.

12 (c) ADDITIONAL OFFICERS.—

13 (1) IN GENERAL.—There shall be in NOAA—

14 (A) a Chief Financial Officer, to be ap-
15 pointed by the President, by and with the ad-
16 vice and consent of the Senate;

17 (B) a Chief of External Affairs, to be ap-
18 pointed by the President, by and with the ad-
19 vice and consent of the Senate;

20 (C) a General Counsel, to be appointed by
21 the President, by and with the advice and con-
22 sent of the Senate; and

23 (D) an Inspector General, to be appointed
24 in accordance with the Inspector General Act of
25 1978 (5 U.S.C. App.).

1 (2) COMPENSATION.—Each Officer appointed
2 under this subsection shall receive basic pay at the
3 rate payable for level IV of the Executive Schedule
4 under section 5315 of title 5, United States Code.

5 (d) TRANSFER OF FUNCTIONS AND OFFICES.—Ex-
6 cept as otherwise provided in this Act, there are trans-
7 ferred to NOAA—

8 (1) the functions and offices of the National
9 Oceanic and Atmospheric Administration, as pro-
10 vided in section 205;

11 (2) the National Bureau of Standards, along
12 with its functions and offices, as provided in section
13 202; and

14 (3) the Office of Space Commerce, along with
15 its functions and offices.

16 (e) ELIMINATION OF POSITIONS.—The Adminis-
17 trator of Oceans and Atmosphere may eliminate positions
18 that are no longer necessary because of the termination
19 of functions under this section and sections 202 and 205.

20 (f) AGENCY TERMINATIONS.—

21 (1) TERMINATIONS.—

22 (A) IN GENERAL.—On the date specified
23 in section 208(a), the following shall terminate:

24 (i) The Office of the Deputy Adminis-
25 trator and Assistant Secretary of the Na-

1 tional Oceanic and Atmospheric Adminis-
2 tration.

3 (ii) The Office of the Deputy Under
4 Secretary of the National Oceanic and At-
5 mospheric Administration.

6 (iii) The Office of the Chief Scientist
7 of the National Oceanic and Atmospheric
8 Administration.

9 (iv) The position of Deputy Assistant
10 Secretary for Oceans and Atmosphere.

11 (v) The position of Deputy Assistant
12 Secretary for International Affairs.

13 (vi) Any office of the National Oce-
14 anic and Atmospheric Administration or
15 the National Bureau of Standards whose
16 primary purpose is to perform high per-
17 formance computing communications, leg-
18 islative, personnel, public relations, budget,
19 constituent, intergovernmental, inter-
20 national, policy and strategic planning,
21 sustainable development, administrative, fi-
22 nancial, educational, legal and coordination
23 functions.

1 (vii) The position of Associate Direc-
2 tor of the National Institute of Standards
3 and Technology.

4 (B) REQUIREMENT.—The functions re-
5 ferred to in subparagraph (A)(vi) shall be per-
6 formed only by officers described in subsection
7 (c).

8 (2) TERMINATION OF EXECUTIVE SCHEDULE
9 POSITIONS.—Each position that, before the effective
10 date of this section, was expressly authorized by law,
11 or the incumbent of which is authorized to receive
12 compensation at the rate prescribed for levels I
13 through V of the Executive Schedule under sections
14 5312 through 5315 of title 5, United States Code,
15 in an office terminated pursuant to this section and
16 sections 202 and 205 shall also terminate.

17 **SEC. 207. MISCELLANEOUS TERMINATIONS; MORATORIUM**
18 **ON PROGRAM ACTIVITIES.**

19 (a) TERMINATIONS.—The following agencies and pro-
20 grams of the Department of Commerce are terminated:

21 (1) The Minority Business Development Admin-
22 istration.

23 (2) The programs and activities of the National
24 Telecommunications and Information Administration
25 referred to in section 204(a).

1 (3) The Advanced Technology Program under
2 section 28 of the National Institute of Standards
3 and Technology Act (15 U.S.C. 278n), as in effect
4 on the day before the effective date of section
5 202(d).

6 (4) The Manufacturing Extension Programs
7 under sections 25 and 26 of the National Institute
8 of Standards and Technology Act (15 U.S.C. 278k
9 and 278l), as in effect on the day before the effective
10 date of section 202(d).

11 (5) The National Institute of Standards and
12 Technology METRIC Program.

13 (6) The Economics and Statistics Administra-
14 tion.

15 (b) MORATORIUM ON PROGRAM ACTIVITIES.—The
16 authority to make grants, enter into contracts, provide as-
17 sistance, incur obligations, or provide commitments (in-
18 cluding any enlargement of existing obligations or commit-
19 ments, except if required by law) with respect to the agen-
20 cies and programs described in subsection (a) is termi-
21 nated effective on the date of enactment of this Act.

22 **SEC. 208. EFFECTIVE DATE.**

23 (a) IN GENERAL.—Except as provided in subsection
24 (b), this title shall take effect on the date specified in sec-
25 tion 102(c).

1 (b) PROVISIONS EFFECTIVE ON DATE OF ENACT-
 2 MENT.—The following provisions of this title shall take ef-
 3 fect on the date of enactment of this Act:

4 (1) Section 201.

5 (2) Section 205(g), except as otherwise pro-
 6 vided in that section.

7 (3) Section 207(b).

8 (4) This section.

9 **TITLE III—ESTABLISHMENT OF**
 10 **UNITED STATES TRADE AD-**
 11 **MINISTRATION**

12 **Subtitle A—General Provisions**

13 **SEC. 301. DEFINITIONS.**

14 In this title:

15 (1) **FEDERAL AGENCY.**—The term “Federal
 16 agency” has the meaning given to the term “agen-
 17 cy” in section 551(1) of title 5, United States Code.

18 (2) **TRADE ADMINISTRATION.**—The term
 19 “Trade Administration” means the United States
 20 Trade Administration established by section 311 of
 21 this Act.

22 (3) **TRADE REPRESENTATIVE.**—The term
 23 “Trade Representative” means the United States
 24 Trade Representative provided for under section 311
 25 of this Act.

1 **Subtitle B—United States Trade**
2 **Administration**

3 **CHAPTER 1—ESTABLISHMENT**

4 **SEC. 311. ESTABLISHMENT OF THE UNITED STATES TRADE**
5 **ADMINISTRATION.**

6 (a) **IN GENERAL.**—The Trade Administration is es-
7 tablished in the executive branch of Government as an
8 independent establishment as defined in section 104 of
9 title 5, United States Code. The Trade Representative
10 shall be the head of the Trade Administration and shall
11 be appointed by the President, by and with the advice and
12 consent of the Senate.

13 (b) **AMBASSADOR STATUS.**—The Trade Representa-
14 tive shall have the rank of Ambassador Extraordinary and
15 Plenipotentiary and shall represent the United States in
16 all trade negotiations conducted by the Trade Administra-
17 tion.

18 (c) **CONTINUED SERVICE OF CURRENT TRADE REP-**
19 **RESENTATIVE.**—The individual serving as Trade Rep-
20 resentative on the date immediately preceding the effective
21 date of this title may continue to serve as Trade Rep-
22 resentative under this section until such time as the Trade
23 Representative is appointed pursuant to subsection (a).

1 (d) SUCCESSOR TO THE DEPARTMENT OF COM-
2 MERCE.—The Trade Administration shall be the successor
3 to the Department of Commerce for purposes of protocol.

4 **SEC. 312. FUNCTIONS OF THE TRADE REPRESENTATIVE.**

5 (a) IN GENERAL.—In addition to the functions trans-
6 ferred to the Trade Representative by this title, such other
7 functions as the President may assign or delegate to the
8 Trade Representative, and such other functions as the
9 Trade Representative may, after the effective date of this
10 title, be required to carry out by law, the Trade Represent-
11 ative shall—

12 (1) serve as the principal advisor to the Presi-
13 dent on international trade policy and advise the
14 President on the impact of other policies of the
15 United States Government on international trade;

16 (2) exercise primary responsibility, with the ad-
17 vice of the interagency organization established
18 under section 242 of the Trade Expansion Act of
19 1962 (19 U.S.C. 1872), for developing and imple-
20 menting international trade policy, including com-
21 modity matters and, to the extent related to inter-
22 national trade policy, direct investment matters and,
23 in exercising such responsibility, advance and imple-
24 ment, as the primary mandate of the Trade Admin-
25 istration, the goals of the United States to—

1 (A) maintain United States leadership in
2 international trade liberalization and expansion
3 efforts;

4 (B) reinvigorate the ability of the United
5 States economy to compete in international
6 markets and to respond flexibly to changes in
7 international competition; and

8 (C) expand United States participation in
9 international trade through aggressive pro-
10 motion and marketing of goods and services
11 that are products of the United States;

12 (3) exercise lead responsibility for the conduct
13 of international trade negotiations, including nego-
14 tiations relating to commodity matters and, to the
15 extent that such negotiations are related to inter-
16 national trade, direct investment negotiations;

17 (4) exercise lead responsibility for the establish-
18 ment of a national export strategy, including policies
19 designed to implement such strategy;

20 (5) with the advice of the interagency organiza-
21 tion established under section 242 of the Trade Ex-
22 pansion Act of 1962, issue policy guidance to other
23 Federal agencies on international trade, commodity,
24 and direct investment functions to the extent nec-

1 essary to assure the coordination of international
2 trade policy;

3 (6) seek and promote new opportunities for
4 United States products and services to compete in
5 the world marketplace;

6 (7) assist small businesses in developing export
7 markets;

8 (8) enforce the laws of the United States relat-
9 ing to trade;

10 (9) analyze economic trends and developments;

11 (10) report directly to Congress—

12 (A) on the administration of, and matters
13 pertaining to, the trade agreements program
14 under the Omnibus Trade and Competitiveness
15 Act of 1988, the Trade Act of 1974, the Trade
16 Expansion Act of 1962, section 350 of the Tar-
17 iff Act of 1930, and any other law relating to
18 trade agreements; and

19 (B) with respect to other issues pertaining
20 to international trade;

21 (11) keep each official adviser to the United
22 States delegations to international conferences,
23 meetings, and negotiation sessions relating to trade
24 agreements who is appointed from the Committee on
25 Finance of the Senate or the Committee on Ways

1 and Means of the House of Representatives under
2 section 161 of the Trade Act of 1974 (19 U.S.C.
3 2211) currently informed on United States negotiat-
4 ing objectives with respect to—

5 (A) trade agreements;

6 (B) the status of negotiations in progress
7 with respect to such agreements; and

8 (C) the nature of any changes in domestic
9 law or the administration thereof that the
10 Trade Representative may recommend to Con-
11 gress to carry out any trade agreement;

12 (12) consult and cooperate with State and local
13 governments and other interested parties on inter-
14 national trade matters of interest to such govern-
15 ments and parties, and to the extent related to inter-
16 national trade matters, on investment matters, and,
17 when appropriate, hold informal public hearings;

18 (13) serve as the principal advisor to the Presi-
19 dent on Government policies designed to contribute
20 to enhancing the ability of United States industry
21 and services to compete in international markets;

22 (14) develop recommendations for national
23 strategies and specific policies intended to enhance
24 the productivity and international competitiveness of
25 United States industries;

1 (15) serve as the principal advisor to the Presi-
2 dent in identifying and assessing the consequences
3 of any Government policies that adversely affect, or
4 have the potential to adversely affect, the inter-
5 national competitiveness of United States industries
6 and services;

7 (16) promote cooperation between business,
8 labor, and Government to improve industrial per-
9 formance and the ability of United States industries
10 to compete in international markets and to facilitate
11 consultation and communication between the Gov-
12 ernment and the private sector about domestic in-
13 dustrial performance and prospects and the perform-
14 ance and prospects of foreign competitors; and

15 (17) monitor and enforce foreign government
16 compliance with international trade agreements to
17 protect United States interests.

18 (b) INTERAGENCY ORGANIZATION.—The Trade Rep-
19 resentative shall be the chairperson of the interagency or-
20 ganization established under section 242 of the Trade Ex-
21 pansion Act of 1962.

22 (c) NATIONAL SECURITY COUNCIL.—The Trade Rep-
23 resentative shall be a member of the National Security
24 Council.

1 (d) ADVISORY COUNCIL.—The Trade Representative
2 shall be Deputy Chairman of the National Advisory Coun-
3 cil on International Monetary and Financial Policies es-
4 tablished under Executive Order No. 11269, issued Feb-
5 ruary 14, 1966.

6 (e) AGRICULTURE.—

7 (1) CONSULTATIONS.—The Trade Representa-
8 tive shall consult with the Secretary of Agriculture
9 or the designee of the Secretary of Agriculture on all
10 matters that potentially involve international trade
11 in agricultural products.

12 (2) UNITED STATES DELEGATION.—If an inter-
13 national meeting for negotiation or consultation in-
14 cludes discussion of international trade in agricul-
15 tural products, the Trade Representative or the des-
16 ignee of the Trade Representative shall be Chairman
17 of the United States delegation to such meeting and
18 the Secretary of Agriculture or the designee of such
19 Secretary shall be Vice Chairman. The provisions of
20 this paragraph shall not limit the authority of the
21 Trade Representative under subsection (h) to assign
22 to the Secretary of Agriculture responsibility for the
23 conduct of, or participation in, any trade negotiation
24 or meeting.

1 (f) TRADE PROMOTION.—The Trade Representative
 2 shall be the chairperson of the Trade Promotion Coordi-
 3 nating Committee established under section 2312 of the
 4 Export Enhancement Act of 1988 (15 U.S.C. 4727).

5 (g) NATIONAL ECONOMIC COUNCIL.—The Trade
 6 Representative shall be a member of the National Eco-
 7 nomic Council established under Executive Order No.
 8 12835, issued January 25, 1993.

9 (h) INTERNATIONAL TRADE NEGOTIATIONS.—Ex-
 10 cept where expressly prohibited by law, the Trade Rep-
 11 resentative, at the request or with the concurrence of the
 12 head of any other Federal agency, may assign the respon-
 13 sibility for conducting or participating in any specific
 14 international trade negotiation or meeting to the head of
 15 such agency whenever the Trade Representative deter-
 16 mines that the subject matter of such international trade
 17 negotiation is related to the functions carried out by such
 18 agency.

19 **CHAPTER 2—OFFICERS**

20 **SEC. 321. DEPUTY UNITED STATES TRADE REPRESENTA-** 21 **TIVES.**

22 (a) ESTABLISHMENT.—There shall be in the Trade
 23 Administration 3 Deputy United States Trade Represent-
 24 atives, who shall be appointed by the President, by and
 25 with the advice and consent of the Senate. The Deputy

1 United States Trade Representatives shall exercise all
2 functions under the direction of the Trade Representative,
3 and shall include—

4 (1) the Deputy United States Trade Represent-
5 ative for Negotiations (referred to in this title as the
6 “Deputy Trade Representative for Negotiations”);

7 (2) the Deputy United States Trade Represent-
8 ative to the World Trade Organization (referred to
9 in this title as the “Deputy Trade Representative to
10 the WTO”); and

11 (3) the Deputy United States Trade Represent-
12 ative for Administration (referred to in this title as
13 the “Deputy Trade Representative for Administra-
14 tion”).

15 (b) FUNCTIONS OF DEPUTY TRADE REPRESENTA-
16 TIVES.—

17 (1) DEPUTY TRADE REPRESENTATIVE FOR NE-
18 GOTIATIONS.—The Deputy Trade Representative for
19 Negotiations shall exercise all functions transferred
20 under section 331 relating to trade negotiations and
21 such other functions as the Trade Representative
22 may direct and shall have the rank and status of
23 Ambassador.

24 (2) DEPUTY TRADE REPRESENTATIVE TO THE
25 WTO.—The Deputy Trade Representative to the

1 WTO shall exercise all functions relating to rep-
2 resentation to the World Trade Organization and
3 shall have the rank and status of Ambassador.

4 (3) DEPUTY TRADE REPRESENTATIVE FOR AD-
5 MINISTRATION.—

6 (A) ABSENCE, DISABILITY, OR VACANCY
7 OF TRADE REPRESENTATIVE.—The Deputy
8 Trade Representative for Administration shall
9 act for and exercise the functions of the Trade
10 Representative during the absence or disability
11 of the Trade Representative or in the event the
12 office of the Trade Representative becomes va-
13 cant. The Deputy Administrator shall act for
14 and exercise the functions of the Trade Rep-
15 resentative until the absence or disability of the
16 Trade Representative no longer exists or a suc-
17 cessor to the Trade Representative has been ap-
18 pointed by the President and confirmed by the
19 Senate.

20 (B) FUNCTIONS.—The Deputy Trade Rep-
21 resentative for Administration shall exercise all
22 functions, under the direction of the Trade
23 Representative, transferred to or established in
24 the Trade Administration, except those func-
25 tions exercised by the Deputy United States

1 Trade Representatives described in paragraphs
2 (1) and (2), the Assistant Administrator for
3 Export Promotion, the Inspector General of the
4 Trade Administration, and the General Counsel
5 of the Trade Administration.

6 **SEC. 322. ASSISTANT ADMINISTRATORS.**

7 (a) ESTABLISHMENT.—There shall be in the Trade
8 Administration 4 Assistant Administrators, who shall be
9 appointed by the President, by and with the advice and
10 consent of the Senate. The Assistant Administrators shall
11 exercise all functions under the direction of the Deputy
12 Trade Representative for Administration and include—

13 (1) the Assistant Administrator for Export Ad-
14 ministration;

15 (2) the Assistant Administrator for Import Ad-
16 ministration;

17 (3) the Assistant Administrator for Trade and
18 Policy Analysis; and

19 (4) the Assistant Administrator for Export Pro-
20 motion.

21 (b) FUNCTIONS OF ASSISTANT ADMINISTRATORS.—

22 (1) EXPORT ADMINISTRATION.—The Assistant
23 Administrator for Export Administration shall exer-
24 cise all functions transferred under section
25 332(1)(C).

1 (2) IMPORT ADMINISTRATION.—The Assistant
2 Administrator for Import Administration shall exer-
3 cise all functions transferred under section
4 332(1)(D).

5 (3) TRADE AND POLICY ANALYSIS.—The Assist-
6 ant Administrator for Trade and Policy Analysis
7 shall exercise all functions transferred under section
8 332(1)(B) and all functions transferred under sec-
9 tion 332(2).

10 (4) EXPORT PROMOTION.—The Assistant Ad-
11 ministrator for Export Promotion shall exercise all
12 functions transferred under sections 332(1)(A)(ii)
13 and 333, and shall have the rank and status of Am-
14 bassador.

15 **SEC. 323. GENERAL COUNSEL.**

16 There shall be in the Trade Administration a General
17 Counsel, who shall be appointed by the President, by and
18 with the advice and consent of the Senate. The General
19 Counsel shall provide legal assistance to the Trade Rep-
20 resentative concerning the activities, programs, and poli-
21 cies of the Trade Administration.

22 **SEC. 324. INSPECTOR GENERAL.**

23 There shall be in the Trade Administration an In-
24 spector General who shall be appointed in accordance with

1 the Inspector General Act of 1978, as amended by section
2 371(a) of this Act.

3 **SEC. 325. CHIEF FINANCIAL OFFICER.**

4 There shall be in the Trade Administration a Chief
5 Financial Officer who shall be appointed in accordance
6 with section 901 of title 31, United States Code, as
7 amended by section 371(e) of this Act. The Chief Finan-
8 cial Officer shall perform all functions prescribed by the
9 Deputy Trade Representative for Administration, under
10 the direction of the Deputy Trade Representative.

11 **CHAPTER 3—TRANSFERS TO THE TRADE**
12 **ADMINISTRATION**

13 **SEC. 331. OFFICE OF THE UNITED STATES TRADE REP-**
14 **RESENTATIVE.**

15 (a) **ABOLISHMENT OF OFFICE OF THE USTR.**—Ef-
16 fective on the applicable date specified in section 102(c),
17 the Office of the United States Trade Representative es-
18 tablished by section 141 of the Trade Act of 1974 (19
19 U.S.C. 141) as in effect on the day before the applicable
20 date specified in section 102(c) is abolished.

21 (b) **TRANSFER OF FUNCTIONS.**—Except as otherwise
22 provided in this Act, all functions that on the day before
23 the applicable date specified in section 102(c) are author-
24 ized to be performed by the United States Trade Rep-
25 resentative, any other officer or employee of the Office of

1 the United States Trade Representative acting in that ca-
2 pacity, or any agency or office of the Office of the United
3 States Trade Representative, are transferred to the Trade
4 Administration established under this title effective on
5 that date.

6 (c) DETERMINATION OF CERTAIN FUNCTIONS.—If
7 necessary, the Office of Management and Budget shall
8 make any determination of the functions that are trans-
9 ferred under this title.

10 **SEC. 332. TRANSFERS FROM THE DEPARTMENT OF COM-**
11 **MERCE.**

12 There are transferred to the Trade Administration
13 the following functions:

14 (1) All functions of, and all functions performed
15 under the direction of, the following officers and em-
16 ployees of the Department of Commerce:

17 (A)(i) The Under Secretary of Commerce
18 for International Trade.

19 (ii) The Director General of the United
20 States and Foreign Commercial Service, relat-
21 ing to all functions exercised by the Service.

22 (B) The Assistant Secretary of Commerce
23 for International Economic Policy and the As-
24 sistant Secretary of Commerce for Trade Devel-
25 opment.

1 (C) The Under Secretary of Commerce for
2 Export Administration.

3 (D) The Assistant Secretary of Commerce
4 for Import Administration.

5 (2) All functions of the Secretary of Commerce
6 relating to the National Trade Data Bank.

7 (3) All functions of the Secretary of Commerce
8 under the Tariff Act of 1930, the Uruguay Round
9 Agreements Act, the Trade Act of 1974, and other
10 Acts relating to international trade for which re-
11 sponsibility is not otherwise assigned under this
12 title.

13 **SEC. 333. TRADE AND DEVELOPMENT AGENCY.**

14 There are transferred to the Assistant Administrator
15 for Export Promotion all functions of the Trade and De-
16 velopment Agency and all functions of the Director of the
17 Trade and Development Agency.

18 **SEC. 334. EXPORT-IMPORT BANK.**

19 (a) IN GENERAL.—

20 (1) TRANSFER OF FUNCTIONS.—There are
21 transferred to the Trade Representative all functions
22 of the Secretary of Commerce relating to the Ex-
23 port-Import Bank of the United States.

1 (2) CONFORMING AMENDMENT.—Section
2 3(c)(1) of the Export-Import Bank Act of 1945 (12
3 U.S.C. 635a(c)(1)) is amended to read as follows:

4 “(c)(1) There shall be a Board of Directors of the
5 Bank consisting of the United States Trade Representa-
6 tive (who shall serve as Chairman), the President of the
7 Export-Import Bank of the United States (who shall serve
8 as Vice Chairman), the first Vice President, and 2 addi-
9 tional persons appointed by the President of the United
10 States, by and with the advice and consent of the Sen-
11 ate.”.

12 (b) EX OFFICIO MEMBER OF EXPORT-IMPORT BANK
13 BOARD OF DIRECTORS.—The Assistant Administrator for
14 Export Promotion shall serve as an ex officio nonvoting
15 member of the Board of Directors of the Export-Import
16 Bank.

17 (c) AMENDMENTS TO RELATED BANKING AND
18 TRADE ACTS.—Section 2301(h) of the Omnibus Trade
19 and Competitiveness Act of 1988 (15 U.S.C. 4721(h)) is
20 amended to read as follows:

21 “(h) ASSISTANCE TO EXPORT-IMPORT BANK.—The
22 Commercial Service shall provide such services as the As-
23 sistant Administrator for Export Promotion of the United
24 States Trade Administration determines necessary to as-
25 sist the Export-Import Bank of the United States to carry

1 out the lending, loan guarantee, insurance, and other ac-
2 tivities of the Bank.”.

3 **SEC. 335. OVERSEAS PRIVATE INVESTMENT CORPORATION.**

4 (a) BOARD OF DIRECTORS.—The second and third
5 sentences of section 233(b) of the Foreign Assistance Act
6 of 1961 (22 U.S.C. 2193(b)) are amended to read as fol-
7 lows: “The United States Trade Representative shall be
8 the Chairman of the Board. The Administrator of the
9 Agency for International Development (who shall serve as
10 Vice Chairman) shall serve on the Board.”.

11 (b) EX OFFICIO MEMBER OF OVERSEAS PRIVATE IN-
12 VESTMENT CORPORATION BOARD OF DIRECTORS.—The
13 Assistant Administrator for Export Promotion of the
14 United States Trade Administration shall serve as an ex
15 officio nonvoting member of the Board of Directors of the
16 Overseas Private Investment Corporation.

17 **SEC. 336. CONSOLIDATION OF EXPORT PROMOTION AND FI-**
18 **NANCING ACTIVITIES.**

19 (a) SUBMISSION OF PLAN.—

20 (1) IN GENERAL.—Not later than 180 days
21 after the date of enactment of this Act, the Presi-
22 dent shall transmit to Congress a comprehensive
23 plan—

1 (A) to consolidate Federal nonagricultural
2 export promotion activities and export financing
3 activities; and

4 (B) to transfer those functions to the
5 Trade Administration.

6 (2) CONTENTS OF PLAN.—The plan under
7 paragraph (1) shall provide for—

8 (A) the elimination of overlap and duplica-
9 tion among all Federal nonagricultural export
10 promotion activities and export financing activi-
11 ties;

12 (B) a unified budget for all Federal non-
13 agricultural export promotion activities which
14 eliminates funding for overlapping and duplica-
15 tive activities identified under subparagraph
16 (A); and

17 (C) a long-term agenda for developing bet-
18 ter cooperation between local, State, and Fed-
19 eral programs and activities designed to stimu-
20 late or assist United States businesses in ex-
21 porting nonagricultural goods or services that
22 are products of the United States, including
23 sharing of facilities, costs, and export market
24 research data.

1 (b) PLAN ELEMENTS.—The plan under subsection
2 (a) shall—

3 (1) place all Federal nonagricultural export pro-
4 motion activities and export financing activities with-
5 in the Trade Administration;

6 (2) achieve an overall 25 percent reduction in
7 the amount of funding for all Federal non-
8 agricultural export promotion activities by not later
9 than 2 years after the date of enactment of this Act;

10 (3) identify any function of the Department of
11 Commerce or of any other Federal department not
12 transferred to the Trade Administration by this title,
13 which should be transferred to the Trade Adminis-
14 tration in order to ensure United States competitive-
15 ness in international trade; and

16 (4) assess the feasibility and potential savings
17 resulting from—

18 (A) the consolidation of the Export-Import
19 Bank of the United States and the Overseas
20 Private Investment Corporation;

21 (B) the consolidation of the Boards of Di-
22 rectors of the Export-Import Bank and the
23 Overseas Private Investment Corporation; and

1 (C) the consolidation of the Trade and De-
2 velopment Agency with the consolidations de-
3 scribed in subparagraphs (A) and (B).

4 (c) DEFINITION.—As used in this section, the term
5 “Federal nonagricultural export promotion activities”
6 means all programs or activities of any department or
7 agency of the Federal Government (including trade mis-
8 sions, and departments and agencies with representatives
9 on the Trade Promotion Coordinating Committee estab-
10 lished under section 2312 of the Export Enhancement Act
11 of 1988 (15 U.S.C. 4727)), that are designed to stimulate
12 or assist United States businesses in exporting non-
13 agricultural goods or services that are products of the
14 United States.

15 **SEC. 337. FUNCTIONS RELATED TO TEXTILE AGREEMENTS.**

16 (a) FUNCTIONS OF CITA.—

17 (1) IN GENERAL.—Subject to paragraph (2),
18 those functions delegated to the Committee for the
19 Implementation of Textile Agreements established
20 under Executive Order No. 11651 (7 U.S.C. 1854
21 note) (in this subsection referred to as “CITA”) are
22 transferred to the Trade Administration.

23 (2) OTHER FUNCTIONS.—Those functions dele-
24 gated to CITA that relate to the assessment of the
25 impact of textile imports on domestic industry are

1 transferred to the International Trade Commission.
 2 The International Trade Commission shall make a
 3 determination and advise the President of the deter-
 4 mination not later than 60 days after receiving a re-
 5 quest for an investigation.

6 (b) ABOLITION OF CITA.—CITA is abolished.

7 **CHAPTER 4—ADMINISTRATIVE**
 8 **PROVISIONS**

9 **SEC. 341. PERSONNEL PROVISIONS.**

10 (a) APPOINTMENTS.—The Trade Representative may
 11 appoint and fix the compensation of such officers and em-
 12 ployees, including investigators, attorneys, and adminis-
 13 trative law judges, as may be necessary to carry out the
 14 functions of the Trade Representative and the Trade Ad-
 15 ministration. Except as otherwise provided by law, such
 16 officers and employees shall be appointed in accordance
 17 with the civil service laws and their compensation fixed
 18 in accordance with title 5, United States Code.

19 (b) POSITIONS ABOVE GS–15.—

20 (1) IN GENERAL.—At the request of the Trade
 21 Representative, the Director of the Office of Person-
 22 nel Management shall, under section 5108 of title 5,
 23 United States Code, provide for the establishment in
 24 a grade level above GS–15 of the General Schedule,
 25 and in the Senior Executive Service, of a number of

1 positions in the Trade Administration equal to the
2 number of positions in that grade level which—

3 (A) were used primarily for the perform-
4 ance of functions and offices transferred by this
5 title; and

6 (B) were assigned and filled on the day be-
7 fore the effective date of this title.

8 (2) APPOINTMENTS.—Appointments to posi-
9 tions provided for under this subsection may be
10 made without regard to the provisions of section
11 3324 of title 5, United States Code, if the individual
12 appointed to such position is an individual who is
13 transferred in connection with the transfer of func-
14 tions and offices pursuant to this title and, on the
15 day before the effective date of this title, holds a po-
16 sition and has duties comparable to those of the po-
17 sition to which appointed pursuant to this sub-
18 section.

19 (3) TERMINATION OF AUTHORITY.—The au-
20 thority under this subsection with respect to any po-
21 sition established at a grade level above GS-15 shall
22 terminate when the person first appointed to fill
23 such position ceases to hold such position.

24 (4) EXCEPTION TO EXECUTIVE POSITION LIM-
25 TATION.—For purposes of section 414(a)(3)(A) of

1 the Civil Service Reform Act of 1978, an individual
2 appointed under this subsection shall be deemed to
3 occupy the same position as the individual occupied
4 on the day before the effective date of this title.

5 (c) EXPERTS AND CONSULTANTS.—The Trade Rep-
6 resentative may obtain the services of experts and consult-
7 ants in accordance with section 3109 of title 5, United
8 States Code, and compensate such experts and consultants
9 for each day (including traveltime) at rates not in excess
10 of the maximum rate of pay for a position above GS-15
11 of the General Schedule under section 5332 of such title.
12 The Trade Representative may pay experts and consult-
13 ants who are serving away from their homes or regular
14 place of business travel expenses and per diem in lieu of
15 subsistence at rates authorized by sections 5702 and 5703
16 of such title for persons in Government service employed
17 intermittently.

18 (d) VOLUNTARY SERVICES.—

19 (1) IN GENERAL.—

20 (A) VOLUNTARY SERVICES UNDER TITLE
21 31.—The Trade Representative is authorized to
22 accept voluntary and uncompensated services
23 without regard to the provisions of section 1342
24 of title 31, United States Code, if such services
25 will not be used to displace Federal employees

1 employed on a full-time, part-time, or seasonal
2 basis.

3 (B) VOLUNTARY SERVICES UNDER TITLE
4 5.—The Trade Representative is authorized to
5 accept volunteer service in accordance with the
6 provisions of section 3111 of title 5, United
7 States Code.

8 (2) PAYMENT OF EXPENSES.—The Trade Rep-
9 resentative is authorized to provide for incidental ex-
10 penses, including transportation, lodging, and sub-
11 sistence for individuals who provide voluntary serv-
12 ices under subparagraph (A) or (B) of paragraph
13 (1).

14 (3) LIMITATION.—An individual who provides
15 voluntary services under paragraph (1)(A) shall not
16 be considered a Federal employee for any purpose
17 other than for purposes of chapter 81 of title 5,
18 United States Code, relating to compensation for
19 work injuries, and chapter 171 of title 28, United
20 States Code, relating to tort claims.

21 **SEC. 342. DELEGATION AND ASSIGNMENT.**

22 Except as otherwise expressly prohibited by law or
23 otherwise provided by this title, the Trade Representative
24 may delegate any of the functions transferred to the Trade
25 Representative by this title and any function transferred

1 or granted to the Trade Representative after the effective
2 date of this title to such officers and employees of the
3 Trade Administration as the Trade Representative may
4 designate, and may authorize successive redelegations of
5 such functions as may be necessary or appropriate. No
6 delegation of functions by the Trade Representative under
7 this section or under any other provision of this title shall
8 relieve the Trade Representative of responsibility for the
9 administration of such functions.

10 **SEC. 343. SUCCESSION.**

11 (a) ORDER OF SUCCESSION.—Subject to the author-
12 ity of the President, and except as provided in section
13 321(b), the Trade Representative shall prescribe the order
14 by which officers of the Trade Administration who are ap-
15 pointed by the President, by and with the advice and con-
16 sent of the Senate, shall act for, and perform the functions
17 of, the Trade Representative or any other officer of the
18 Trade Administration appointed by the President, by and
19 with the advice and consent of the Senate, during the ab-
20 sence or disability of the Trade Representative or such
21 other officer, or in the event of a vacancy in the office
22 of the Trade Representative or such other officer.

23 (b) CONTINUATION.—Notwithstanding any other pro-
24 vision of law, and unless the President directs otherwise,
25 an individual acting for the Trade Representative or an-

1 other officer of the Trade Administration pursuant to sub-
2 section (a) shall continue to serve in that capacity until
3 the absence or disability of the Trade Representative or
4 such other officer no longer exists or a successor to the
5 Trade Representative or such other officer has been ap-
6 pointed by the President and confirmed by the Senate.

7 **SEC. 344. REORGANIZATION.**

8 (a) IN GENERAL.—Subject to subsection (b), the
9 Trade Representative is authorized to allocate or reallo-
10 cate functions among the officers of the Trade Adminis-
11 tration, and to establish, consolidate, alter, or discontinue
12 such organizational entities in the Trade Administration
13 as may be necessary or appropriate.

14 (b) EXCEPTION.—The Trade Representative may not
15 exercise the authority under subsection (a) to establish,
16 consolidate, alter, or discontinue any organizational entity
17 in the Trade Administration or allocate or reallocate any
18 function of an officer or employee of the Trade Adminis-
19 tration that is inconsistent with any specific provision of
20 this title.

21 **SEC. 345. RULES.**

22 The Trade Representative is authorized to prescribe,
23 in accordance with the provisions of chapters 5 and 6 of
24 title 5, United States Code, such rules and regulations as
25 the Trade Representative determines necessary or appro-

1 piate to administer and manage the functions of the
2 Trade Representative or the Trade Administration.

3 **SEC. 346. FUNDS TRANSFER.**

4 The Trade Representative may, when authorized in
5 an appropriation Act in any fiscal year, transfer funds
6 from one appropriation to another within the Trade Ad-
7 ministration, except that—

8 (1) no appropriation for any fiscal year shall be
9 either increased or decreased by more than 10 per-
10 cent; and

11 (2) no such transfer shall result in increasing
12 any such appropriation above the amount authorized
13 to be appropriated for that purpose.

14 **SEC. 347. CONTRACTS, GRANTS, AND COOPERATIVE AGREE-**
15 **MENTS.**

16 (a) IN GENERAL.—Subject to the provisions of the
17 Federal Property and Administrative Services Act of
18 1949, the Trade Representative may make, enter into, and
19 perform such contracts, leases, cooperative agreements,
20 grants, or other similar transactions with public agencies,
21 private organizations, and persons, and make payments
22 (in lump sum or installments, and by way of advance or
23 reimbursement, and, in the case of any grant, with nec-
24 essary adjustments on account of overpayments and un-
25 derpayments) as the Trade Representative considers nec-

1 essary or appropriate to carry out the functions of the
2 Trade Representative or the Trade Administration.

3 (b) EXCEPTION.—Notwithstanding any other provi-
4 sion of this title, the authority to enter into contracts or
5 to make payments under this chapter shall be effective
6 only to such extent, or in such amounts, as are provided
7 in advance in appropriation Acts. This subsection does not
8 apply with respect to the authority granted under section
9 349.

10 **SEC. 348. USE OF FACILITIES.**

11 (a) USE BY TRADE REPRESENTATIVE.—In carrying
12 out any function of the Trade Representative or the Trade
13 Administration, the Trade Representative, with or without
14 reimbursement, may use the research, services, equipment,
15 and facilities of—

16 (1) an individual;

17 (2) any public or private nonprofit agency or
18 organization, including any agency or instrumentality
19 of the United States or of any State, the District
20 of Columbia, the Commonwealth of Puerto Rico, or
21 any territory or possession of the United States;

22 (3) any political subdivision of any State, the
23 District of Columbia, the Commonwealth of Puerto
24 Rico, or any territory or possession of the United
25 States; or

1 (4) any foreign government.

2 (b) USE OF TRADE REPRESENTATIVE FACILITIES.—

3 The Trade Representative, under terms, at rates, and for
4 periods that the Trade Representative considers to be in
5 the public interest, may permit the use by public and pri-
6 vate agencies, corporations, associations or other organiza-
7 tions, or individuals, of any real property, or any facility,
8 structure or other improvement thereon, under the cus-
9 tody of the Trade Representative. The Trade Representa-
10 tive may require permittees under this section to maintain
11 or recondition, at their own expense, the real property, fa-
12 cilities, structures, and improvements used by such per-
13 mittees.

14 **SEC. 349. GIFTS AND BEQUESTS.**

15 (a) IN GENERAL.—The Trade Representative is au-
16 thorized to accept, hold, administer, and utilize gifts and
17 bequests of property, both real and personal, for the pur-
18 pose of aiding or facilitating the work of the Trade Admin-
19 istration. Gifts and bequests of money and the proceeds
20 from sales of other property received as gifts or bequests
21 shall be deposited in the United States Treasury in a sepa-
22 rate fund and shall be disbursed on order of the Trade
23 Representative. Property accepted pursuant to this sub-
24 section, and the proceeds thereof, shall be used as nearly

1 as possible in accordance with the terms of the gift or be-
2 quest.

3 (b) TAX TREATMENT.—For the purpose of Federal
4 income, estate, and gift taxes, and State taxes, property
5 accepted under subsection (a) shall be considered a gift
6 or bequest to or for the use of the United States.

7 (c) INVESTMENT.—

8 (1) IN GENERAL.—Upon the request of the
9 Trade Representative, the Secretary of the Treasury
10 may invest and reinvest in securities of the United
11 States or in securities guaranteed as to principal
12 and interest by the United States any moneys con-
13 tained in the fund provided for in subsection (a).

14 (2) TREATMENT OF INCOME.—Income accruing
15 from the securities referred to in paragraph (1), and
16 from any other property held by the Trade Rep-
17 resentative pursuant to subsection (a), shall—

18 (A) be deposited to the credit of the fund;

19 and

20 (B) be disbursed upon order of the Trade
21 Representative.

22 **SEC. 350. WORKING CAPITAL FUND.**

23 (a) ESTABLISHMENT.—The Trade Representative is
24 authorized to establish for the Trade Administration a
25 working capital fund, to be available without fiscal year

1 limitation, for expenses necessary for the maintenance and
2 operation of such common administrative services as the
3 Trade Representative shall find to be desirable in the in-
4 terest of economy and efficiency, including—

5 (1) a central supply service for stationery and
6 other supplies and equipment for which adequate
7 stocks may be maintained to meet in whole or in
8 part the requirements of the Trade Administration
9 and its components;

10 (2) central messenger, mail, and telephone serv-
11 ice and other communications services;

12 (3) office space and central services for docu-
13 ment reproduction and for graphics and visual aids;

14 (4) a central library service; and

15 (5) such other services as may be approved by
16 the Director of the Office of Management and Budg-
17 et.

18 (b) OPERATION OF FUND.—

19 (1) IN GENERAL.—The capital of the fund shall
20 consist of any appropriations made for the purpose
21 of providing working capital and the fair and reason-
22 able value of such stocks of supplies, equipment, and
23 other assets and inventories on order as the Trade
24 Representative may transfer to the fund, less the re-
25 lated liabilities and unpaid obligations.

1 (2) ADVANCE REIMBURSEMENTS.—The fund
2 shall be reimbursed in advance from available funds
3 of agencies and offices in the Trade Administration,
4 or from other sources, for supplies and services at
5 rates which will approximate the expense of oper-
6 ation, including the accrual of annual leave and the
7 depreciation of equipment.

8 (3) OTHER CREDITS.—In addition to the cred-
9 its made under paragraph (1), the fund shall be
10 credited with receipts from sale or exchange of prop-
11 erty and receipts in payment for loss or damage to
12 property owned by the fund.

13 (4) SURPLUS.—There shall be covered into the
14 United States Treasury as miscellaneous receipts
15 any surplus of the fund (all assets, liabilities, and
16 prior losses considered) above the amounts trans-
17 ferred or appropriated to establish and maintain the
18 fund.

19 (5) TRANSFERS TO FUND.—There shall be
20 transferred to the fund the stocks of supplies, equip-
21 ment, other assets, liabilities, and unpaid obligations
22 relating to those services which the Trade Rep-
23 resentative determines will be performed.

1 **SEC. 351. SERVICE CHARGES.**

2 (a) **AUTHORITY.**—Notwithstanding any other provi-
3 sion of law, the Trade Representative may establish rea-
4 sonable fees and commissions with respect to applications,
5 documents, awards, loans, grants, research data, services,
6 and assistance administered by the Trade Administration.
7 The Trade Representative may change and abolish such
8 fees and commissions. Before establishing, changing, or
9 abolishing any schedule of fees or commissions under this
10 section, the Trade Representative may submit such sched-
11 ule to Congress.

12 (b) **DEPOSITS.**—The Trade Representative is author-
13 ized to require a deposit before the Trade Representative
14 provides any item, information, service, or assistance for
15 which a fee or commission is required under this section.

16 (c) **DEPOSIT OF MONEYS.**—Moneys received under
17 this section shall be deposited in the Treasury in a special
18 account for use by the Trade Representative and are au-
19 thorized to be appropriated and made available until ex-
20 pended.

21 (d) **FACTORS IN ESTABLISHING FEES AND COMMIS-**
22 **SIONS.**—In establishing reasonable fees or commissions
23 under this section, the Trade Representative may take into
24 account—

1 (1) the actual costs which will be incurred in
2 providing the items, information, services, or assist-
3 ance concerned;

4 (2) the efficiency of the Government in provid-
5 ing such items, information, services, or assistance;

6 (3) the portion of the cost that will be incurred
7 in providing such items, information, services, or as-
8 sistance which may be attributed to benefits for the
9 general public rather than exclusively for the person
10 to whom the items, information, services, or assist-
11 ance is provided;

12 (4) any public service which occurs through the
13 provision of such items, information, services, or as-
14 sistance; and

15 (5) such other factors as the Trade Representa-
16 tive considers appropriate.

17 (e) REFUNDS OF EXCESS PAYMENTS.—In any case
18 in which the Trade Representative determines that any
19 person has made a payment which is not required under
20 this section or has made a payment which is in excess of
21 the amount required under this section, the Trade Rep-
22 resentative, upon application or otherwise, may cause a
23 refund to be made from applicable funds.

1 **SEC. 352. SEAL OF OFFICE.**

2 The Trade Representative shall cause a seal of office
3 to be made for the Trade Administration of such design
4 as the Trade Representative shall approve. Judicial notice
5 shall be taken of such seal.

6 **CHAPTER 5—RELATED AGENCIES**

7 **SEC. 361. INTERAGENCY TRADE ORGANIZATION.**

8 Section 242(a)(3) of the Trade Expansion Act of
9 1962 (19 U.S.C. 1872(a)(3)) is amended to read as fol-
10 lows:

11 “(3)(A) The interagency organization estab-
12 lished under subsection (a) shall be composed of—

13 “(i) the United States Trade Representa-
14 tive, who shall be the chairperson,

15 “(ii) the Secretary of Agriculture,

16 “(iii) the Secretary of the Treasury,

17 “(iv) the Secretary of Labor,

18 “(v) the Secretary of State, and

19 “(vi) the representatives of such other de-
20 partments and agencies as the United States
21 Trade Representative shall designate.

22 “(B) The United States Trade Representative
23 may invite representatives from other agencies, as
24 appropriate, to attend particular meetings if subject
25 matters of specific functional interest to such agen-
26 cies are under consideration. It shall meet at such

1 times and with respect to such matters as the Presi-
2 dent or the chairperson shall direct.”.

3 **SEC. 362. NATIONAL SECURITY COUNCIL.**

4 The fourth paragraph of section 101(a) of the Na-
5 tional Security Act of 1947 (50 U.S.C. 402(a)) is amend-
6 ed—

7 (1) by redesignating paragraphs (5), (6), and
8 (7) as paragraphs (6), (7), and (8), respectively; and

9 (2) by inserting after paragraph (4) the follow-
10 ing new paragraph:

11 “(5) the United States Trade Representative;”.

12 **SEC. 363. INTERNATIONAL MONETARY FUND.**

13 Section 3 of the Bretton Woods Agreement Act (22
14 U.S.C. 286a) is amended by adding at the end the follow-
15 ing new subsection:

16 “(e) The United States executive director of the Fund
17 shall consult with the United States Trade Representative
18 with respect to matters under consideration by the Fund
19 which relate to trade.”.

20 **CHAPTER 6—CONFORMING AMENDMENTS**

21 **SEC. 371. AMENDMENTS TO GENERAL PROVISIONS.**

22 (a) INSPECTOR GENERAL.—The Inspector General
23 Act of 1978 (5 U.S.C. App. 1 et seq.) is amended—

24 (1) in section 9(a)(1) by adding after subpara-
25 graph (W) the following:

1 “(X) of the United States Trade Rep-
2 representative, all functions of the Inspector Gen-
3 eral of the Department of Commerce and the
4 Office of the Inspector General of the Depart-
5 ment of Commerce relating to the functions
6 transferred to the United States Trade Rep-
7 resentative by section 332 of the Department of
8 Commerce Dismantling Act; and”;
9 (2) in section 11—

10 (A) in paragraph (1) by inserting “the
11 United States Trade Representative;” after
12 “the Attorney General;”; and

13 (B) in paragraph (2) by inserting “the
14 United States Trade Administration,” after
15 “Treasury;”.

16 (b) AMENDMENT TO THE TRADE ACT OF 1974.—

17 (1) TRADE NEGOTIATIONS.—Chapter 4 of title
18 I of the Trade Act of 1974 (19 U.S.C. 2171) is
19 amended to read as follows:

1 **“CHAPTER 4—ADMINISTRATION OF**
2 **TRADE AGREEMENTS, REPRESENTA-**
3 **TION IN TRADE NEGOTIATIONS, AND**
4 **OTHER TRADE MATTERS**

5 **“SEC. 141. FUNCTIONS OF THE UNITED STATES TRADE REP-**
6 **RESENTATIVE.**

7 “The United States Trade Representative, estab-
8 lished under section 311 of the Department of Commerce
9 Dismantling Act, shall—

10 “(1) be the chief representative of the United
11 States for each trade negotiation under this title or
12 chapter 1 of title III of this Act, or subtitle A of
13 title I of the Omnibus Trade and Competitiveness
14 Act of 1988, or any other provision of law relating
15 to international trade negotiations;

16 “(2) be responsible for the administration of
17 trade agreement programs under this Act, the Omni-
18 bus Trade and Competitiveness Act of 1988, the
19 Trade Expansion Act of 1962, section 350 of the
20 Tariff Act of 1930, and any other provision of law
21 relating to trade agreement programs;

22 “(3) advise the President and Congress with re-
23 spect to nontariff barriers to international trade,
24 international commodity agreements, and other mat-

1 ters which are related to trade agreement programs;
2 and

3 “(4) be responsible for making reports to the
4 President and Congress with respect to the matters
5 set forth in paragraphs (1) and (2).”.

6 (2) TABLE OF CONTENTS.—Title I of the table
7 of contents of the Trade Act of 1974 is amended by
8 striking the items relating to chapter 4 and section
9 141 and inserting:

“CHAPTER 4—ADMINISTRATION OF TRADE AGREEMENTS, REPRESENTATION
IN TRADE NEGOTIATIONS, AND OTHER TRADE MATTERS

“Sec. 141. Functions of the United States Trade Representative.”.

10 (d) FOREIGN SERVICE PERSONNEL.—Section 202(a)
11 of the Foreign Service Act of 1980 (22 U.S.C. 3922(a))
12 is amended by striking paragraph (3) and inserting:

13 “(3) The United States Trade Representative
14 may utilize the Foreign Service personnel system in
15 accordance with this Act—

16 “(A) with respect to the personnel per-
17 forming functions—

18 “(i) which were transferred to the De-
19 partment of Commerce from the Depart-
20 ment of State by Reorganization Plan No.
21 3 of 1979; and

22 “(ii) which were subsequently trans-
23 ferred to the United States Trade Rep-

1 representative by section 332 of the Depart-
2 ment of Commerce Dismantling Act; and

3 “(B) with respect to other personnel of the
4 United States Trade Administration to the ex-
5 tent the President determines to be necessary in
6 order to enable the United States Trade Ad-
7 ministration to carry out functions which re-
8 quire service abroad.”.

9 (e) CHIEF FINANCIAL OFFICERS.—Section
10 901(b)(1)(B) of title 31, United States Code, is amended
11 to read as follows:

12 “(B) The Trade Administration.”.

13 **SEC. 372. REPEALS.**

14 (a) DEPARTMENT OF COMMERCE.—The first section
15 of the Act entitled “An Act to establish the Department
16 of Commerce and Labor”, approved February 14, 1903
17 (15 U.S.C. 1501), is repealed.

18 (b) UNDER SECRETARY; ASSISTANT SECRETARIES;
19 OTHER POSITIONS.—

20 (1) Subsection (a) of the first section of the Act
21 entitled “An Act to authorize an Under Secretary of
22 Commerce for Economic Affairs”, approved June
23 16, 1982 (96 Stat. 115; 15 U.S.C. 1503a), is re-
24 pealed.

1 (2) The Act entitled “An Act to provide for the
2 appointment of one additional Assistant Secretary of
3 Commerce, and for other purposes”, approved July
4 15, 1947 (15 U.S.C. 1505), is repealed.

5 (3) The first sentence of section 304 of the De-
6 partment of Commerce Appropriation Act, 1955 (15
7 U.S.C. 1506), is repealed.

8 (4) The Act entitled “An Act to authorize an
9 additional Assistant Secretary of Commerce”, ap-
10 proved February 16, 1962 (15 U.S.C. 1507), is re-
11 pealed.

12 (5) Subsection (a) of section 9 of the Maritime
13 Appropriation Authorization Act for Fiscal Year
14 1978 (15 U.S.C. 1507b), is repealed.

15 (6)(A) The first section of the Act of March 18,
16 1904 (33 Stat. 135, chapter 716; 15 U.S.C. 1508),
17 is repealed.

18 (B) Section 2 of the Act of July 17, 1952 (66
19 Stat. 758, chapter 932; 15 U.S.C. 1508), is re-
20 pealed.

21 (c) BUREAUS IN DEPARTMENT.—

22 (1) Sections 4 and 12 of the Act entitled “An
23 Act to Establish the Department of Commerce and
24 Labor”, approved February 14, 1903 (15 U.S.C.
25 1511), are repealed.

1 “Deputy United States Trade Representatives
2 (3).”.

3 (b) POSITIONS AT LEVEL III.—Section 5314 of title
4 5, United States Code, is amended by striking the item
5 relating to Deputy United States Trade Representatives
6 and inserting the following:

7 “Assistant Administrators, United States Trade
8 Administration (4).”.

9 (c) POSITIONS AT LEVEL IV.—Section 5315 of title
10 5, United States Code, is amended by adding at the end
11 the following:

12 “General Counsel, United States Trade Admin-
13 istration.

14 “Inspector General, United States Trade Ad-
15 ministration.

16 “Chief Financial Officer, United States Trade
17 Administration.”.

18 **CHAPTER 7—MISCELLANEOUS**

19 **SEC. 381. EFFECTIVE DATE.**

20 (a) IN GENERAL.—This title shall take effect on the
21 effective date specified in section 102(c), except that—

22 (1) section 336 shall take effect on the date of
23 enactment of this Act; and

24 (2) at any time after the date of enactment of
25 this Act the officers provided for in chapter 2 may

1 be nominated and appointed, as provided in such
2 chapter.

3 (b) INTERIM COMPENSATION AND EXPENSES.—
4 Funds available to the Department of Commerce or the
5 Office of the United States Trade Representative (or any
6 official or component thereof), with respect to the func-
7 tions transferred by this title, may be used, with approval
8 of the Director of the Office of Management and Budget,
9 to pay the compensation and expenses of an officer ap-
10 pointed under subsection (a) who will carry out such func-
11 tions until funds for that purpose are otherwise available.

12 **SEC. 382. INTERIM APPOINTMENTS.**

13 (a) IN GENERAL.—If one or more officers required
14 by this title to be appointed by and with the advice and
15 consent of the Senate have not entered upon office on the
16 effective date of this title and notwithstanding any other
17 provision of law, the President may designate any officer
18 who was appointed by and with the advice and consent
19 of the Senate, and who was such an officer on the day
20 before the effective date of this title, to act in the office
21 until it is filled as provided by this title.

22 (b) COMPENSATION.—Any officer acting in an office
23 pursuant to subsection (a) shall receive compensation at
24 the rate prescribed by this title for such office.

1 **SEC. 383. FUNDING REDUCTIONS RESULTING FROM REOR-**
2 **GANIZATION.**

3 (a) **FUNDING REDUCTIONS.**—Notwithstanding the
4 transfer of functions under this title, and except as pro-
5 vided in subsection (b), the total amount appropriated by
6 the United States in performing all functions vested in the
7 Trade Representative and the Trade Administration pur-
8 suant to this title shall not exceed—

9 (1) for the first fiscal year that begins after the
10 date specified in section 102(c), 75 percent of the
11 total amount appropriated in fiscal year 1998 for
12 the performance of all those functions; and

13 (2) for the second fiscal year that begins after
14 the date specified in section 102(c) and for each fis-
15 cal year thereafter, 65 percent of the total amount
16 appropriated in fiscal year 1998 for the performance
17 of all those functions.

18 (b) **EXCEPTION.**—Subsection (a) shall not apply to
19 obligations or expenditures incurred as a direct con-
20 sequence of the termination, transfer, or other disposition
21 of functions described in subsection (a) pursuant to this
22 Act.

23 (c) **RULE OF CONSTRUCTION.**—This section shall su-
24 perse any other provision of law that does not—

25 (1) explicitly refer to this section, and

26 (2) create an exemption from this section.

1 (d) RESPONSIBILITY OF TRADE REPRESENTATIVE.—
 2 The Trade Representative, in consultation with the Direc-
 3 tor of the Office of Management and Budget, shall make
 4 such modifications in programs as are necessary to carry
 5 out the reductions in appropriations set forth in para-
 6 graphs (1) and (2) of subsection (a).

7 (e) RESPONSIBILITIES OF THE DIRECTOR OF THE
 8 OFFICE OF MANAGEMENT AND BUDGET.—The Director
 9 of the Office of Management and Budget shall include in
 10 each report under subsections (a) and (b) of section 106
 11 a description of the actions taken to comply with the re-
 12 quirements of this section.

13 **TITLE IV—UNITED STATES PAT-**
 14 **ENT AND TRADEMARK ORGA-**
 15 **NIZATION**

16 **Subtitle A—United States Patent**
 17 **and Trademark Organization**

18 **SEC. 401. SHORT TITLE.**

19 This subtitle may be cited as the “United States Pat-
 20 ent and Trademark Organization Act of 1997”.

1 **CHAPTER 1—ESTABLISHMENT OF THE**
2 **UNITED STATES PATENT AND TRADE-**
3 **MARK ORGANIZATION**

4 **SEC. 411. ESTABLISHMENT OF THE UNITED STATES PAT-**
5 **ENT AND TRADEMARK ORGANIZATION AS A**
6 **GOVERNMENT CORPORATION.**

7 (a) **ESTABLISHMENT.**—The United States Patent
8 and Trademark Organization is established as a wholly
9 owned Government corporation subject to chapter 91 of
10 title 31, separate from any department.

11 (b) **OFFICES.**—The United States Patent and Trade-
12 mark Organization shall maintain its principal office in
13 the District of Columbia, or the metropolitan area thereof,
14 for the service of process and papers and for the purpose
15 of carrying out its powers, duties, and obligations under
16 this subtitle. The United States Patent and Trademark
17 Organization shall be deemed, for purposes of venue in
18 civil actions, to be a resident of the district in which its
19 principal office is located except where jurisdiction is oth-
20 erwise provided by law. The United States Patent and
21 Trademark Organization may establish satellite offices in
22 such places within the United States as it considers nec-
23 essary and appropriate in the conduct of its business.

24 (c) **REFERENCE.**—For purposes of this subtitle, a
25 reference to the “Organization” shall be a reference to the

1 United States Patent and Trademark Organization, unless
2 the context provides otherwise.

3 **SEC. 412. POWERS AND DUTIES.**

4 (a) IN GENERAL.—The United States Patent and
5 Trademark Organization, shall be responsible for—

6 (1) the granting and issuing of patents and the
7 registration of trademarks;

8 (2) conducting studies, programs, or exchanges
9 of items or services regarding domestic and inter-
10 national patent and trademark law, the administra-
11 tion of the Organization, or any other function vest-
12 ed in the Organization by law, including programs to
13 recognize, identify, assess, and forecast the tech-
14 nology of patented inventions and their utility to in-
15 dustry;

16 (3)(A) authorizing or conducting studies and
17 programs cooperatively with foreign patent and
18 trademark offices and international organizations, in
19 connection with the granting and issuing of patents
20 and the registration of trademarks; and

21 (B) with the concurrence of the Secretary of
22 State, authorizing the transfer of not to exceed
23 \$100,000 in any year to the Department of State
24 for the purpose of making special payments to inter-
25 national intergovernmental organizations for studies

1 and programs for advancing international coopera-
2 tion concerning patents, trademarks, and related
3 matters; and

4 (4) disseminating to the public information with
5 respect to patents and trademarks.

6 (b) SPECIAL PAYMENTS.—The special payments
7 under subsection (a)(3)(B) may be in addition to any
8 other payments or contributions to international organiza-
9 tions and shall not be subject to any limitations imposed
10 by law on the amounts of such other payments or con-
11 tributions by the United States Government.

12 (c) SPECIFIC POWERS.—The Organization—

13 (1) shall have perpetual succession;

14 (2) shall adopt and use a corporate seal, which
15 shall be judicially noticed and with which letters pat-
16 ent, certificates of trademark registrations, and pa-
17 pers issued by the Organization shall be authenti-
18 cated;

19 (3) may sue and be sued in its corporate name
20 and be represented by its own attorneys in all judi-
21 cial and administrative proceedings, subject to the
22 provisions of section 416;

23 (4) may indemnify the Director of the United
24 States Patent and Trademark Organization, the
25 Commissioner of Patents, the Commissioner of

1 Trademarks, and other officers, attorneys, agents,
2 and employees (including members of the Manage-
3 ment Advisory Boards of the Patent Office and the
4 Trademark Office) of the Organization for liabilities
5 and expenses incurred within the scope of their em-
6 ployment;

7 (5) may adopt, amend, and repeal bylaws, rules,
8 regulations, and determinations, which—

9 (A) shall govern the manner in which its
10 business will be conducted and the powers
11 granted to it by law will be exercised; and

12 (B) shall be made after notice and oppor-
13 tunity for full participation by interested public
14 and private parties;

15 (6)(A) may acquire, construct, purchase, lease,
16 hold, manage, operate, improve, alter, and renovate
17 any real, personal, or mixed property, or any interest
18 therein, as it considers necessary to carry out its
19 functions; and

20 (B) sell, lease, grant, and dispose of such prop-
21 erty as it considers necessary to effectuate the pur-
22 poses of this title;

23 (7)(A) may make such purchases, contracts for
24 the construction, maintenance, or management and
25 operation of facilities, and contracts for supplies or

1 services, without regard to the provisions of the Fed-
2 eral Property and Administrative Services Act of
3 1949 (40 U.S.C. 471 et seq.), the Public Buildings
4 Act (40 U.S.C. 601 et seq.), and the Stewart B.
5 McKinney Homeless Assistance Act (42 U.S.C.
6 11301 et seq.); and

7 (B) may enter into and perform such purchases
8 and contracts for printing services, including the
9 process of composition, platemaking, presswork, silk
10 screen processes, binding, microform, and the prod-
11 ucts of such processes, as it considers necessary to
12 carry out the functions of the Organization, without
13 regard to sections 501 through 517 and 1101
14 through 1123 of title 44, United States Code;

15 (8) may use, with their consent, services, equip-
16 ment, personnel, and facilities of other departments,
17 agencies, and instrumentalities of the Federal Gov-
18 ernment, on a reimbursable basis, and cooperate
19 with such other departments, agencies, and instru-
20 mentalities in the establishment and use of services,
21 equipment, and facilities of the Organization;

22 (9) may obtain from the Administrator of Gen-
23 eral Services such services as the Administrator is
24 authorized to provide to other agencies of the United

1 States, on the same basis as those services are pro-
2 vided to other agencies of the United States;

3 (10) may use, with the consent of the United
4 States and the agency, government, or international
5 organization concerned, the services, records, facili-
6 ties, or personnel of any State or local government
7 agency or instrumentality or foreign government or
8 international organization to perform functions on
9 its behalf;

10 (11) may determine the character of, and the
11 necessity for, its obligations and expenditures and
12 the manner in which they shall be incurred, allowed,
13 and paid, subject to the provisions of title 35, Unit-
14 ed States Code and the Act of July 5, 1946 (com-
15 monly referred to as the Trademark Act of 1946);

16 (12) may retain and use all of its revenues and
17 receipts, including revenues from the sale, lease, or
18 disposal of any real, personal, or mixed property, or
19 any interest therein, of the Organization, including
20 for research and development and capital invest-
21 ment, subject to the provisions of section 10101 of
22 the Omnibus Budget Reconciliation Act of 1990 (35
23 U.S.C. 41 note);

1 (13) shall have the priority of the United States
2 with respect to the payment of debts from bankrupt,
3 insolvent, and decedents' estates;

4 (14) may accept monetary gifts or donations of
5 services, or of real, personal, intellectual, or mixed
6 property, in order to enhance libraries and museums
7 operated by the Organization, support the edu-
8 cational programs of the Organization, or otherwise
9 carry out the functions of the Organization;

10 (15) may execute, in accordance with its by-
11 laws, rules, and regulations, all instruments nec-
12 essary and appropriate in the exercise of any of its
13 powers; and

14 (16) may provide for liability insurance and in-
15 surance against any loss in connection with its prop-
16 erty, other assets, or operations either by contract or
17 by self-insurance.

18 (d) RESTRICTIONS ON GIFTS.—Any acceptance of a
19 gift or donation under subsection (c)(14) shall be subject
20 to section 201 of title 18, United States Code. The Direc-
21 tor shall establish regulations for the acceptance of such
22 gifts and donations including regulations prohibiting gifts
23 or donations to the Organization by foreign countries.

24 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion shall be construed to nullify, void, cancel, or interrupt

1 any pending request-for-proposal let or contract issued by
2 the General Services Administration for the specific pur-
3 pose of relocating or leasing space to the United States
4 Patent and Trademark Organization.

5 **SEC. 413. ORGANIZATION AND MANAGEMENT.**

6 (a) OFFICES.—The United States Patent and Trade-
7 mark Organization shall consist of—

- 8 (1) the Office of the Director;
- 9 (2) the United States Patent Office; and
- 10 (3) the United States Trademark Office.

11 (b) DIRECTOR.—

12 (1) IN GENERAL.—The management of the
13 United States Patent and Trademark Organization
14 shall be vested in a Director of the United States
15 Patent and Trademark Organization (referred to in
16 this subtitle as the “Director”, unless the context
17 provides otherwise), who shall be a citizen of the
18 United States and who shall be appointed by the
19 President, by and with the advice and consent of the
20 Senate. The Director shall be a person who, by rea-
21 son of professional background and experience in
22 patent or trademark law, is especially qualified to
23 manage the Organization.

24 (2) DUTIES.—(A) The Director shall—

1 (i) be responsible for the Management and
2 direction of the Organization and shall perform
3 this duty in a fair, impartial, and equitable
4 manner; and

5 (ii) strive to meet the goals set forth in the
6 performance agreement described under para-
7 graph (4).

8 (B) The Director shall advise the President, of
9 all activities of the Organization undertaken in re-
10 sponse to obligations of the United States under
11 treaties and executive agreements, or which relate to
12 cooperative programs with those authorities of for-
13 eign governments that are responsible for granting
14 patents or registering trademarks. The Director
15 shall also recommend to the President changes in
16 law or policy which may improve the ability of Unit-
17 ed States citizens to secure and enforce patent and
18 trademark rights in the United States or in foreign
19 countries.

20 (C)(i) At the direction of the President, the Di-
21 rector may represent the United States in inter-
22 national negotiations on matters of patents or trade-
23 marks, or may designate an officer or officers of the
24 Organization to participate in such negotiations.

1 (ii) Nothing in this subparagraph shall be con-
2 strued to alter any statutory responsibility of the
3 Secretary of State or the United States Trade Rep-
4 resentative.

5 (D) The Director, in consultation with the Di-
6 rector of the Office of Personnel Management, shall
7 maintain a program for identifying national security
8 positions and providing for appropriate security
9 clearances.

10 (E) The Director may perform such personnel,
11 procurement, and other functions, with respect to
12 the United States Patent Office and the United
13 States Trademark Office, where a centralized admin-
14 istration of such functions would improve the effi-
15 ciency of the Offices, by continuous unanimous
16 agreement of the Director, the Commissioner of Pat-
17 ents, and the Commissioner of Trademarks. The
18 agreement shall be in writing and shall indicate the
19 allocation of costs among the Office of the Director,
20 the United States Patent Office, and the United
21 States Trademark Office.

22 (F) Except as otherwise provided in this sub-
23 title, the Director shall ensure that—

1 (i) the United States Patent Office and the
2 United States Trademark Office, respectively,
3 shall—

4 (I) prepare all appropriation requests
5 under section 1108 of title 31, United
6 States Code, for each office for submission
7 by the Director;

8 (II) adjust fees to provide sufficient
9 revenues to cover the expenses of such of-
10 fice; and

11 (III) expend funds derived from such
12 fees for only the functions of such office;
13 and

14 (ii) each such office is not involved in the
15 management of any other office.

16 (G) The Director shall submit to Congress an-
17 nually such information as is required under chapter
18 91 of title 31, United States Code, including—

19 (i) the total monies received and expended
20 by the Organization;

21 (ii) the purpose for which the monies were
22 spent;

23 (iii) the amount of any surplus revenues
24 retained by the Organization;

1 (iv) the quality and quantity of the work of
2 the Organization; and

3 (v) other information relating to the Orga-
4 nization.

5 (3) OATH.—The Director shall, before taking
6 office, take an oath to discharge faithfully the duties
7 of the Organization.

8 (4) COMPENSATION.—The Director shall re-
9 ceive compensation at the rate of pay in effect for
10 level III of the Executive Schedule under section
11 5314 of title 5, United States Code and, in addition,
12 may receive as a bonus, an amount which would
13 raise total compensation to the equivalent of the
14 level of the rate of pay in effect for level II of the
15 Executive Schedule under section 5313 of title 5,
16 based upon an evaluation by the Director of OMB
17 of the Director's performance as defined in an an-
18 nual performance agreement between the Director
19 and the Director of OMB. The annual performance
20 agreement shall incorporate measurable goals as de-
21 lined in an annual performance plan agreed to by
22 the Director and the Director of OMB.

23 (5) REMOVAL.—The Director shall serve at the
24 pleasure of the President.

1 (6) DESIGNEE OF DIRECTOR.—The Director
2 shall designate an officer of the Organization who
3 shall be vested with the authority to act in the ca-
4 pacity of the Director in the event of the absence or
5 incapacity of the Director.

6 (7) RELATIONSHIP WITH EXISTING AUTHORI-
7 TIES.—Nothing in this section shall derogate from
8 the duties or functions of the Register of Copyrights.

9 (c) OFFICERS AND EMPLOYEES OF THE ORGANIZA-
10 TION.—

11 (1) COMMISSIONERS OF PATENTS AND TRADE-
12 MARKS.—The Director shall appoint a Commissioner
13 of Patents and a Commissioner of Trademarks
14 under section 3 of title 35, United States Code and
15 section 53 of the Act of July 5, 1946 (commonly re-
16 ferred to as the Trademark Act of 1946), respec-
17 tively, as amended by this title.

18 (2) OTHER OFFICERS AND EMPLOYEES.—The
19 Director shall—

20 (A) appoint officers, employees (including
21 attorneys), and agents of the Organization, who
22 shall be citizens of the United States, as the Di-
23 rector considers necessary to carry out its func-
24 tions;

1 (B) fix the compensation of such officers
2 and employees, except as provided in subsection
3 (e); and

4 (C) define the authority and duties of such
5 officers and employees and delegate to them
6 such of the powers vested in the Organization
7 as the Director may determine.

8 (3) PERSONNEL LIMITATIONS.—The Organiza-
9 tion shall not be subject to any administratively or
10 statutorily imposed limitation on positions or person-
11 nel, and no positions or personnel of the Organiza-
12 tion shall be taken into account for purposes of ap-
13 plying any such limitation.

14 (d) LIMITS ON COMPENSATION.—Except as other-
15 wise provided by law, the annual rate of basic pay of an
16 officer or employee of the Organization may not be fixed
17 at a rate that exceeds, and total compensation payable to
18 any such officer or employee for any year may not exceed,
19 the annual rate of basic pay in effect for level II of the
20 Executive Schedule under section 5313 of title 5, United
21 States Code. The Director shall prescribe such regulations
22 as may be necessary to carry out this subsection.

23 (e) INAPPLICABILITY OF TITLE 5, UNITED STATES
24 CODE, GENERALLY.—Except as otherwise provided in this
25 section, officers and employees of the Organization shall

1 not be subject to the provisions of title 5, United States
2 Code, relating to Federal employees.

3 (f) CONTINUED APPLICABILITY OF CERTAIN PROVI-
4 SIONS OF TITLE 5, UNITED STATES CODE.—

5 (1) IN GENERAL.—The following provisions of
6 title 5, United States Code, shall apply to the Orga-
7 nization and its officers and employees:

8 (A) Section 3110 (relating to employment
9 of relatives; restrictions).

10 (B) Subchapter II of chapter 55 (relating
11 to withholding pay).

12 (C) Subchapters II and III of chapter 73
13 (relating to employment limitations and political
14 activities, respectively).

15 (D) Chapter 71 (relating to labor-manage-
16 ment relations), subject to paragraph (2) and
17 subsection (g).

18 (E) Section 3303 (relating to political rec-
19 ommendations).

20 (F) Subchapter II of chapter 61 (relating
21 to flexible and compressed work schedules).

22 (G) Section 2302(b)(8) (relating to whis-
23 tleblower protection) and whistleblower related
24 provisions of chapter 12 (covering the role of
25 the Office of Special Counsel).

1 (2) COMPENSATION SUBJECT TO COLLECTIVE
2 BARGAINING.—

3 (A) IN GENERAL.—Notwithstanding any
4 other provision of law, for purposes of applying
5 chapter 71 of title 5, United States Code, pur-
6 suant to paragraph (1)(D), basic pay and other
7 forms of compensation shall be considered to be
8 among the matters as to which the duty to bar-
9 gain in good faith extends under such chapter.

10 (B) EXCEPTIONS.—The duty to bargain in
11 good faith shall not, by reason of subparagraph
12 (A), be considered to extend to any benefit
13 under title 5, United States Code, which is af-
14 forded by paragraph (1), (2), (3), or (4) of sub-
15 section (g).

16 (C) LIMITATIONS APPLY.—Nothing in this
17 subsection shall be considered to allow any limi-
18 tation under subsection (d) to be exceeded.

19 (g) PROVISIONS OF TITLE 5, UNITED STATES CODE,
20 THAT CONTINUE TO APPLY, SUBJECT TO CERTAIN RE-
21 QUIREMENTS.—

22 (1) RETIREMENT.—(A) The provisions of sub-
23 chapter III of chapter 83 and chapter 84 of title 5,
24 United States Code, shall apply to the Organization

1 and its officers and employees, subject to subpara-
2 graph (B).

3 (B)(i) The amount required of the Organization
4 under the second sentence of section 8334(a)(1) of
5 title 5, United States Code, with respect to any par-
6 ticular individual shall, instead of the amount which
7 would otherwise apply, be equal to the normal-cost
8 percentage (determined with respect to officers and
9 employees of the Organization using dynamic as-
10 sumptions, as defined by section 8401(9) of such
11 title) of the individual's basic pay, minus the amount
12 required to be withheld from such pay under such
13 section 8334(a)(1).

14 (ii) The amount required of the Organization
15 under section 8334(k)(1)(B) of title 5, United
16 States Code, with respect to any particular individ-
17 ual shall be equal to an amount computed in a man-
18 ner similar to that specified in clause (i), as deter-
19 mined in accordance with clause (iii).

20 (iii) Any regulations necessary to carry out this
21 subparagraph shall be prescribed by the Office of
22 Personnel Management.

23 (C) The United States Patent and Trademark
24 Organization may supplement the benefits provided
25 under the preceding provisions of this paragraph.

1 (2) HEALTH BENEFITS.—(A) The provisions of
2 chapter 89 of title 5, United States Code, shall
3 apply to the Organization and its officers and em-
4 ployees, subject to subparagraph (B).

5 (B)(i) With respect to any individual who be-
6 comes an officer or employee of the Organization
7 pursuant to subsection (i), the eligibility of such in-
8 dividual to participate in such program as an annu-
9 itant (or of any other person to participate in such
10 program as an annuitant based on the death of such
11 individual) shall be determined disregarding the re-
12 quirements of section 8905(b) of title 5, United
13 States Code. The preceding sentence shall not apply
14 if the individual ceases to be an officer or employee
15 of the Organization for any period of time after be-
16 coming an officer or employee of the Organization
17 pursuant to subsection (i) and before separation.

18 (ii) The Government contributions authorized
19 by section 8906 of title 5, United States Code, for
20 health benefits for anyone participating in the health
21 benefits program pursuant to this subparagraph
22 shall be made by the Organization in the same man-
23 ner as provided under section 8906(g)(2) of such
24 title with respect to the United States Postal Service
25 for individuals associated therewith.

1 (iii) For purposes of this subparagraph, the
2 term “annuitant” has the meaning given such term
3 by section 8901(3) of title 5, United States Code.

4 (C) The Organization may supplement the ben-
5 efits provided under the preceding provisions of this
6 paragraph.

7 (3) LIFE INSURANCE.—(A) The provisions of
8 chapter 87 of title 5, United States Code, shall
9 apply to the Organization and its officers and em-
10 ployees, subject to subparagraph (B).

11 (B)(i) Eligibility for life insurance coverage
12 after retirement or while in receipt of compensation
13 under subchapter I of chapter 81 of title 5, United
14 States Code, shall be determined, in the case of any
15 individual who becomes an officer or employee of the
16 Organization pursuant to subsection (i), without re-
17 gard to the requirements of section 8706(b) (1) or
18 (2) of such title, but subject to the condition speci-
19 fied in the last sentence of paragraph (2)(B)(i) of
20 this subsection.

21 (ii) Government contributions under section
22 8708(d) of such title on behalf of any such individ-
23 ual shall be made by the Organization in the same
24 manner as provided under paragraph (3) thereof

1 with respect to the United States Postal Service for
2 individuals associated therewith.

3 (C) The Organization may supplement the ben-
4 efits provided under the preceding provisions of this
5 paragraph.

6 (4) EMPLOYEES' COMPENSATION FUND.—(A)
7 Officers and employees of the Organization shall not
8 become ineligible to participate in the program
9 under chapter 81 of title 5, United States Code, re-
10 lating to compensation for work injuries, by reason
11 of subsection (e).

12 (B) The Organization shall remain responsible
13 for reimbursing the Employees' Compensation Fund,
14 pursuant to section 8147 of title 5, United States
15 Code, for compensation paid or payable after the ef-
16 fective date of this subtitle in accordance with chap-
17 ter 81 of title 5, United States Code, with regard to
18 any injury, disability, or death due to events arising
19 before such date, whether or not a claim has been
20 filed or is final on such date.

21 (h) LABOR-MANAGEMENT RELATIONS.—

22 (1) LABOR RELATIONS AND EMPLOYEE RELA-
23 TIONS PROGRAMS.—The Organization shall develop
24 hiring practices, labor relations and employee rela-
25 tions programs with the objective of improving pro-

1 ductivity and efficiency, incorporating the following
2 principles:

3 (A) Such programs shall be consistent with
4 the merit principles in section 2301(b) of title
5 5, United States Code.

6 (B) Such programs shall provide veterans
7 preference protections equivalent to those estab-
8 lished by sections 2108, 3308 through 3318,
9 3320, 3502, and 3504 of title 5, United States
10 Code.

11 (C)(i) The right to work shall not be sub-
12 ject to undue restraint or coercion. The right to
13 work shall not be infringed or restricted in any
14 way based on membership in, affiliation with, or
15 financial support of a labor organization.

16 (ii) No person shall be required, as a con-
17 dition of employment or continuation of employ-
18 ment—

19 (I) to resign or refrain from voluntary
20 membership in, voluntary affiliation with,
21 or voluntary financial support of a labor
22 organization;

23 (II) to become or remain a member of
24 a labor organization;

1 (III) to pay any dues, fees, assess-
2 ments, or other charges of any kind or
3 amount to a labor organization;

4 (IV) to pay to any charity or other
5 third party, in lieu of such payments, any
6 amount equivalent to or a pro rata portion
7 of dues, fees, assessments, or other charges
8 regularly required of members of a labor
9 organization; or

10 (V) to be recommended, approved, re-
11 ferred, or cleared by or through a labor or-
12 ganization.

13 (iii) This subparagraph shall not apply to
14 a person described in section 7103(a)(2)(v) of
15 title 5, United States Code, or a “supervisor”,
16 “management official”, or “confidential em-
17 ployee” as those terms are defined in 7103(a)
18 (10), (11), and (13) of such title.

19 (iv) Any labor organization recognized by
20 the Organization as the exclusive representative
21 of a unit of employees of the Organization shall
22 represent the interests of all employees in that
23 unit without discrimination and without regard
24 to labor organization membership.

1 (2) ADOPTION OF EXISTING LABOR AGREE-
2 MENTS.—The Organization shall adopt all labor
3 agreements which are in effect, as of the day before
4 the effective date of this subtitle, with respect to
5 such Organization (as then in effect).

6 (i) CARRYOVER OF PERSONNEL.—

7 (1) FROM PTO.—Effective as of the effective
8 date of this subtitle, all officers and employees of the
9 Patent and Trademark Office on the day before
10 such effective date shall become officers and employ-
11 ees of the Organization, without a break in service.

12 (2) OTHER PERSONNEL.—(A) Any individual
13 who, on the day before the effective date of this sub-
14 title, is an officer or employee of the Department of
15 Commerce (other than an officer or employee under
16 paragraph (1)) shall be transferred to the Organiza-
17 tion if—

18 (i) such individual serves in a position for
19 which a major function is the performance of
20 work reimbursed by the Patent and Trademark
21 Office, as determined by the Director of OMB;

22 (ii) such individual serves in a position
23 that performed work in support of the Patent
24 and Trademark Office during at least half of

1 the incumbent's work time, as determined by
2 the Director of OMB; or

3 (iii) such transfer would be in the interest
4 of the Organization, as determined by the Di-
5 rector of OMB in consultation with the Direc-
6 tor.

7 (B) Any transfer under this paragraph shall be
8 effective as of the same effective date as referred to
9 in paragraph (1), and shall be made without a break
10 in service.

11 (3) ACCUMULATED LEAVE.—The amount of
12 sick and annual leave and compensatory time accu-
13 mulated under title 5, United States Code, before
14 the effective date described in paragraph (1), by any
15 individual who becomes an officer or employee of the
16 Organization under this subsection, are obligations
17 of the Organization.

18 (4) TERMINATION RIGHTS.—Any employee re-
19 ferred to in paragraph (1) or (2) of this subsection
20 whose employment with the Organization is termi-
21 nated during the 1-year period beginning on the ef-
22 fective date of this subtitle shall be entitled to rights
23 and benefits, to be afforded by the Organization,
24 similar to those such employee would have had
25 under Federal law if termination had occurred im-

1 mediately before such date. An employee who would
2 have been entitled to appeal any such termination to
3 the Merit Systems Protection Board, if such termi-
4 nation had occurred immediately before such effec-
5 tive date, may appeal any such termination occur-
6 ring within such 1-year period to the Board under
7 such procedures as it may prescribe.

8 (5) TRANSITION PROVISIONS.—(A)(i) On or
9 after the effective date of this subtitle, the President
10 shall appoint a Director of the United States Patent
11 and Trademark Organization who shall serve until
12 the earlier of—

13 (I) the date on which a Director qualifies
14 under subsection (b); or

15 (II) the date occurring 1 year after the ef-
16 fective date of this subtitle.

17 (ii) The President shall not make more than 1
18 appointment under this subparagraph.

19 (B) The individual serving as the Assistant
20 Commissioner of Patents on the day before the ef-
21 fective date of this subtitle shall serve as the Com-
22 missioner of Patents until the date on which a Com-
23 missioner of Patents is appointed under section 3 of
24 title 35, United States Code, as amended by this
25 title.

1 (C) The individual serving as the Assistant
2 Commissioner of Trademarks on the day before the
3 effective date of this subtitle shall serve as the Com-
4 missioner of Trademarks until the date on which a
5 Commissioner of Trademarks is appointed under
6 section 53 of the Act of July 5, 1946 (commonly re-
7 ferred to as the Trademark Act of 1946), as amend-
8 ed by this title.

9 (j) COMPETITIVE STATUS.—For purposes of appoint-
10 ment to a position in the competitive service for which an
11 officer or employee of the Organization is qualified, such
12 officer or employee shall not forfeit any competitive status,
13 acquired by such officer or employee before the effective
14 date of this subtitle, by reason of becoming an officer or
15 employee of the Organization under subsection (i).

16 (k) SAVINGS PROVISIONS.—Compensation, benefits,
17 and other terms and conditions of employment in effect
18 immediately before the effective date of this subtitle,
19 whether provided by statute or by rules and regulations
20 of the former Patent and Trademark Office or the execu-
21 tive branch of the Government of the United States, shall
22 continue to apply to officers and employees of the Organi-
23 zation, until changed in accordance with this section
24 (whether by action of the Director or otherwise).

1 (l) REMOVAL OF QUASI-JUDICIAL EXAMINERS.—The
 2 Organization may remove a patent examiner or examiner-
 3 in-chief, or a trademark examiner or member of a Trade-
 4 mark Trial and Appeal Board only for such cause as will
 5 promote the efficiency of the Organization.

6 **SEC. 414. UNITED STATES PATENT OFFICE.**

7 (a) ESTABLISHMENT OF THE PATENT OFFICE AS A
 8 SEPARATE ADMINISTRATIVE UNIT.—Section 1 of title 35,
 9 United States Code, is amended to read as follows:

10 **“§ 1. Establishment**

11 “(a) ESTABLISHMENT.—The United States Patent
 12 Office is established as a separate administrative unit of
 13 the United States Patent and Trademark Organization,
 14 where records, books, drawings, specifications, and other
 15 papers and things pertaining to patents shall be kept and
 16 preserved, except as otherwise provided by law.

17 “(b) REFERENCE.—For purposes of this title, the
 18 United States Patent Office shall also be referred to as
 19 the ‘Office’ and the ‘Patent Office’.”

20 (b) POWERS AND DUTIES.—Section 2 of title 35,
 21 United States Code, is amended to read as follows:

22 **“§ 2. Powers and duties**

23 “The United States Patent Office, through the Direc-
 24 tor of the United States Patent and Trademark Organiza-
 25 tion, shall be responsible for—

1 “(1) granting and issuing patents;

2 “(2) conducting studies, programs, or ex-
3 changes of items or services regarding domestic and
4 international patent law, the administration of the
5 Organization, or any other function vested in the
6 Organization by law, including programs to recog-
7 nize, identify, assess, and forecast the technology of
8 patented inventions and their utility to industry;

9 “(3) authorizing or conducting studies and pro-
10 grams cooperatively with foreign patent offices and
11 international organizations, in connection with the
12 granting and issuing of patents; and

13 “(4) disseminating to the public information
14 with respect to patents.”.

15 (c) ORGANIZATION AND MANAGEMENT.—Section 3 of
16 title 35, United States Code, is amended to read as fol-
17 lows:

18 **“§ 3. Officers and employees**

19 “(a) COMMISSIONER.—

20 “(1) IN GENERAL.—The management of the
21 United States Patent Office shall be vested in a
22 Commissioner of Patents, who shall be a citizen of
23 the United States and who shall be appointed by the
24 Director of the United States Patent and Trade-
25 mark Organization and shall serve at the pleasure

1 of the Director of the United States Patent and
2 Trademark Organization. The Commissioner shall be
3 a person who, by reason of professional background
4 and experience in patent law, is especially qualified
5 to manage the Office.

6 “(2) DUTIES.—

7 “(A) IN GENERAL.—The Commissioner
8 shall be responsible for all aspects of the man-
9 agement, administration, and operation of the
10 Office, including the granting and issuing of
11 patents, and shall perform these duties in a
12 fair, impartial, and equitable manner.

13 “(B) ADVISING THE DIRECTOR OF THE
14 UNITED STATES PATENT AND TRADEMARK OR-
15 GANIZATION.—The Commissioner shall advise
16 the Director of the United States Patent and
17 Trademark Organization of all activities of the
18 Office undertaken in response to obligations of
19 the United States under treaties and executive
20 agreements, or which relate to cooperative pro-
21 grams with those authorities of foreign govern-
22 ments that are responsible for granting patents.
23 The Commissioner shall advise the Director of
24 the United States Patent and Trademark Orga-
25 nization on matters of patent law and shall rec-

1 commend to the Director of the United States
2 Patent and Trademark Organization changes in
3 law or policy which may improve the ability of
4 United States citizens to secure and enforce
5 patent rights in the United States or in foreign
6 countries.

7 “(C) REGULATIONS.—The Commissioner
8 may establish regulations, not inconsistent with
9 law, for the conduct of proceedings in the Pat-
10 ent Office.

11 “(D) CONSULTATION WITH THE MANAGE-
12 MENT ADVISORY BOARD.—(i) The Commis-
13 sioner shall consult with the Management Advi-
14 sory Board established in section 5—

15 “(I) on a regular basis on matters re-
16 lating to the operation of the Office; and

17 “(II) before submitting budgetary
18 proposals to the Director of the United
19 States Patent and Trademark Organiza-
20 tion for submission to the Office of Man-
21 agement and Budget or changing or pro-
22 posing to change patent user fees or patent
23 regulations.

1 “(3) OATH.—The Commissioner shall, before
2 taking office, take an oath to discharge faithfully the
3 duties of the Office.

4 “(4) COMPENSATION.—

5 “(A) IN GENERAL.—The Commissioner
6 shall receive compensation at the rate of pay in
7 effect for level IV of the Executive Schedule
8 under section 5315 of title 5.

9 “(B) BONUS.—In addition to compensa-
10 tion under subparagraph (A), the Commissioner
11 may, at the discretion of the Director of the
12 United States Patent and Trademark Organiza-
13 tion, receive as a bonus, an amount which
14 would raise total compensation to the equivalent
15 of the rate of pay in effect for level III of the
16 Executive Schedule under section 5314 of title
17 5.

18 “(b) OFFICERS AND EMPLOYEES.—

19 “(1) DEPUTY COMMISSIONER OF PATENTS.—
20 The Commissioner shall appoint a Deputy Commis-
21 sioner of Patents who shall be vested with the au-
22 thority to act in the capacity of the Commissioner in
23 the event of the absence or incapacity of the Com-
24 missioner. In the event of a vacancy in the office of
25 Commissioner, the Deputy Commissioner shall fill

1 the office of Commissioner until a new Commis-
2 sioner is appointed and takes office.

3 “(2) OMBUDSMAN.—The Commissioner shall
4 appoint an ombudsman to advise the Commissioner
5 on the concerns of independent inventors, nonprofit
6 organizations, and small business concerns.

7 “(3) OTHER OFFICERS AND EMPLOYEES.—
8 Other officers, attorneys, employees, and agents
9 shall be selected and appointed by the Commis-
10 sioner, and shall be vested with such powers and du-
11 ties as the Commissioner may determine.”

12 (d) MANAGEMENT ADVISORY BOARD.—Chapter 1 of
13 part I of title 35, United States Code, is amended by in-
14 serting after section 4 the following:

15 **“§ 5. Patent Office Management Advisory Board**

16 “(a) ESTABLISHMENT OF MANAGEMENT ADVISORY
17 BOARD.—

18 “(1) APPOINTMENT.—The United States Pat-
19 ent Office shall have a Management Advisory Board
20 (hereafter in this title referred to as the ‘Advisory
21 Board’) of 5 members, who shall be appointed by the
22 President and shall serve at the pleasure of the
23 President. Not more than 3 of the 5 members shall
24 be members of the same political party. At least 1

1 member shall be an independent inventor, as defined
2 in regulations issued by the Commissioner.

3 “(2) CHAIR.—The President shall designate a
4 Chair of the Advisory Board, whose term as chair
5 shall be for 3 years.

6 “(3) TIMING OF APPOINTMENTS.—Initial ap-
7 pointments to the Advisory Board shall be made
8 within 3 months after the effective date of the Unit-
9 ed States Patent and Trademark Organization Act
10 of 1997. Vacancies shall be filled in the manner in
11 which the original appointment was made under this
12 subsection within 3 months after they occur.

13 “(b) BASIS FOR APPOINTMENTS.—Members of the
14 Advisory Board shall be citizens of the United States who
15 shall be chosen so as to represent the interests of diverse
16 users of the United States Patent Office, and shall include
17 individuals with substantial background and achievement
18 in corporate finance and management.

19 “(c) MEETINGS.—The Advisory Board shall meet at
20 the call of the Chair to consider an agenda set by the
21 Chair.

22 “(d) DUTIES.—The Advisory Board shall—

23 “(1) review the policies, goals, performance,
24 budget, and user fees of the United States Patent

1 Office, and advise the Commissioner on these mat-
2 ters;

3 “(2) within 60 days after the end of each fiscal
4 year—

5 “(A) prepare an annual report on the mat-
6 ters referred to in paragraph (1);

7 “(B) transmit the report to the Director of
8 the United States Patent and Trademark Orga-
9 nization, the President, and the Committees on
10 the Judiciary of the Senate and the House of
11 Representatives; and

12 “(C) publish the report in the Patent Of-
13 fice Official Gazette.

14 “(f) COMPENSATION.—Each member of the Advisory
15 Board shall be compensated for each day (including travel
16 time) during which such member is attending meetings or
17 conferences of the Advisory Board or otherwise engaged
18 in the business of the Advisory Board, at the rate which
19 is the daily equivalent of the annual rate of basic pay in
20 effect for level III of the Executive Schedule under section
21 5314 of title 5, and while away from such member’s home
22 or regular place of business such member may be allowed
23 travel expenses, including per diem in lieu of subsistence,
24 as authorized by section 5703 of title 5.

1 “(g) ACCESS TO INFORMATION.—Members of the Ad-
2 visory Board shall be provided access to records and infor-
3 mation in the United States Patent Office, except for per-
4 sonnel or other privileged information and information
5 concerning patent applications required to be kept in con-
6 fidence by section 122.

7 “(h) APPLICABILITY OF CERTAIN ETHICS LAWS.—
8 Members of the Advisory Board shall be special Govern-
9 ment employees within the meaning of section 202 of title
10 18.”.

11 (e) CONFORMING AMENDMENTS.—Section 6 of title
12 35, United States Code, and the item relating to such sec-
13 tion in the table of contents for chapter 1 of title 35, Unit-
14 ed States Code, are repealed.

15 (f) BOARD OF PATENT APPEALS AND INTER-
16 FERENCES.—Section 7 of title 35, United States Code, is
17 amended to read as follows:

18 **“§ 7. Board of Patent Appeals and Interferences**

19 “(a) ESTABLISHMENT AND COMPOSITION.—There
20 shall be in the United States Patent Office a Board of
21 Patent Appeals and Interferences. The Commissioner, the
22 Deputy Commissioner, and the administrative patent
23 judges shall constitute the Board. The administrative pat-
24 ent judges shall be persons of competent legal knowledge
25 and scientific ability.

1 “(b) DUTIES.—

2 “(1) IN GENERAL.—The Board of Patent Ap-
3 peals and Interferences shall, on written appeal of
4 an applicant, a patent owner, or a third-party re-
5 quester in a reexamination proceeding—

6 “(A) review adverse decisions of examin-
7 ers—

8 “(i) upon applications for patents; and

9 “(ii) in reexamination proceedings;

10 and

11 “(B) determine priority and patentability
12 of invention in interferences declared under sec-
13 tion 135(a).

14 “(2) HEARINGS.—Each appeal and interference
15 shall be heard by at least 3 members of the Board,
16 who shall be designated by the Deputy Commis-
17 sioner. Only the Board of Patent Appeals and Inter-
18 ferences may grant rehearings.”.

19 (g) ANNUAL REPORT OF COMMISSIONER.—Section
20 14 of title 35, United States Code, is amended to read
21 as follows:

22 **“§ 14. Annual report to Congress**

23 “The Commissioner shall report to the Director of
24 the United States Patent and Trademark Organization
25 such information as the Director is required to submit to

1 Congress annually under section 157(d) of this title, and
2 under chapter 91 of title 31, including—

3 “(1) the total of the moneys received and ex-
4 pended by the Office;

5 “(2) the purposes for which the moneys were
6 spent;

7 “(3) the quality and quantity of the work of the
8 Office; and

9 “(4) other information relating to the Office.”.

10 (h) PRACTICE BEFORE PATENT OFFICE.—

11 (1) IN GENERAL.—Section 31 of title 35, Unit-
12 ed States Code, is amended to read as follows:

13 **“§ 31. Regulations for agents and attorneys**

14 “The Commissioner may prescribe regulations gov-
15 erning the recognition and conduct of agents, attorneys,
16 or other persons representing applicants or other parties
17 before the Office. The regulations may require such per-
18 sons, before being recognized as representatives of appli-
19 cants or other persons, to show that they are of good
20 moral character and reputation and are possessed of the
21 necessary qualifications to render to applicants or other
22 persons valuable service, advice, and assistance in the
23 presentation or prosecution of their applications or other
24 business before the Office.”.

1 (2) DESIGNATION OF ATTORNEY TO CONDUCT
2 HEARING.—Section 32 of title 35, United States
3 Code, is amended—

4 (A) in the first sentence, by striking “Pat-
5 ent and Trademark Office” and inserting “Pat-
6 ent Office”; and

7 (B) by inserting before the last sentence
8 the following: “The Commissioner shall have
9 the discretion to designate any attorney who is
10 an officer or employee of the United States Pat-
11 ent Office to conduct the hearing required by
12 this section.”.

13 (i) FUNDING.—

14 (1) ADJUSTMENT OF FEES.—Section 41(f) of
15 title 35, United States Code, is amended to read as
16 follows:

17 “(f) The Commissioner, after consulting with the
18 Patent Office Management Advisory Board pursuant to
19 section 3(a)(2)(C) of this title and after notice and oppor-
20 tunity for full participation by interested public and pri-
21 vate parties, may, by regulation, adjust the fees estab-
22 lished in this section.”.

23 (2) PATENT OFFICE FUNDING.—Section 42 of
24 title 35, United States Code, is amended to read as
25 follows:

1 **“§ 42. Patent Office funding**

2 “(a) FEES PAYABLE TO THE OFFICE.—All fees for
3 services performed by or materials furnished by the Unit-
4 ed States Patent Office shall be payable to the Office.

5 “(b) USE OF MONEYS.—Moneys from fees shall be
6 available to the United States Patent Office to carry out,
7 to the extent provided in appropriations Acts, the func-
8 tions of the Office. Moneys of the Office not otherwise
9 used to carry out the functions of the Office shall be kept
10 in cash on hand or on deposit, or invested in obligations
11 of the United States or guaranteed by the United States,
12 or in obligations or other instruments which are lawful in-
13 vestments for fiduciary, trust, or public funds. Fees avail-
14 able to the Commissioner under this title shall be used
15 only for the processing of patent applications and for other
16 services and materials relating to patents, including the
17 agreed upon share of any centralized function, as set forth
18 in section 413(b)(2)(E) of the United States Patent and
19 Trademark Organization Act of 1997.

20 “(c) CONTRIBUTION TO THE OFFICE OF THE DIREC-
21 TOR OF THE UNITED STATES PATENT AND TRADEMARK
22 ORGANIZATION.—The Patent Office shall contribute 50
23 percent of the annual budget of the Office of the Director
24 of the United States Patent and Trademark Organiza-
25 tion.”.

1 **SEC. 415. UNITED STATES TRADEMARK OFFICE.**

2 (a) ESTABLISHMENT OF THE UNITED STATES
3 TRADEMARK OFFICE AS A SEPARATE ADMINISTRATIVE
4 UNIT.—The Act of July 5, 1946 (commonly referred to
5 as the Trademark Act of 1946) is amended—

6 (1) by redesignating titles X and XI as titles XI
7 and XII, respectively;

8 (2) by redesignating sections 45, 46, 47, 48,
9 49, 50, and 51 as sections 61, 71, 72, 73, 74, 75,
10 and 76, respectively; and

11 (3) by inserting after title IX the following new
12 title:

13 **“TITLE X—UNITED STATES**
14 **TRADEMARK OFFICE**

15 **“SEC. 51. ESTABLISHMENT.**

16 “(a) ESTABLISHMENT.—The United States Trade-
17 mark Office is established as a separate administrative
18 unit of the United States Patent and Trademark Organi-
19 zation.

20 “(b) REFERENCE.—For purposes of this chapter, the
21 United States Trademark Office shall also be referred to
22 as the ‘Office’ and the ‘Trademark Office’.

23 **“SEC. 52. POWERS AND DUTIES.**

24 “The United States Trademark Office, under the pol-
25 icy direction of the Secretary of Commerce through the

1 Director of the United States Patent and Trademark Or-
2 ganization, shall be responsible for—

3 “(1) the registration of trademarks;

4 “(2) conducting studies, programs, or ex-
5 changes of items or services regarding domestic and
6 international trademark law or the administration of
7 the Office;

8 “(3) authorizing or conducting studies and pro-
9 grams cooperatively with foreign trademark offices
10 and international organizations, in connection with
11 the registration of trademarks; and

12 “(4) disseminating to the public information
13 with respect to trademarks.

14 **“SEC. 53. OFFICERS AND EMPLOYEES.**

15 “(a) COMMISSIONER.—

16 “(1) IN GENERAL.—The management of the
17 United States Trademark Office shall be vested in a
18 Commissioner of Trademarks, who shall be a citizen
19 of the United States and who shall be appointed by
20 the Director of the United States Patent and Trade-
21 mark Organization and shall serve at the pleasure of
22 the Director of the United States Patent and Trade-
23 mark Organization. The Commissioner shall be a
24 person who, by reason of professional background

1 and experience in trademark law, is especially quali-
2 fied to manage the Office.

3 “(2) DUTIES.—

4 “(A) IN GENERAL.—The Commissioner
5 shall be responsible for all aspects of the man-
6 agement, administration, and operation of the
7 Office, including the registration of trademarks,
8 and shall perform these duties in a fair, impar-
9 tial, and equitable manner.

10 “(B) ADVISING THE DIRECTOR OF THE
11 UNITED STATES PATENT AND TRADEMARK OR-
12 GANIZATION.—The Commissioner shall advise
13 the Director of the United States Patent and
14 Trademark Organization of all activities of the
15 Office undertaken in response to obligations of
16 the United States under treaties and executive
17 agreements, or which relate to cooperative pro-
18 grams with those authorities of foreign govern-
19 ments that are responsible for registering trade-
20 marks. The Commissioner shall advise the Di-
21 rector of the United States Patent and Trade-
22 mark Organization on matters of trademark
23 law and shall recommend to the Director of the
24 United States Patent and Trademark Organiza-
25 tion changes in law or policy which may im-

1 prove the ability of United States citizens to se-
2 cure and enforce trademark rights in the Unit-
3 ed States or in foreign countries.

4 “(C) REGULATIONS.—The Commissioner
5 may establish regulations, not inconsistent with
6 law, for the conduct of proceedings in the
7 Trademark Office.

8 “(D) CONSULTATION WITH THE MANAGE-
9 MENT ADVISORY BOARD.—(i) The Commis-
10 sioner shall consult with the Trademark Office
11 Management Advisory Board established under
12 section 54—

13 “(I) on a regular basis on matters re-
14 lating to the operation of the Office; and

15 “(II) before submitting budgetary
16 proposals to the Director of the United
17 States Patent and Trademark Organiza-
18 tion for submission to the Office of Man-
19 agement and Budget or changing or pro-
20 posing to change trademark user fees or
21 trademark regulations.

22 “(E) PUBLICATIONS.—(i) The Commis-
23 sioner may print, or cause to be printed, the
24 following:

1 “(I) Certificates of trademark reg-
2 istrations, including statements and draw-
3 ings, together with copies of the same.

4 “(II) The Official Gazette of the Unit-
5 ed States Trademark Office.

6 “(III) Annual indexes of trademarks
7 and registrants.

8 “(IV) Annual volumes of decisions in
9 trademark cases.

10 “(V) Pamphlet copies of laws and
11 rules relating to trademarks and circulars
12 or other publications relating to the busi-
13 ness of the Office.

14 “(ii) The Commissioner may exchange any
15 of the publications specified under clause (i) for
16 publications desirable for the use of the Trade-
17 mark Office.

18 “(3) OATH.—The Commissioner shall, before
19 taking office, take an oath to discharge faithfully the
20 duties of the Office.

21 “(4) COMPENSATION.—

22 “(A) IN GENERAL.—The Commissioner
23 shall receive compensation at the rate of pay in
24 effect for level IV of the Executive Schedule

1 under section 5315 of title 5, United States
2 Code.

3 “(B) BONUS.—In addition to compensa-
4 tion under subparagraph (A), the Commissioner
5 may, at the discretion of the Director of the
6 United States Patent and Trademark Organiza-
7 tion, receive as a bonus, an amount which
8 would raise total compensation to the equivalent
9 of the rate of pay in effect for level III of the
10 Executive Schedule under section 5314 of title
11 5.

12 “(b) OFFICERS AND EMPLOYEES.—The Commis-
13 sioner shall appoint a Deputy Commissioner of Trade-
14 marks who shall be vested with the authority to act in
15 the capacity of the Commissioner in the event of the ab-
16 sence or incapacity of the Commissioner. In the event of
17 a vacancy in the office of Commissioner, the Deputy Com-
18 missioner shall fill the office of Commissioner until a new
19 Commissioner is appointed and takes office. Other offi-
20 cers, attorneys, employees, and agents shall be selected
21 and appointed by the Commissioner, and shall be vested
22 with such powers and duties as the Commissioner may de-
23 termine.

1 **“SEC. 54. TRADEMARK OFFICE MANAGEMENT ADVISORY**
2 **BOARD.**

3 “(a) ESTABLISHMENT OF MANAGEMENT ADVISORY
4 BOARD.—

5 “(1) APPOINTMENT.—The United States
6 Trademark Office shall have a Management Advi-
7 sory Board (referred to in this title as the ‘Advisory
8 Board’) of 5 members, who shall be appointed by the
9 President and shall serve at the pleasure of the
10 President. Not more than 3 of the 5 members shall
11 be members of the same political party.

12 “(2) CHAIR.—The President shall designate a
13 Chair of the Advisory Board, whose term as chair
14 shall be for 3 years.

15 “(3) TIMING OF APPOINTMENTS.—Initial ap-
16 pointments to the Advisory Board shall be made
17 within 3 months after the effective date of the Unit-
18 ed States Patent and Trademark Organization Act
19 of 1997. Vacancies shall be filled in the manner in
20 which the original appointment was made under this
21 section within 3 months after they occur.

22 “(b) BASIS FOR APPOINTMENTS.—Members of the
23 Advisory Board shall be citizens of the United States who
24 shall be chosen so as to represent the interests of diverse
25 users of the United States Trademark Office, and shall

1 include individuals with substantial background and
2 achievement in corporate finance and management.

3 “(c) MEETINGS.—The Advisory Board shall meet at
4 the call of the Chair to consider an agenda set by the
5 Chair.

6 “(d) DUTIES.—The Advisory Board shall—

7 “(1) review the policies, goals, performance,
8 budget, and user fees of the United States Trade-
9 mark Office, and advise the Commissioner on these
10 matters; and

11 “(2) within 60 days after the end of each fiscal
12 year—

13 “(A) prepare an annual report on the mat-
14 ters referred to under paragraph (1);

15 “(B) transmit the report to the Director of
16 the United States Patent and Trademark Orga-
17 nization, the President, and the Committees on
18 the Judiciary of the Senate and the House of
19 Representatives; and

20 “(C) publish the report in the Trademark
21 Office Official Gazette.

22 “(f) COMPENSATION.—Each member of the Advisory
23 Board shall be compensated for each day (including travel
24 time) during which such member is attending meetings or
25 conferences of the Advisory Board or otherwise engaged

1 in the business of the Advisory Board, at the rate which
2 is the daily equivalent of the annual rate of basic pay in
3 effect for level III of the Executive Schedule under section
4 5314 of title 5, United States Code, and while away from
5 such member's home or regular place of business such
6 member may be allowed travel expenses, including per
7 diem in lieu of subsistence, as authorized by section 5703
8 of title 5, United States Code.

9 “(g) ACCESS TO INFORMATION.—Members of the Ad-
10 visory Board shall be provided access to records and infor-
11 mation in the United States Trademark Office, except for
12 personnel or other privileged information.

13 “(h) APPLICABILITY OF CERTAIN ETHIC LAWS.—
14 Members of the Advisory Board shall be special Govern-
15 ment employees within the meaning of section 202 of title
16 18, United States Code.

17 **“SEC. 55. ANNUAL REPORT TO CONGRESS.**

18 “The Commissioner shall report to the Director of
19 the United States Patent and Trademark Organization
20 such information as the Director is required to report to
21 Congress annually under chapter 91 of title 5, United
22 States Code, including—

23 “(1) the moneys received and expended by the
24 Office;

1 “(2) the purposes for which the moneys were
2 spent;

3 “(3) the quality and quantity of the work of the
4 Office; and

5 “(4) other information relating to the Office.

6 **“SEC. 56. TRADEMARK OFFICE FUNDING.**

7 “(a) FEES PAYABLE TO THE OFFICE.—All fees for
8 services performed by or materials furnished by the Unit-
9 ed States Trademark Office shall be payable to the Office.

10 “(b) USE OF MONEYS.—Moneys from fees shall be
11 available to the United States Trademark Office to carry
12 out, to the extent provided in appropriations Acts, the
13 functions of the Office. Moneys of the Office not otherwise
14 used to carry out the functions of the Office shall be kept
15 in cash on hand or on deposit, or invested in obligations
16 of the United States or guaranteed by the United States,
17 or in obligations or other instruments which are lawful in-
18 vestments for fiduciary, trust, or public funds. Fees avail-
19 able to the Commissioner under this chapter shall be used
20 only for the registration of trademarks and for other serv-
21 ices and materials relating to trademarks, including the
22 agreed upon share of any centralized function, as set forth
23 in section 413(b)(2)(E) of the United States Patent and
24 Trademark Organization Act of 1997.

1 “(c) CONTRIBUTION TO THE OFFICE OF THE DIREC-
2 TOR OF THE UNITED STATES PATENT AND TRADEMARK
3 ORGANIZATION.—The Trademark Office shall contribute
4 50 percent of the annual budget of the Office of the Direc-
5 tor of the United States Patent and Trademark Organiza-
6 tion.”.

7 (b) TRADEMARK TRIAL AND APPEAL BOARD.—Sec-
8 tion 17 of the Act of July 5, 1946 (commonly referred
9 to as the Trademark Act of 1946) (15 U.S.C. 1067) is
10 amended to read as follows:

11 “SEC. 17. (a) In every case of interference, opposition
12 to registration, application to register as a lawful concur-
13 rent user, or application to cancel the registration of a
14 mark, the Commissioner shall give notice to all parties and
15 shall direct a Trademark Trial and Appeal Board to deter-
16 mine and decide the respective rights of registration.

17 “(b) The Trademark Trial and Appeal Board shall
18 include the Commissioner of Trademarks, the Deputy
19 Commissioner of Trademarks, and administrative trade-
20 mark judges competent in trademark law who are ap-
21 pointed by the Commissioner.”.

22 (c) DETERMINATION OF FEES.—Section 31(a) of the
23 Act of July 5, 1946 (commonly referred to as the Trade-
24 mark Act of 1946) (15 U.S.C. 1067(a)) is amended by
25 striking the second and third sentences and inserting the

1 following: “Fees established under this subsection may be
2 adjusted by the Commissioner, after consulting with the
3 Trademark Office Management Advisory Board in accord-
4 ance with section 53(a)(2)(C) of this Act and after notice
5 and opportunity for full participation by interested public
6 and private parties. The Director of the United States
7 Patent and Trademark Organization shall determine
8 whether such fees are consistent with the policy direction
9 of the Secretary of Commerce.”.

10 **SEC. 416. SUITS BY AND AGAINST THE ORGANIZATION.**

11 (a) ACTIONS UNDER UNITED STATES LAW.—Any
12 civil action or proceeding to which the United States Pat-
13 ent and Trademark Organization is a party is deemed to
14 arise under the laws of the United States. The Federal
15 courts shall have exclusive jurisdiction over all civil actions
16 by or against the Organization.

17 (b) REPRESENTATION BY THE DEPARTMENT OF JUS-
18 TICE.—The United States Patent and Trademark Organi-
19 zation shall be deemed an agency of the United States for
20 purposes of section 516 of title 28, United States Code.

21 (c) PROHIBITION ON ATTACHMENT, LIENS, OR SIMI-
22 LAR PROCESS.—No attachment, garnishment, lien, or
23 similar process, intermediate or final, in law or equity,
24 may be issued against property of the Organization.

1 **SEC. 417. FUNDING.**

2 (a) IN GENERAL.—The activities of the United
3 States Patent and Trademark Organization and each of-
4 fice of the Organization shall be funded entirely through
5 fees payable to the United States Patent Office (under
6 section 42 of title 35, United States Code) and the United
7 States Trademark Office (under section 56 of the Act of
8 July 5, 1946 (commonly known as the Trademark Act of
9 1946)), and surcharges appropriated by Congress, to the
10 extent provided in appropriations Acts and subject to the
11 provisions of subsection (b).

12 (b) BORROWING AUTHORITY.—

13 (1) IN GENERAL.—The United States Patent
14 and Trademark Organization is authorized to issue
15 from time to time for purchase by the Secretary of
16 the Treasury its debentures, bonds, notes, and other
17 evidences of indebtedness (referred to in this sub-
18 section as “obligations”) to assist in financing the
19 activities of the United States Patent Office and the
20 United States Trademark Office. Borrowing under
21 this section shall be subject to prior approval in ap-
22 propriations Acts. Such borrowing shall not exceed
23 amounts approved in appropriations Acts.

24 (2) BORROWING AUTHORITY.—Any borrowing
25 under this subsection shall be repaid only from fees
26 paid to the Office for which such obligations were is-

1 sued and surcharges appropriated by Congress. Such
2 obligations shall be redeemable at the option of the
3 United States Patent and Trademark Organization
4 before maturity in the manner stipulated in such ob-
5 ligations and shall have such maturity as is deter-
6 mined by the United States Patent and Trademark
7 Organization with the approval of the Secretary of
8 the Treasury. Each such obligation issued to the
9 Treasury shall bear interest at a rate not less than
10 the current yield on outstanding marketable obliga-
11 tions of the United States of comparable maturity
12 during the month preceding the issuance of the obli-
13 gation as determined by the Secretary of the Treas-
14 ury.

15 (3) PURCHASE OF OBLIGATIONS.—The Sec-
16 retary of the Treasury shall purchase any obligations
17 of the United States Patent and Trademark Organi-
18 zation issued under this subsection and for such
19 purpose the Secretary of the Treasury is authorized
20 to use as a public-debt transaction the proceeds of
21 any securities issued under chapter 31 of title 31,
22 United States Code, and the purposes for which se-
23 curities may be issued under that chapter are ex-
24 tended to include such purpose.

1 (4) TREATMENT.—Payment under this sub-
2 section of the purchase price of such obligations of
3 the United States Patent and Trademark Organiza-
4 tion shall be treated as public debt transactions of
5 the United States.

6 **SEC. 418. TRANSFERS.**

7 (a) TRANSFER OF FUNCTIONS.—Except as relates to
8 the direction of patent and trademark policy, there are
9 transferred to, and vested in, the United States Patent
10 and Trademark Organization all functions, powers, and
11 duties vested by law in the Secretary of Commerce or the
12 Department of Commerce or in the officers or components
13 in the Department of Commerce with respect to the au-
14 thority to grant patents and register trademarks, and in
15 the Patent and Trademark Office, as in effect on the day
16 before the effective date of this subtitle, and in the officers
17 and components of such office.

18 (b) TRANSFER OF FUNDS AND PROPERTY.—The
19 Secretary of Commerce shall transfer to the United States
20 Patent and Trademark Organization, on the effective date
21 of this subtitle, so much of the assets, liabilities, contracts,
22 property, records, and unexpended and unobligated bal-
23 ances of appropriations, authorizations, allocations, and
24 other funds employed, held, used, arising from, available
25 to, or to be made available to the Department of Com-

1 merce, including funds set aside for accounts receivable
2 which are related to functions, powers, and duties which
3 are vested in the United States Patent and Trademark
4 Office by this subtitle.

5 **SEC. 419. USE OF ORGANIZATION NAME.**

6 The use of the terms “United States Patent and
7 Trademark Organization”, “Patent and Trademark Of-
8 fice”, “United States Patent Office”, “Patent Office”,
9 “United States Trademark Office”, “Trademark Office”,
10 or any combination of such terms, as the name or part
11 thereof under which an individual or entity does business,
12 is prohibited. A violation of this section may be enjoined
13 by any Federal court at the suit of the Organization. In
14 any such suit, the Organization shall be entitled to statu-
15 tory damages of \$1,000 for each day during which such
16 violation continues or is repeated following notice by the
17 Organization and, in addition, may recover actual dam-
18 ages flowing from such violations.

19 **CHAPTER 2—EFFECTIVE DATE;**
20 **TECHNICAL AMENDMENTS**

21 **SEC. 431. EFFECTIVE DATE.**

22 This subtitle and the amendments made by this sub-
23 title shall take effect 4 months after the date of enactment
24 of this Act.

1 **SEC. 432. TECHNICAL AND CONFORMING AMENDMENTS.**

2 (a) AMENDMENTS TO TITLE 35.—

3 (1) TABLE OF PARTS.—The item relating to
4 part I in the table of parts for title 35, United
5 States Code, is amended to read as follows:

“I. United States Patent Office 1.”.

6 (2) HEADING.—The heading for part I of title
7 35, United States Code, is amended to read as fol-
8 lows:

9 **“PART I—UNITED STATES PATENT OFFICE”.**

10 (3) TABLE OF CHAPTERS.—The table of chap-
11 ters for part I of title 35, United States Code, is
12 amended by amending the item relating to chapter
13 1 to read as follows:

“1. Establishment, Officers and Employees, Functions 1”.

14 (4) TABLE OF SECTIONS.—The table of sections
15 for chapter 1 of title 35, United States Code, is
16 amended to read as follows:

17 **“CHAPTER 1—ESTABLISHMENT, OFFICERS**
18 **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 Office Management Advisory Board.

“6. Duties of Commissioner.

“7. Board of Patent Appeals and Interferences.

“8. Library.

“9. Classification of patents.

“10. Certified copies of records.

“11. Publications.

“12. Exchange of copies of patents with foreign countries.

“13. Copies of patents for public libraries.

“14. Annual report to Congress.”.

1 (5) COMMISSIONER OF PATENTS AND TRADE-
2 MARKS.—(A) Section 41(h)(1) of title 35, United
3 States Code, is amended by striking “Commissioner
4 of Patents and Trademarks” and inserting “Com-
5 missioner”.

6 (B) Section 155 of title 35, United States Code,
7 is amended by striking “Commissioner of Patents
8 and Trademarks” and inserting “Commissioner”.

9 (C) Section 155A(c) of title 35, United States
10 Code, is amended by striking “Commissioner of Pat-
11 ents” and inserting “Commissioner”.

12 (6) PATENT AND TRADEMARK OFFICE.—The
13 provisions of title 35, United States Code, are
14 amended by striking “Patent and Trademark Of-
15 fice” each place it appears and inserting “Patent Of-
16 fice”.

17 (7) SECRETARY OF COMMERCE.—Section
18 157(d) of title 35, United States Code, is amended
19 by striking “Secretary of Commerce” and inserting
20 “Director of the United States Patent and Trade-
21 mark Organization”.

22 (b) AMENDMENTS TO THE TRADEMARK ACT OF
23 1946.—

1 (1) REFERENCES.—All amendments in this
2 subsection refer to the Act of July 5, 1946 (com-
3 monly referred to as the Trademark Act of 1946).

4 (2) AMENDMENTS RELATING TO COMMIS-
5 SIONER.—Section 61 (as redesignated by section
6 415(a)(2) of this title) is amended by striking the
7 undesignated paragraph relating to the definition of
8 the term “Commissioner” and inserting the follow-
9 ing:

10 “The term ‘Commissioner’ means the Commissioner
11 of Trademarks.”.

12 (3) AMENDMENTS RELATING TO PATENT AND
13 TRADEMARK OFFICE.—(A) Section 1(a)(1) is
14 amended by striking “Patent and Trademark Of-
15 fice” and inserting “Trademark Office”.

16 (B) Section 1(a)(2) is amended by striking
17 “Patent and Trademark Office” and inserting
18 “Trademark Office”.

19 (C) Section 1(b)(1) is amended by striking
20 “Patent and Trademark Office” and inserting
21 “Trademark Office”.

22 (D) Section 1(b)(2) is amended by striking
23 “Patent and Trademark Office” and inserting
24 “Trademark Office”.

1 (E) Section 1(d)(1) is amended by striking
2 “Patent and Trademark Office” each place such
3 term appears and inserting “Trademark Office”.

4 (F) Section 1(e) is amended by striking “Pat-
5 ent and Trademark Office” and inserting “Trade-
6 mark Office”.

7 (G) Section 2(d) is amended by striking “Pat-
8 ent and Trademark Office” and inserting “Trade-
9 mark Office”.

10 (H) Section 7(a) is amended by striking “Pat-
11 ent and Trademark Office” each place such term ap-
12 pears and inserting “Trademark Office”.

13 (I) Section 7(d) is amended by striking “Patent
14 and Trademark Office” and inserting “Trademark
15 Office”.

16 (J) Section 7(e) is amended by striking “Patent
17 and Trademark Office” each place such term ap-
18 pears and inserting “Trademark Office”.

19 (K) Section 7(f) is amended by striking “Pat-
20 ent and Trademark Office” each place such term ap-
21 pears and inserting “Trademark Office”.

22 (L) Section 7(g) is amended by striking “Pat-
23 ent and Trademark Office” each place such term ap-
24 pears and inserting “Trademark Office”.

1 (M) Section 8(a) is amended by striking “Pat-
2 ent and Trademark Office” and inserting “Trade-
3 mark Office”.

4 (N) Section 8(b) is amended by striking “Pat-
5 ent and Trademark Office” and inserting “Trade-
6 mark Office”.

7 (O) Section 10 is amended by striking “Patent
8 and Trademark Office” each place such term ap-
9 pears and inserting “Trademark Office”.

10 (P) Section 12(a) is amended by striking “Pat-
11 ent and Trademark Office” and inserting “Trade-
12 mark Office”.

13 (Q) Section 13(a) is amended by striking “Pat-
14 ent and Trademark Office” and inserting “Trade-
15 mark Office”.

16 (R) Section 13(b)(1) is amended by striking
17 “Patent and Trademark Office” each place such
18 term appears and inserting “Trademark Office”.

19 (S) Section 15(2) is amended by striking “Pat-
20 ent and Trademark Office” and inserting “Trade-
21 mark Office”.

22 (T) Section 17 is amended by striking “Patent
23 and Trademark Office” and inserting “Trademark
24 Office”.

1 (U) Section 21(a)(2) is amended by striking
2 “Patent and Trademark Office” and inserting
3 “Trademark Office”.

4 (V) Section 21(a)(3) is amended by striking
5 “Patent and Trademark Office” each place such
6 term appears and inserting “Trademark Office”.

7 (W) Section 21(a)(4) is amended by striking
8 “Patent and Trademark Office” each place such
9 term appears and inserting “Trademark Office”.

10 (X) Section 21(b)(3) is amended by striking
11 “Patent and Trademark Office” each place such
12 term appears and inserting “Trademark Office”.

13 (Y) Section 21(b)(4) is amended by striking
14 “Patent and Trademark Office” and inserting
15 “Trademark Office”.

16 (Z) Section 24 is amended by striking “Patent
17 and Trademark Office” and inserting “Trademark
18 Office”.

19 (AA) Section 29 is amended by striking “Pat-
20 ent and Trademark Office” each place such term ap-
21 pears and inserting “Trademark Office”.

22 (BB) Section 30 is amended by striking “Pat-
23 ent and Trademark Office” and inserting “Trade-
24 mark Office”.

1 (CC) Section 31(a) is amended by striking
2 “Patent and Trademark Office” and inserting
3 “Trademark Office”.

4 (DD) Section 34(a) is amended by striking
5 “Patent and Trademark Office” and inserting
6 “Trademark Office”.

7 (EE) Section 34(d)(1)(B)(i) is amended by
8 striking “Patent and Trademark Office” and insert-
9 ing “Trademark Office”.

10 (FF) Section 35(a) is amended by striking
11 “Patent and Trademark Office” and inserting
12 “Trademark Office”.

13 (GG) Section 36 is amended by striking “Pat-
14 ent and Trademark Office” and inserting “Trade-
15 mark Office”.

16 (HH) Section 37 is amended by striking “Pat-
17 ent and Trademark Office” and inserting “Trade-
18 mark Office”.

19 (II) Section 38 is amended by striking “Patent
20 and Trademark Office” and inserting “Trademark
21 Office”.

22 (JJ) Section 39(b) is amended by striking
23 “Patent and Trademark Office” and inserting
24 “Trademark Office”.

1 (KK) Section 41 is amended by striking “Patent and Trademark Office” and inserting “Trademark Office”.

2
3
4 (LL) Section 61 (as redesignated under section 415(a)(2) of this title) is amended in the undesignated paragraph relating to the definition of “registered mark”—

5
6
7
8 (i) by striking “Patent and Trade Mark Office” and inserting “Trademark Office; and

9
10 (ii) by striking “Patent and Trade Office” and inserting “Trademark Office”.

11
12 (MM) Section 72(a) (as redesignated under section 415(a)(2) of this title) is amended by striking “Patent and Trademark Office” and inserting “Trademark Office”.

13
14
15
16 (NN) Section 75 (as redesignated under section 415(a)(2) of this title) is amended by striking “Patent and Trademark Office” and inserting “Trademark Office”.

17
18
19
20 (c) AMENDMENTS TO TITLE 5.—Title 5, United States Code, is amended—

21
22 (1) in section 5102(c)(23)—

23 (A) by striking “examiners-in-chief” in each place it appears and inserting “administrative patent judges”; and

24
25

1 (B) by striking “Office, Department of
2 Commerce” and inserting “Organization”; and
3 (2) in section 5316—

4 (A) by striking “Commissioner of Patents,
5 Department of Commerce.”; and

6 (B) by striking:

7 “Deputy Commissioner of Patents and Trade-
8 marks.

9 “Assistant Commissioner for Patents.

10 “Assistant Commissioner for Trademarks.”.

11 (d) AMENDMENT TO TITLE 31.—Section 9101(3) of
12 title 31, United States Code, is amended by adding at the
13 end the following:

14 “(O) the United States Patent and Trade-
15 mark Organization.”.

16 (e) AMENDMENTS TO INSPECTOR GENERAL ACT OF
17 1978.—Section 11 of the Inspector General Act of 1978
18 (5 U.S.C. App.) is amended—

19 (1) in paragraph (1) by striking “or the Com-
20 missioner of Social Security, Social Security Admin-
21 istration;” and inserting “the Commissioner of So-
22 cial Security, Social Security Administration; or the
23 Director of the United States Patent and Trade-
24 mark Organization, United States Patent and
25 Trademark Organization;”; and

1 “(1) IN GENERAL.—(A) Subject to paragraph
2 (2), each application for patent, except applications
3 for design patents filed under chapter 16 of this title
4 and provisional applications filed under section
5 111(b) of this title, shall be published, in accordance
6 with procedures determined by the Commissioner, as
7 soon as possible after the expiration of a period of
8 18 months from the earliest filing date for which a
9 benefit is sought under this title. At the request of
10 the applicant, an application may be published ear-
11 lier than the end of such 18-month period.

12 “(B) No information concerning published pat-
13 ent applications shall be made available to the public
14 except as the Commissioner determines.

15 “(C) Notwithstanding any other provision of
16 law, a determination by the Commissioner to release
17 or not to release information concerning a published
18 patent application shall be final and nonreviewable.

19 “(2) EXCEPTIONS.—(A) An application that is
20 no longer pending shall not be published.

21 “(B) An application that is subject to a secrecy
22 order pursuant to section 181 of this title shall not
23 be published.

24 “(C)(i) Where an applicant makes a request
25 upon filing, certifying that the invention disclosed in

1 the application has not and will not be the subject
2 of an application filed in a foreign country, the ap-
3 plication shall not be published as provided in para-
4 graph (1).

5 “(ii) An applicant may rescind a request made
6 under clause (i) at any time. An applicant has a
7 duty to notify the Director within 1 month of filing
8 an application in a foreign country.

9 “(iii) Where an applicant rescinds a request
10 made under clause (i) or notifies the Director that
11 an application was filed in a foreign country, the ap-
12 plication shall be published in accordance with the
13 provisions of paragraph (1).

14 “(c) PRE-ISSUANCE OPPOSITION.—The provisions of
15 this section shall not operate to create any new oppor-
16 tunity for pre-issuance opposition. The Commissioner may
17 establish appropriate procedures to ensure that this sec-
18 tion does not create any new opportunity for pre-issuance
19 opposition that did not exist prior to the adoption of this
20 section.

21 “(d) STUDY.—

22 “(1) IN GENERAL.—The General Accounting
23 Office shall conduct a 3-year study of the applicants
24 who file only in the United States after the effective
25 date of this title.

1 “(2) CONTENTS.—The study conducted under
2 paragraph (1) shall—

3 “(A) consider the number of such appli-
4 cants in relation to the number of applicants
5 who file in the United States and outside the
6 United States;

7 “(B) examine how many domestic-only fil-
8 ers request at the time of filing not to be pub-
9 lished;

10 “(C) examine how many such filers rescind
11 that request or later choose to file abroad; and

12 “(D) examine the manner of entity seeking
13 an application and any correlation that may
14 exist between such manner and publication of
15 patent applications.”.

16 **SEC. 443. TIME FOR CLAIMING BENEFIT OF EARLIER FIL-**
17 **ING DATE.**

18 (a) IN A FOREIGN COUNTRY.—Section 119(b) of title
19 35, United States Code, is amended to read as follows:

20 “(b)(1) No application for patent shall be entitled to
21 this right of priority unless a claim, identifying the foreign
22 application by specifying its application number, country,
23 and the day, month, and year of its filing, is filed in the
24 Patent Office at such time during the pendency of the ap-
25 plication as required by the Commissioner.

1 “(2) The Commissioner may consider the failure of
2 the applicant to file a timely claim for priority as a waiver
3 of any such claim. The Commissioner may establish proce-
4 dures, including the payment of a surcharge, to accept an
5 unintentionally delayed claim under this section.

6 “(3) The Commissioner may require a certified copy
7 of the original foreign application, specification, and draw-
8 ings upon which it is based, a translation if not in the
9 English language, and such other information as the Com-
10 missioner considers necessary. Any such certification shall
11 be made by the foreign intellectual property authority in
12 which the foreign application was filed and show the date
13 of the application and of the filing of the specification and
14 other papers.”.

15 (b) IN THE UNITED STATES.—Section 120 of title
16 35, United States Code, is amended by adding at the end
17 the following: “The Commissioner may determine the time
18 period during the pendency of the application within which
19 an amendment containing the specific reference to the ear-
20 lier filed application is submitted. The Commissioner may
21 consider the failure to submit such an amendment within
22 that time period as a waiver of any benefit under this sec-
23 tion. The Commissioner may establish procedures, includ-
24 ing the payment of a surcharge, to accept unavoidably late
25 submissions of amendments under this section.”.

1 **SEC. 444. PROVISIONAL RIGHTS.**

2 Section 154 of title 35, United States Code, is
3 amended—

4 (1) in the section caption by inserting “; **pro-**
5 **visional rights**” after “**patent**”; and

6 (2) by adding at the end the following new sub-
7 section:

8 “(d) PROVISIONAL RIGHTS.—

9 “(1) IN GENERAL.—In addition to other rights
10 provided by this section, a patent shall include the
11 right to obtain a reasonable royalty from any person
12 who, during the period beginning on the date of pub-
13 lication of the application for such patent pursuant
14 to section 122(b) of this title, or in the case of an
15 international application filed under the treaty de-
16 fined in section 351(a) of this title designating the
17 United States under Article 21(2)(a) of such treaty,
18 the date of publication of the application, and ending
19 on the date the patent is issued—

20 “(A)(i) makes, uses, offers for sale, or sells
21 in the United States the invention as claimed in
22 the published patent application or imports
23 such an invention into the United States; or

24 “(ii) if the invention as claimed in the pub-
25 lished patent application is a process, uses, of-
26 fers for sale, or sells in the United States or

1 imports into the United States products made
2 by that process as claimed in the published pat-
3 ent application; and

4 “(B) had actual notice of the published
5 patent application, and where the right arising
6 under this paragraph is based upon an inter-
7 national application designating the United
8 States that is published in a language other
9 than English, a translation of the international
10 application into the English language.

11 “(2) RIGHT BASED ON SUBSTANTIALLY IDEN-
12 TICAL INVENTIONS.—The right under paragraph (1)
13 to obtain a reasonable royalty shall not be available
14 under this subsection unless the invention as claimed
15 in the patent is substantially identical to the inven-
16 tion as claimed in the published patent application.

17 “(3) TIME LIMITATION ON OBTAINING A REA-
18 SONABLE ROYALTY.—The right under paragraph (1)
19 to obtain a reasonable royalty shall be available only
20 in an action brought not later than 6 years after the
21 patent is issued. The right under paragraph (1) to
22 obtain a reasonable royalty shall not be affected by
23 the duration of the period described in paragraph
24 (1).

1 “(4) REQUIREMENTS FOR INTERNATIONAL AP-
2 PLICATIONS.—

3 “(A) EFFECTIVE DATE.—The right under
4 paragraph (1) to obtain a reasonable royalty
5 based upon the publication under the treaty of
6 an international application designating the
7 United States shall commence from the date
8 that the Patent Office receives a copy of the
9 publication under the treaty defined in section
10 351(a) of this title of the international applica-
11 tion, or, if the publication under the treaty of
12 the international application is in a language
13 other than English, from the date that the Pat-
14 ent Office receives a translation of the inter-
15 national application in the English language.

16 “(B) COPIES.—The Commissioner may re-
17 quire the applicant to provide a copy of the
18 international application and a translation
19 thereof.

20 “(5) ISSUANCE OF PATENTS ON INDIVIDUAL
21 CLAIMS.—Where the Director in a notification to the
22 applicant under section 132 of this title indicates
23 that one or more claims of a published application
24 are allowable, the applicant may request the issu-
25 ance of a patent incorporating those claims. The ap-

1 **SEC. 446. COST RECOVERY FOR PUBLICATION.**

2 The Commissioner of Patents shall recover the cost
3 of early publication required by the amendment made by
4 section 442 by adjusting the filing, issue, and maintenance
5 fees under title 35, United States Code, by charging a sep-
6 arate publication fee, or by any combination of these meth-
7 ods.

8 **SEC. 447. CONFORMING CHANGES.**

9 The following provisions of title 35, United States
10 Code, are amended:

11 (1) Section 11 is amended in paragraph 1 of
12 subsection (a) by inserting “and published applica-
13 tions for patents” after “Patents”.

14 (2) Section 12 is amended—

15 (A) in the section caption by inserting
16 “**and applications**” after “**patents**”; and

17 (B) by inserting “and published applica-
18 tions for patents” after “patents”.

19 (3) Section 13 is amended—

20 (A) in the section caption by inserting
21 “**and applications**” after “**patents**”; and

22 (B) by inserting “and published applica-
23 tions for patents” after “patents”.

24 (4) The items relating to sections 12 and 13 in
25 the table of sections for chapter 1 are each amended
26 by inserting “and applications” after “patents”.

1 (5) The item relating to section 122 in the table
2 of sections for chapter 11 is amended by inserting
3 “; publication of patent applications” after “applica-
4 tions”.

5 (6) The item relating to section 154 in the table
6 of sections for chapter 14 is amended by inserting
7 “; provisional rights” after “patent”.

8 (7) Section 181 is amended—

9 (A) in the first undesignated paragraph—

10 (i) by inserting “by the publication of
11 an application or” after “disclosure”; and

12 (ii) “the publication of the application
13 or” after “withhold”;

14 (B) in the second undesignated paragraph
15 by inserting “by the publication of an applica-
16 tion or” after “disclosure of an invention”;

17 (C) in the third undesignated paragraph—

18 (i) by inserting “by the publication of
19 the application or” after “disclosure of the
20 invention”; and

21 (ii) “the publication of the application
22 or” after “withhold”; and

23 (D) in the fourth undesignated paragraph
24 by inserting “the publication of an application
25 or” after “and” in the first sentence.

1 (8) Section 252 is amended in the first undesig-
2 nated paragraph by inserting “substantially” before
3 “identical” each place it appears.

4 (9) Section 284 is amended by adding at the
5 end of the second undesignated paragraph the fol-
6 lowing: “Increased damages under this paragraph
7 shall not apply to provisional rights under section
8 154(d) of this title.”.

9 (10) Section 374 is amended to read as follows:

10 **“§ 374. Publication of international application: Ef-**
11 **fect**

12 “The publication under the treaty, defined in section
13 351(a) of this title, of an international application des-
14 ignating the United States shall confer the same rights
15 and shall have the same effect under this title as an appli-
16 cation for patent published under section 122(b), except
17 as provided in sections 102(e) and 154(d) of this title.”.

18 **SEC. 448. LAST DAY OF PENDENCY OF PROVISIONAL APPLI-**
19 **CATION.**

20 Section 119(e) of title 35, United States Code, is
21 amended by adding at the end the following:

22 “(3) If the day that is 12 months after the filing date
23 of a provisional application falls on a Saturday, Sunday,
24 or legal holiday as defined in rule 6(a) of the Federal
25 Rules of Civil Procedure, the period of pendency of the

1 provisional application shall be extended to the next suc-
2 ceeding business day.”.

3 **SEC. 449. EFFECTIVE DATE.**

4 (a) SECTIONS 442 THROUGH 447.—Sections 442
5 through 447, and the amendments made by such sections,
6 shall take effect on the date that is 1 year after the date
7 of enactment of this Act and shall apply to all applications
8 filed under section 111 of title 35, United States Code,
9 on or after that date, and all applications complying with
10 section 371 of title 35, United States Code, that resulted
11 from international applications filed on or after that date.
12 The amendment made by section 444 shall also apply to
13 international applications designating the United States
14 that are filed on or after the date that is 1 year after
15 the date of enactment of this Act.

16 (b) SECTION 448.—The amendments made by sec-
17 tion 448 shall take effect on the date of enactment of this
18 Act and, except for a design patent application filed under
19 chapter 16 of title 35, United States Code, shall apply to
20 any application filed on or after June 8, 1995.

21 **Subtitle C—Patent Term**
22 **Restoration**

23 **SEC. 451. PATENT TERM RESTORATION AUTHORITY.**

24 Section 154(b) of title 35, United States Code, is
25 amended to read as follows:

1 “(b) ADJUSTMENT OF PATENT TERM.—

2 “(1) BASIS FOR PATENT TERM RESTORA-
3 TION.—

4 “(A) DELAY.—Subject to the limitations
5 under paragraph (2), if the issue of an original
6 patent is delayed due to—

7 “(i) a proceeding under section 135(a)
8 of this title;

9 “(ii) the imposition of an order pursu-
10 ant to section 181 of this title;

11 “(iii) appellate review by the Board of
12 Patent Appeals and Interferences or by a
13 Federal court where the patent was issued
14 pursuant to a decision in the review revers-
15 ing an adverse determination of patentabil-
16 ity; or

17 “(iv) an unusual administrative delay
18 by the Patent Office in issuing the patent,
19 the term of the patent shall be adjusted for the
20 period of delay.

21 “(B) ADMINISTRATIVE DELAY.—For pur-
22 poses of subparagraph (A)(iv), an unusual ad-
23 ministrative delay by the Patent Office is the
24 failure to—

1 “(i) make a notification of the rejection of any claim for a patent or any objection or argument under section 132 of this title or give or mail a written notice of allowance under section 151 of this title not later than 14 months after the date on which the application was filed;

2 “(ii) respond to a reply under section 132 of this title or to an appeal taken under section 134 of this title not later than 4 months after the date on which the reply was filed or the appeal was taken;

3 “(iii) act on an application not later than 4 months after the date of a decision by the Board of Patent Appeals and Interferences under section 134 or 135 of this title or a decision by a Federal court under section 141, 145, or 146 of this title where allowable claims remain in an application;

4 “(iv) issue a patent not later than 4 months after the date on which the issue fee was paid under section 151 of this title and all outstanding requirements were satisfied; or

1 “(v) issue a patent within 3 years
2 after the actual filing date of the applica-
3 tion in the United States, if the appli-
4 cant—

5 “(I) has not obtained further lim-
6 ited examination of the application
7 under section 132(b) of this title;

8 “(II) has not benefited from an
9 adjustment of patent term under
10 clause (i), (ii), or (iii) or paragraph
11 (1)(A);

12 “(III) has not sought or obtained
13 appellate review by the Board of Pat-
14 ent Appeals and Interferences or by a
15 Federal court other than in a case in
16 which the patent was issued pursuant
17 to a decision in the review reversing
18 an adverse determination of patent-
19 ability; and

20 “(IV) has not requested any
21 delay in the processing of the applica-
22 tion by the Patent Office.

23 “(2) LIMITATIONS.—

24 “(A) IN GENERAL.—The total duration of
25 any adjustments granted pursuant to either

1 subclause (iii) or (iv) of paragraph (1)(A) or
2 both such subclauses shall not exceed 10 years.
3 To the extent that periods of delay attributable
4 to grounds specified in paragraph (1) overlap,
5 the period of any adjustment granted under
6 this subsection shall not exceed the actual num-
7 ber of days the issuance of the patent was de-
8 layed.

9 “(B) REDUCTION OF ADJUSTMENT.—The
10 period of adjustment of the term of a patent
11 under this subsection shall be reduced by a pe-
12 riod equal to the time in which the applicant
13 failed to engage in reasonable efforts to con-
14 clude prosecution of the application. The Com-
15 missioner shall prescribe regulations establish-
16 ing the circumstances that constitute a failure
17 of an applicant to engage in reasonable efforts
18 to conclude processing or examination of an ap-
19 plication.

20 “(C) DISCLAIMED TERM.—No patent the
21 term of which has been disclaimed beyond a
22 specified date may be adjusted under this sec-
23 tion beyond the expiration date specified in the
24 disclaimer.

1 “(D) APPLICANT DELAY.—The period of
2 adjustment of the term of a patent under clause
3 (iv) of paragraph (1)(A), which is based on the
4 failure of the Patent Office to meet the criteria
5 set forth in clause (v) of paragraph (1)(B),
6 shall be reduced by the cumulative total of any
7 periods of time that an applicant takes to re-
8 spond in excess of 3 months after the date on
9 which the Patent Office makes any rejection,
10 objection, argument, or other request, except
11 that the Commissioner, upon petition from the
12 applicant in the case of a nonprofit research
13 laboratory or nonprofit entity such as a univer-
14 sity, research center, or hospital, shall reinstate
15 all or part of such time upon a showing of good
16 cause by the applicant, but in no case more
17 than 3 additional months for each such re-
18 sponse beyond 3 months.

19 “(3) PROCEDURES.—The Commissioner shall
20 prescribe regulations establishing procedures for the
21 notification of patent term extensions under this
22 subsection and procedures for contesting patent
23 term extensions under this subsection.

24 “(4) NOTICE TO COMMISSIONER.—In a case in
25 which a patent term is adjusted under this sub-

1 section, the Commissioner shall determine the period
 2 of any patent term adjustment available under this
 3 section and shall include a copy of that determina-
 4 tion with the final notice. The Commissioner shall
 5 prescribe regulations establishing procedures for the
 6 application for, and notification of, patent term ad-
 7 justments granted by the Commissioner under this
 8 subsection.

9 “(5) JUDICIAL REVIEW.—Any applicant dissat-
 10 isfied with a determination of the Commissioner
 11 under paragraph (3) may have remedy by civil ac-
 12 tion in the United States Court of Federal Claims
 13 if commenced within 180 days after the mailing of
 14 the notice of allowance as the Commissioner ap-
 15 points. The initiation of a civil action under this sec-
 16 tion shall not delay the issuance of a patent.”.

17 **SEC. 452. FURTHER EXAMINATION OF PATENT APPLICA-**
 18 **TIONS.**

19 Section 132 of title 35, United States Code, is
 20 amended—

21 (1) in the first sentence by striking “Whenever”
 22 and inserting “(a) Whenever”; and

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

24 “(b) The Commissioner shall prescribe regulations to
 25 provide for the further limited reexamination of applica-

1 tions for patent at the request of the applicant. The Com-
2 missioner may establish appropriate fees for such further
3 limited examination and shall be authorized to provide a
4 50 percent reduction on such fees for small entities that
5 qualify for reduced fees under section 41(h)(1) of this
6 title.”.

7 **SEC. 453. TECHNICAL CLARIFICATION.**

8 Section 156(a) of title 35, United States Code, is
9 amended—

10 (1) in the matter preceding paragraph (1) by
11 inserting “, which shall include any patent term ad-
12 justment granted under section 154(b),” after “the
13 original expiration date of the patent”.

14 **SEC. 454. EFFECTIVE DATE.**

15 The amendments made by section 451 shall take ef-
16 fect on the date of enactment of this Act and, except for
17 a design patent application filed under chapter 16 of title
18 35, United States Code, shall apply to any application
19 filed on or after June 8, 1995.

20 **Subtitle D—Prior Domestic**
21 **Commercial Use**

22 **SEC. 461. SHORT TITLE.**

23 This subtitle may be cited as the “Prior Domestic
24 Commercial Use Act of 1997”.

1 **SEC. 462. DEFENSE TO PATENT INFRINGEMENT BASED ON**
2 **PRIOR DOMESTIC COMMERCIAL USE.**

3 (a) DEFENSE.—Chapter 28 of title 35, United States
4 Code, is amended by adding at the end the following new
5 section:

6 **“§ 273. Prior domestic commercial use; defense to in-**
7 **fringement**

8 “(a) DEFINITIONS.—For purposes of this section—

9 “(1) the terms ‘commercially used’, ‘commer-
10 cially use’, and ‘commercial use’—

11 “(A) mean the use in the United States in
12 commerce, use by the United States, or the use
13 in the design, testing, or production in the
14 United States of a product or service which is
15 used in commerce or used by the United States,
16 whether or not the subject matter at issue is ac-
17 cessible to or otherwise known to the public;
18 and

19 “(B) includes in the case of activities per-
20 formed by a nonprofit research laboratory, or
21 nonprofit entity such as a university, research
22 center, or hospital, a use for which the public
23 is the intended beneficiary shall be considered
24 to be a use described in subparagraph (A) ex-
25 cept that the use—

1 “(i) may be asserted as a defense
2 under this section only for continued use
3 by and in the laboratory or nonprofit en-
4 tity; and

5 “(ii) may not be asserted as a defense
6 with respect to any subsequent commer-
7 cialization or use outside such laboratory
8 or nonprofit entity;

9 “(2) the terms ‘used in commerce’, and ‘use in
10 commerce’ mean that there has been an actual
11 arms-length sale or other commercial transfer, or
12 use by the United States, of the subject matter at
13 issue or that there has been an actual arms-length
14 sale or other commercial transfer, or use by the
15 United States, of a product or service resulting from
16 the use of the subject matter at issue; and

17 “(3) the ‘effective filing date’ of a patent is the
18 earlier of the actual filing date of the application for
19 the patent or the filing date of any earlier United
20 States, foreign, or international application to which
21 the subject matter at issue is entitled under section
22 119, 120, or 365 of this title.

23 “(b) DEFENSE TO INFRINGEMENT.—

24 “(1) IN GENERAL.—A person shall not be liable
25 as an infringer under section 271 of this title, nor

1 shall the United States be held liable under section
2 1498(a) of title 28, with respect to any subject mat-
3 ter that would otherwise infringe one or more claims
4 in the patent being asserted against such person, if
5 such person had, acting in good faith, commercially
6 used the subject matter before the effective filing
7 date of such patent.

8 “(2) EXHAUSTION OF RIGHT.—The sale or
9 other disposition of the subject matter of a patent
10 by a person entitled to assert a defense under this
11 section with respect to that subject matter shall ex-
12 haust the patent owner’s rights under the patent to
13 the extent such rights would have been exhausted
14 had such sale or other disposition been made by the
15 patent owner.

16 “(c) LIMITATIONS AND QUALIFICATIONS OF DE-
17 FENSE.—The defense to infringement under this section
18 is subject to the following:

19 “(1) DERIVATION.—A person may not assert
20 the defense under this section if the subject matter
21 on which the defense is based was derived from the
22 patentee or persons in privity with the patentee.

23 “(2) NOT A GENERAL LICENSE.—The defense
24 asserted by a person under this section is not a gen-
25 eral license under all claims of the patent at issue,

1 but extends only to the subject matter claimed in the
2 patent with respect to which the person can assert
3 a defense under this chapter, except that the defense
4 shall also extend to variations in the quantity or vol-
5 ume of use of the claimed subject matter, and to im-
6 provements in the claimed subject matter that do
7 not infringe additional specifically claimed subject
8 matter of the patent.

9 “(3) EFFECTIVE AND SERIOUS PREPARA-
10 TION.—With respect to subject matter that cannot
11 be commercialized without a significant investment
12 of time, money, and effort, a person shall be deemed
13 to have commercially used the subject matter if—

14 “(A) before the effective filing date of the
15 patent, the person reduced the subject matter
16 to practice in the United States, completed a
17 significant portion of the total investment nec-
18 essary to commercially use the subject matter,
19 and made an arms-length commercial trans-
20 action in the United States in connection with
21 the preparation to use the subject matter; and

22 “(B) thereafter the person diligently com-
23 pleted the remainder of the activities and in-
24 vestments necessary to commercially use the
25 subject matter, and promptly began commercial

1 use of the subject matter, even if such activities
2 were conducted after the effective filing date of
3 the patent.

4 “(4) BURDEN OF PROOF.—A person asserting
5 the defense under this section shall have the burden
6 of establishing the defense.

7 “(5) ABANDONMENT OF USE.—A person who
8 has abandoned commercial use of subject matter
9 may not rely on activities performed before the date
10 of such abandonment in establishing a defense under
11 subsection (b) with respect to actions taken after the
12 date of such abandonment.

13 “(6) PERSONAL DEFENSE.—The defense under
14 this section may only be asserted by the person who
15 performed the acts necessary to establish the defense
16 and, except for any transfer to the patent owner, the
17 right to assert the defense shall not be licensed or
18 assigned or transferred to another person except in
19 connection with the good faith assignment or trans-
20 fer of the entire enterprise or line of business to
21 which the defense relates.

22 “(7) ONE-YEAR LIMITATION.—A person may
23 not assert a defense under this section unless the
24 subject matter on which the defense is based had
25 been commercially used or actually reduced to prac-

1 tice more than one year prior to the effective filing
2 date of the patent by the person asserting the de-
3 fense or someone in privity with that person.

4 “(d) UNSUCCESSFUL ASSERTION OF DEFENSE.—If
5 the defense under this section is pleaded by a person who
6 is found to infringe the patent and who subsequently fails
7 to demonstrate a reasonable basis for asserting the de-
8 fense, the court shall find the case exceptional for the pur-
9 pose of awarding attorney’s fees under section 285 of this
10 title.

11 “(e) INVALIDITY.—A patent shall not be deemed to
12 be invalid under section 102 or 103 of this title solely be-
13 cause a defense is established under this section.”.

14 (b) CONFORMING AMENDMENT.—The table of sec-
15 tions at the beginning of chapter 28 of title 35, United
16 States Code, is amended by adding at the end the follow-
17 ing new item:

“Sec. 273. Prior domestic commercial use; defense to infringement.”.

18 **SEC. 463. EFFECTIVE DATE AND APPLICABILITY.**

19 This subtitle and the amendments made by this sub-
20 title shall take effect on the date of enactment of this Act,
21 but shall not apply to any action for infringement that
22 is pending on such date of enactment or with respect to
23 any subject matter for which an adjudication of infringe-
24 ment, including a consent judgment, has been made before
25 such date of enactment.

1 **Subtitle E—Patent Reexamination**
2 **Reform**

3 **SEC. 471. SHORT TITLE.**

4 This subtitle may be cited as the “Patent Reexamina-
5 tion Reform Act of 1997”.

6 **SEC. 472. DEFINITIONS.**

7 Section 100 of title 35, United States Code, is
8 amended by adding at the end the following new sub-
9 section:

10 “(e) The term ‘third-party requester’ means a person
11 requesting reexamination under section 302 of this title
12 who is not the patent owner.”.

13 **SEC. 473. REEXAMINATION PROCEDURES.**

14 (a) REQUEST FOR REEXAMINATION.—Section 302 of
15 title 35, United States Code, is amended to read as fol-
16 lows:

17 **“§ 302. Request for reexamination**

18 “(a) IN GENERAL.—Any person at any time may file
19 a request for reexamination by the Office of a patent on
20 the basis of any prior art cited under the provisions of
21 section 301 of this title.

22 “(b) REQUIREMENTS.—The request shall—

23 “(1) be in writing, include the identity of the
24 real party in interest, and be accompanied by pay-
25 ment of a reexamination fee established by the Com-

1 missioner of Patents pursuant to the provisions of
2 section 41 of this title; and

3 “(2) set forth the pertinency and manner of ap-
4 plying cited prior art to every claim for which reex-
5 amination is requested.

6 “(c) COPY.—Unless the requesting person is the
7 owner of the patent, the Commissioner promptly shall
8 send a copy of the request to the owner of record of the
9 patent.”.

10 (b) DETERMINATION OF ISSUE BY COMMISSIONER.—
11 Section 303 of title 35, United States Code, is amended
12 to read as follows:

13 **“§ 303. Determination of issue by Commissioner**

14 “(a) REEXAMINATION.—Not later than 3 months
15 after the filing of a request for reexamination under the
16 provisions of section 302 of this title, the Commissioner
17 shall determine whether a substantial new question of pat-
18 entability affecting any claim of the patent concerned is
19 raised by the request, with or without consideration of
20 other patents or printed publications. On the Commis-
21 sioner’s initiative, and any time, the Commissioner may
22 determine whether a substantial new question of patent-
23 ability is raised by patents and publications.

24 “(b) RECORD.—A record of the Commissioner’s de-
25 termination under subsection (a) shall be placed in the of-

1 ficial file of the patent, and a copy shall be promptly given
2 or mailed to the owner of record of the patent and to the
3 third-party requester, if any.

4 “(c) FINAL DECISION.—A determination by the
5 Commissioner pursuant to subsection (a) shall be final
6 and nonappealable. Upon a determination that no sub-
7 stantial new question of patentability has been raised, the
8 Commissioner may refund a portion of the reexamination
9 fee required under section 302 of this title.”.

10 (c) REEXAMINATION ORDER BY COMMISSIONER.—
11 Section 304 of title 35, United States Code, is amended
12 to read as follows:

13 **“§ 474. Reexamination order by Commissioner**

14 “If, in a determination made under the provisions of
15 section 303(a) of this title, the Commissioner finds that
16 a substantial new question of patentability affecting a
17 claim of a patent is raised, the determination shall include
18 an order for reexamination of the patent for resolution of
19 the question. The order may be accompanied by the initial
20 action of the Patent Office on the merits of the reexamina-
21 tion conducted in accordance with section 305 of this
22 title.”.

23 (d) CONDUCT OF REEXAMINATION PROCEEDINGS.—
24 Section 305 of title 35, United States Code, is amended
25 to read as follows:

1 **“§ 305. Conduct of reexamination proceedings**

2 “(a) IN GENERAL.—Subject to subsection (b), reex-
3 amination shall be conducted according to the procedures
4 established for initial examination under the provisions of
5 sections 132 and 133 of this title. In any reexamination
6 proceeding under this chapter, the patent owner shall be
7 permitted to propose any amendment to the patent and
8 a new claim or claims, except that no proposed amended
9 or new claim enlarging the scope of the claims of the pat-
10 ent shall be permitted.

11 “(b) RESPONSE.—(1) This subsection shall apply to
12 any reexamination proceeding in which the order for reex-
13 amination is based upon a request by a third-party re-
14 quester.

15 “(2) With the exception of the reexamination request,
16 any document filed by either the patent owner or the
17 third-party requester shall be served on the other party.

18 “(3) If the patent owner files a response to any Pat-
19 ent Office action on the merits, the third-party requester
20 shall have 1 opportunity to file written comments within
21 a reasonable period not less than 1 month after the date
22 of service of the patent owner’s response. Written com-
23 ments provided under this paragraph shall be limited to
24 issues covered by the Patent Office action or the patent
25 owner’s response.

1 “(c) SPECIAL DISPATCH.—Unless otherwise provided
2 by the Commissioner for good cause, all reexamination
3 proceedings under this section, including any appeal to the
4 Board of Patent Appeals and Interferences, shall be con-
5 ducted with special dispatch within the Office.”.

6 (e) APPEAL.—Section 306 of title 35, United States
7 Code, is amended to read as follows:

8 **“§ 306. Appeal**

9 “(a) PATENT OWNER.—The patent owner involved in
10 a reexamination proceeding under this chapter—

11 “(1) may appeal under the provisions of section
12 134 of this title, and may appeal under the provi-
13 sions of sections 141 through 144 of this title, with
14 respect to any decision adverse to the patentability
15 of any original or proposed amended or new claim
16 of the patent, and

17 “(2) may be a party to any appeal taken by a
18 third-party requester pursuant to subsection (b) of
19 this section.

20 “(b) THIRD-PARTY REQUESTER.—A third-party re-
21 quester may—

22 “(1) appeal under the provisions of section 134
23 of this title, and may appeal under the provisions of
24 sections 141 through 144 of this title, with respect
25 to any final decision favorable to the patentability of

1 any original or proposed amended or new claim of
2 the patent; or

3 “(2) be a party to any appeal taken by the pat-
4 ent owner, subject to subsection (c) of this section.

5 “(c) PARTICIPATION AS PARTY.—

6 “(1) IN GENERAL.—A third-party requester
7 whose request for a reexamination results in an
8 order under section 304 of this title is estopped from
9 asserting at a later time, in any civil action arising
10 in whole or in part under section 1338 of title 28,
11 the invalidity of any claim determined to be patent-
12 able on appeal on any ground which the third-party
13 requester raised or could have raised during the re-
14 examination proceedings. This subsection does not
15 prevent the assertion of invalidity based on newly
16 discovered prior art unavailable to the third-party
17 requester and the Patent Office at the time of the
18 reexamination proceedings.

19 “(2) ELECTION TO PARTICIPATE.—A third-
20 party requester is deemed not to have participated
21 as a party to an appeal by the patent owner unless,
22 not later than 20 days after the patent owner has
23 filed notice of appeal, the third-party requester files
24 notice with the Commissioner electing to partici-
25 pate.”.

1 (f) REEXAMINATION PROHIBITED.—

2 (1) IN GENERAL.—Chapter 30 of title 35, Unit-
3 ed States Code, is amended by adding at the end the
4 following new section:

5 **“§ 308. Reexamination prohibited**

6 “(a) ORDER FOR REEXAMINATION.—Notwithstand-
7 ing any provision of this chapter, once an order for reex-
8 amination of a patent has been issued under section 304
9 of this title, neither the patent owner nor the third-party
10 requester, if any, nor privies of either, may file a subse-
11 quent request for reexamination of the patent until a reex-
12 amination certificate is issued and published under section
13 307 of this title, unless authorized by the Commissioner.

14 “(b) FINAL DECISION.—Once a final decision has
15 been entered against a party in a civil action arising in
16 whole or in part under section 1338 of title 28 that the
17 party has not sustained its burden of proving the invalidity
18 of any patent claim in suit or if a final decision in a reex-
19 amination proceeding instituted by a third-party requester
20 is favorable to a patentability of any original or proposed
21 amended as new claim of the patent and such decision is
22 not appealed by the third-party requester under section
23 306(b), then neither that party nor its privies may there-
24 after request reexamination of any such patent claim on
25 the basis of issues which that party or its privies raised

1 or could have raised in such civil action or reexamination
2 proceeding, and a reexamination requested by that party
3 or its privies on the basis of such issues may not thereafter
4 be maintained by the Office, notwithstanding any other
5 provision of this chapter. This subsection does not prevent
6 the assertion of invalidity based on newly discovered prior
7 art unavailable to the third-party requester and the Patent
8 Office at the time of the reexamination proceedings.”.

9 (2) TECHNICAL AND CONFORMING AMEND-
10 MENT.—The table of sections for chapter 30 of title
11 35, United States Code, is amended by adding at
12 the end the following:

“308. Reexamination prohibited.”.

13 **SEC. 474. CONFORMING AMENDMENTS.**

14 (a) PATENT FEES; PATENT SEARCH SYSTEMS.—Sec-
15 tion 41(a)(7) of title 35, United States Code, is amended
16 to read as follows:

17 “(7) On filing each petition for the revival of an
18 unintentionally abandoned application for a patent,
19 for the unintentionally delayed payment of the fee
20 for issuing each patent, or for an unintentionally de-
21 layed response by the patent owner in a reexamina-
22 tion proceeding, \$1,250, unless the petition is filed
23 under sections 133 or 151 of this title, in which case
24 the fee shall be \$110.”.

1 (b) APPEAL TO THE BOARD OF PATENT APPEALS
2 AND INTERFERENCES.—Section 134 of title 35, United
3 States Code, is amended to read as follows:

4 **“§ 134. Appeal to the Board of Patent Appeals and**
5 **Interferences**

6 “(a) PATENT APPLICANT.—An applicant for a pat-
7 ent, any of whose claims has been twice rejected, may ap-
8 peal from the decision of the primary examiner to the
9 Board of Patent Appeals and Interferences, having once
10 paid the fee for such appeal.

11 “(b) PATENT OWNER.—A patent owner in a reexam-
12 ination proceeding may appeal from the final rejection of
13 any claim by the primary examiner to the Board of Patent
14 Appeals and Interferences, having once paid the fee for
15 such appeal.

16 “(c) THIRD-PARTY.—A third-party requester may
17 appeal to the Board of Patent Appeals and Interferences
18 from the final decision of the primary examiner favorable
19 to the patentability of any original or proposed amended
20 or new claim of a patent, having once paid the fee for
21 such appeal.”.

22 (d) APPEAL TO COURT OF APPEALS FOR THE FED-
23 ERAL CIRCUIT.—Section 141 of title 35, United States
24 Code, is amended by amending the first sentence to read
25 as follows: “An applicant, a patent owner, or a third-party

1 requester, dissatisfied with the final decision in an appeal
2 to the Board of Patent Appeals and Interferences under
3 section 134 of this title, may appeal the decision to the
4 United States Court of Appeals for the Federal Circuit.”.

5 (e) PROCEEDINGS ON APPEAL.—Section 143 of title
6 35, United States Code, is amended by amending the third
7 sentence to read as follows: “In ex parte and reexamina-
8 tion cases, the Commissioner shall submit to the court in
9 writing the grounds for the decision of the Patent Office,
10 addressing all the issues involved in the appeal.”.

11 (f) CIVIL ACTION TO OBTAIN PATENT.—Section 145
12 of title 35, United States Code, is amended in the first
13 sentence by inserting “(a)” after “section 134”.

14 **SEC. 475. REPORT TO CONGRESS.**

15 Not later than 5 years after the effective date of this
16 subtitle, the Director shall submit to Congress a report
17 evaluating whether the reexamination proceedings estab-
18 lished under the amendments made by this subtitle are
19 inequitable to any of the parties in interest and, if so, the
20 report shall contain recommendations for changes to the
21 amendments made by this subtitle to remove such in-
22 equity.

23 **SEC. 476. EFFECTIVE DATE.**

24 This subtitle and the amendments made by this sub-
25 title shall take effect on the date that is 1 year after the

1 date of enactment of this Act and shall apply to all reex-
2 amination requests filed on or after such date.

3 **Subtitle F—Miscellaneous Patent** 4 **Provisions**

5 **SEC. 481. PROVISIONAL APPLICATIONS.**

6 (a) ABANDONMENT.—Section 111(b)(5) of title 35,
7 United States Code, is amended to read as follows:

8 “(5) ABANDONMENT.—Notwithstanding the ab-
9 sence of a claim, upon timely request and as pre-
10 scribed by the Commissioner, a provisional applica-
11 tion may be treated as an application filed under
12 subsection (a). Subject to section 1993(c)(3) of this
13 title, if no such request is made, the provisional ap-
14 plication shall be regarded as abandoned 12 months
15 after the filing date of such application and shall not
16 be subject to revival thereafter.”.

17 (b) TECHNICAL AMENDMENT RELATING TO WEEK-
18 ENDS AND HOLIDAYS.—Section 119(e) of title 35, United
19 States Code, is amended by adding at the end the follow-
20 ing:

21 “(3) If the day that is 12 months after the fil-
22 ing date of a provisional application falls on a Satur-
23 day, Sunday, or Federal holiday within the District
24 of Columbia, the period of pendency of the provi-

1 sional application shall be extended to the next suc-
2 ceeding secular or business day.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 subsection (a) apply to a provisional application filed on
5 or after June 8, 1995.

6 **SEC. 482. INTERNATIONAL APPLICATIONS.**

7 Section 119 of title 35, United States Code, is
8 amended as follows:

9 (1) In subsection (a), insert “or in a WTO
10 member country” after “or to citizens of the United
11 States,”.

12 (2) At the end of section 119 add the following
13 new subsections:

14 “(f) Applications for plant breeder’s rights filed in
15 a WTO member country (or in a foreign UPOV Contract-
16 ing Party) shall have the same effect for the purpose of
17 the right of priority under subsections (a) through (c) of
18 this section as applications for patents, subject to the
19 same conditions and requirements of this section as apply
20 to applications for patents.

21 “(g) As used in this section—

22 “(1) the term ‘WTO member country’ has the
23 same meaning as the term is defined in section
24 104(b)(2) of this title; and

1 “(2) the term ‘UPOV Contracting Party’ means
2 a member of the International Convention for the
3 Protection of New Varieties of Plants.”.

4 **SEC. 483. ACCESS TO ELECTRONIC PATENT INFORMATION.**

5 (a) IN GENERAL.—The United States Patent and
6 Trademark Organization shall develop and implement
7 statewide computer networks with remote library sites in
8 requesting rural States such that citizens in those States
9 will have enhanced access to information in their State’s
10 patent and trademark depository library.

11 (b) DEFINITION.—In this section, the term “rural
12 States” means the States that qualified on January 1,
13 1997, as rural States under section 1501(b) of the Omni-
14 bus Crime Control and Safe Streets Act of 1968 (42
15 U.S.C. 379bb(b)).

16 **SEC. 484. CERTAIN LIMITATIONS ON DAMAGES FOR PAT-**
17 **ENT INFRINGEMENT NOT APPLICABLE.**

18 Section 287(c) of title 35, United States Code, is
19 amended in paragraph (4) by striking “before the date
20 of enactment of this subsection” and inserting “based on
21 an application the earliest effective filing date of which
22 is prior to September 30, 1996”.

1 **SEC. 485. PLANT PATENTS.**

2 (a) TUBER PROPAGATED PLANTS.—Section 161 of
3 title 35, United States Code, is amended by striking “a
4 tuber propagated plant or”.

5 (b) RIGHTS IN PLANT PATENTS.—The text of section
6 163 of title 35, United States Code, is amended to read
7 as follows: “In the case of a plant patent, the grant to
8 the patentee, such patentee’s heirs or assigns, shall have
9 the right to exclude others from asexually reproducing the
10 plant, and from using, offering for sale, or selling the
11 plant so reproduced, or any of its parts, throughout the
12 United States, or from importing the plant so reproduced,
13 or any parts thereof, into the United States.”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 subsection (a) shall apply on the date of enactment of this
16 Act. The amendments made by subsection (b) shall apply
17 to any plant patent issued on or after the date of enact-
18 ment of this Act.

19 **SEC. 486. ELECTRONIC FILING.**

20 Section 22 of title 35, United States Code, is amend-
21 ed by striking “printed or typewritten” and inserting
22 “printed, typewritten, or on an electronic medium”.

23 **SEC. 487. STUDY AND REPORT ON BIOLOGICAL DEPOSITS**

24 **IN SUPPORT OF BIOTECHNOLOGY PATENTS.**

25 (a) IN GENERAL.—No later than 6 months after the
26 date of enactment of this Act, the General Accounting Of-

1 fice, in consultation with the United States Patent Office,
 2 shall conduct a study and submit a report to Congress
 3 on the potential risks to the United States biotechnology
 4 industry relating to biological deposits in support of bio-
 5 technology patents.

6 (b) CONTENTS.—The study conducted under this sec-
 7 tion shall include—

8 (1) an examination of the risk of export and the
 9 risk of third-party transfer of biological deposits,
 10 and the risks posed by the change to 18-month pub-
 11 lication requirements;

12 (2) an analysis of comparative legal and regu-
 13 latory regimes; and

14 (3) any related recommendations.

15 (c) CONSIDERATION OF REPORT.—In drafting regu-
 16 lations affecting biological deposits (including any modi-
 17 fication of 37 Code of Federal Regulations 1.801 et seq.),
 18 the United States Patent Office shall consider the rec-
 19 ommendations of the study conducted under this section.

20 **TITLE V—STATISTICAL** 21 **CONSOLIDATION**

22 **Subtitle A—General Provisions**

23 **SEC. 501. FINDINGS.**

24 Congress, recognizing the importance of statistical in-
 25 formation in the development of national priorities and

1 policies and in the administration of public programs,
2 finds that—

3 (1) improved coordination and planning among
4 the statistical programs of the Federal Government
5 is necessary—

6 (A) to strengthen and improve the quality
7 and utility of Federal statistics; and

8 (B) to reduce duplication and waste in in-
9 formation collected for statistical purposes;

10 (2) while the demand for statistical information
11 has grown substantially over the 30-year period pre-
12 ceding the date of enactment of this Act, the lack
13 of coordinated planning within the decentralized
14 Federal statistical system has limited the usefulness
15 of statistics in defining problems and determining
16 national policies to deal with complex social and eco-
17 nomic issues;

18 (3) the establishment of a unified statistical
19 policy for the Federal Government to ensure that—

20 (A) data available from Federal statistical
21 programs are responsive to the information
22 needs of the President and Congress in develop-
23 ing national policies; and

1 (B) necessary statistical information is col-
2 lected with the least reporting burden imposed
3 on individuals, businesses, and public entities;

4 (4) a central statistical policy and coordination
5 office is necessary—

6 (A) to develop and implement a Federal
7 statistical policy;

8 (B) to establish priorities for Federal sta-
9 tistical programs;

10 (C) to oversee and evaluate the statistical
11 programs of the Government; and

12 (D) to ensure that data collected for statis-
13 tical purposes by the Government are collected
14 and reported in accordance with established
15 standards; and

16 (5) it is conducive and integral to a sound Fed-
17 eral policy that the heads of major statistical agen-
18 cies within a Federal department or agency have di-
19 rect access to the head of such department or agen-
20 cy.

21 **SEC. 502. SENSE OF CONGRESS.**

22 (a) CHIEF STATISTICIAN.—It is the sense of Con-
23 gress that—

24 (1) a more centralized statistical system is inte-
25 gral to efficiency;

1 (2) with increased efficiency comes better inte-
2 gration of research, methodology, survey design, and
3 taking advantage of economies of scale;

4 (3) the Chief Statistician should have the au-
5 thority, personnel, and other resources necessary to
6 carry out the duties of that office effectively, includ-
7 ing duties relating to statistical forms clearance;

8 (4) statistical forms clearance at the Office of
9 Management and Budget should be better distin-
10 guished from regulatory forms clearance; and

11 (5) recognizing that the Chief Statistician has
12 numerous responsibilities with respect to statistical
13 policy and coordination, the Chief Statistician should
14 have a direct reporting relationship with the Direc-
15 tor of the Office of Management and Budget.

16 (b) CONFIDENTIALITY.—It is the sense of Congress
17 that—

18 (1) entities of the Federal Government (includ-
19 ing the Federal Council on Statistical Policy and the
20 Interagency Council on Statistical Policy) and pri-
21 vate entities should examine the efficacy of replacing
22 the individual confidentiality provisions of statistical
23 agencies with a single, uniform standard that guar-
24 antees confidentiality across the affected agencies;
25 and

1 (2) those entities should also examine the shar-
2 ing of confidential data for statistical purposes with-
3 in the Federal Statistical Service and special ar-
4 rangements to permit the sharing of confidential
5 data for statistical purposes with State agencies co-
6 operating with Federal agencies in statistical pro-
7 grams.

8 (c) DECENNIAL CENSUSES.—It is the sense of Con-
9 gress that the budget and functions of the Bureau of the
10 Census relating to any decennial census of population
11 should be segregated from the other budget and functions
12 of the Bureau of the Census.

13 **SEC. 503. DEFINITIONS.**

14 In this title:

15 (1) ADMINISTRATOR.—The term “Adminis-
16 trator” means the Administrator of the Federal Sta-
17 tistical Service.

18 (2) CENSUS OF POPULATION.—The term “cen-
19 sus of population” has the meaning given such term
20 by section 141(g) of title 13, United States Code.

21 (3) CHIEF STATISTICIAN.—The term “Chief
22 Statistician” means the Chief Statistician of the Of-
23 fice of Management and Budget.

1 (4) COUNCIL.—The term “Council” means the
2 Federal Council on Statistical Policy under section
3 513.

4 (5) DEPUTY ADMINISTRATOR.—The term
5 “Deputy Administrator” means the Deputy Admin-
6 istrator of the Federal Statistical Service.

7 (6) FEDERAL AGENCY.—The term “Federal
8 agency” has the meaning provided the term “agen-
9 cy” in section 551(1) of title 5, United States Code.

10 (7) FUNCTION.—The term “function” includes
11 any duty, obligation, power, authority, responsibility,
12 right, privilege, activity, or program.

13 (8) OFFICE.—The term “office” includes any
14 office, bureau, institute, council, unit, or organiza-
15 tional entity, or any component thereof.

16 (9) SERVICE.—The term “Service” means the
17 Federal Statistical Service.

18 **Subtitle B—Establishment of the** 19 **Federal Statistical Service**

20 **SEC. 511. ESTABLISHMENT.**

21 The Federal Statistical Service is established as an
22 independent establishment, as that term is defined in sec-
23 tion 104 of title 5, United States Code, in the executive
24 branch of the Federal Government.

1 **SEC. 512. PRINCIPAL OFFICERS.**

2 (a) ADMINISTRATOR.—

3 (1) IN GENERAL.—There shall be at the head
4 of the Service an Administrator of the Federal Sta-
5 tistical Service, who shall be appointed, from among
6 individuals nominated for that purpose by the Fed-
7 eral Council on Statistical Policy who are experi-
8 enced in the collection and utilization of statistical
9 data or survey research, by the President, by and
10 with the advice and consent of the Senate.

11 (2) ADMINISTRATION.—The Service, including
12 all functions and offices transferred to the Service
13 under this title, shall be administered, in accordance
14 with the provisions of this title, under the super-
15 vision and direction of the Administrator.

16 (3) COMPENSATION OF ADMINISTRATOR.—The
17 Administrator shall receive basic pay at the rate
18 payable for level II of the Executive Schedule under
19 section 5313 of title 5, United States Code.

20 (b) DEPUTY ADMINISTRATOR.—

21 (1) IN GENERAL.—There shall be in the Service
22 a Deputy Administrator of the Federal Statistical
23 Service who shall be appointed, from among individ-
24 uals nominated for that purpose by the Federal
25 Council on Statistical Policy who are experienced in
26 the collection and utilization of statistical data or

1 survey research, by the President, by and with the
2 advice and consent of the Senate.

3 (2) DUTIES OF DEPUTY ADMINISTRATOR.—

4 During the absence or disability of the Adminis-
5 trator, or in the event of a vacancy in the office of
6 the Administrator, the Deputy Administrator shall
7 act as Administrator. The Deputy Administrator
8 shall perform such other duties and exercise such
9 powers as the Administrator may from time to time
10 prescribe.

11 (3) COMPENSATION OF DEPUTY ADMINIS-

12 TRATOR.—The Deputy Administrator shall receive
13 basic pay at the rate payable for level III of the Ex-
14 ecutive Schedule under section 5314 of title 5, Unit-
15 ed States Code.

16 (c) BUREAU DIRECTORS.—

17 (1) IN GENERAL.—There shall be in the Serv-
18 ice—

19 (A) a Director of the Census who shall, on
20 the transfer of functions and offices under sec-
21 tion 203, serve as the head of the Bureau of
22 the Census; and

23 (B) a Director of the Bureau of Economic
24 Analysis who shall, on the transfer of functions

1 and offices under section 203, serve as the head
2 of the Bureau of Economic Analysis; and

3 (C) a Director of the Bureau of Labor Sta-
4 tistics who shall, on the transfer of functions
5 and offices under subtitle C, serve as the head
6 of the Bureau of Labor Statistics.

7 (2) APPOINTMENT.—Each of the Directors re-
8 ferred to in paragraph (1) shall be appointed by the
9 President, by and with the advice and consent of the
10 Senate.

11 (4) COMPENSATION OF DIRECTOR OF BUREAU
12 OF ECONOMIC ANALYSIS.—

13 (A) IN GENERAL.—The position of Direc-
14 tor of the Bureau of Economic Analysis shall be
15 a Senior Executive Service position.

16 (B) SENIOR EXECUTIVE SERVICE DE-
17 FINED.—For purposes of this paragraph, the
18 term “Senior Executive Service position” shall
19 have the same meaning as in section 3132(a) of
20 title 5, United States Code.

21 (5) TERMS.—The term of office for each Direc-
22 tor referred to in paragraph (1) shall be as specified
23 in the predecessor under the applicable provision of
24 law in effect on the day before the date of enactment
25 of this Act, except that, notwithstanding section 21

1 of title 13, United States Code, the term of the Di-
2 rector of the Census shall be 4 years.

3 (d) GENERAL COUNSEL.—There shall be in the Serv-
4 ice a General Counsel who shall administer the Office of
5 General Counsel of the Federal Statistical Service. The
6 General Counsel shall be appointed by the President, by
7 and with the advice and consent of the Senate.

8 (e) INSPECTOR GENERAL.—There shall be in the
9 Service an Inspector General appointed in accordance with
10 the Inspector General Act of 1978 (5 U.S.C. App.).

11 **SEC. 513. FEDERAL COUNCIL ON STATISTICAL POLICY.**

12 (a) ESTABLISHMENT.—A Federal Council on Statis-
13 tical Policy shall advise the Service.

14 (b) COMPOSITION.—The Council shall be composed
15 of 9 members as follows:

16 (1) The Administrator of the Federal Statistical
17 Service.

18 (2) The Director of the Census.

19 (3) The Director of the Bureau of Labor Statis-
20 tics.

21 (4) The Director of the Bureau of Economic
22 Analysis.

23 (5) The Chief Statistician of the Office of Man-
24 agement and Budget.

1 (6) Two members appointed by the Majority
2 Leader of the Senate from among individuals who—

3 (A) are not officers or employees of the
4 Government; and

5 (B) are especially qualified to serve on the
6 Council by virtue of experience relating to 1 or
7 more of the bureaus referred to in title III.

8 (7) Two members appointed by the Speaker of
9 the House of Representatives from among individ-
10 uals who—

11 (A) are not officers or employees of the
12 Government; and

13 (B) are especially qualified to serve on the
14 Council by virtue of experience relating to 1 or
15 more of the bureaus referred to in section 203
16 or subtitle C.

17 (c) TERMS.—

18 (1) IN GENERAL.—Each member under sub-
19 section (b)(6) shall be appointed for a term of 5
20 years, except that, of the members first appointed—

21 (A) 1 shall be appointed for a term of 5
22 years; and

23 (B) 1 shall be appointed for a term of 3
24 years.

1 (2) STAGGERED TERMS.—Each member under
2 subsection (b)(7) shall be appointed for a term of 5
3 years, except that, of the members first appointed—

4 (A) 1 shall be appointed for a term of 5
5 years; and

6 (B) 1 shall be appointed for a term of 2
7 years.

8 (d) FUNCTIONS.—

9 (1) IN GENERAL.—The Council shall—

10 (A) make any nominations required under
11 section 512(a)(1);

12 (B) serve as an advisory body to the Chief
13 Statistician on confidentiality issues, such as
14 those relating to—

15 (i) the collection or sharing of data
16 for statistical purposes among Federal
17 agencies; and

18 (ii) the sharing of data, for statistical
19 purposes, by States and political subdivi-
20 sions with the Federal Government; and

21 (C) establish a statistical policy as de-
22 scribed in section 501(3).

23 (2) STUDY AND REPORT AS PROCEDURES.—

1 (A) STUDY.—The Council shall study pro-
2 cedures for the release of major economic and
3 social indicators by the Federal Government.

4 (B) REPORT.—Not later than 18 months
5 after the date of enactment of this Act, the
6 Council shall submit to Congress a report on
7 the findings of the study under subparagraph
8 (A).

9 (3) STUDY OF FUNCTIONS.—

10 (A) STUDY.—The Council shall study—

11 (i) whether or not the functions of the
12 Bureau of the Census relating to decennial
13 censuses of population could be delineated
14 from the other functions of the Bureau;
15 and

16 (ii) if the functions referred to in
17 clause (i) could be delineated from other
18 functions of the Bureau, recommendations
19 on how such a delineation of functions
20 might be achieved.

21 (B) REPORT.—Not later than 12 months
22 after the date of enactment of this Act, the
23 Council shall submit to Congress a report on
24 the findings of the study conducted under sub-
25 paragraph (A).

1 (4) STUDY AND REPORT ON FIELD OFFICES.—

2 (A) STUDY.—The Council shall study—

3 (i) making as appropriate, the field
4 offices of the Bureau of the Census part of
5 the field offices of the Bureau of Labor
6 Statistics; and

7 (ii) any savings anticipated as a result
8 of the implementation of clause (i).

9 (B) REPORT.—Not later than 12 months
10 after the date of enactment of this Act, the
11 Council shall submit to Congress a report on
12 the findings of the study conducted under sub-
13 paragraph (A).

14 (e) COMPENSATION.—Members of the Council under
15 subsection (b)(6) shall be entitled to receive the daily
16 equivalent of the rate of basic pay for level IV of the Exec-
17 utive Schedule under section 5315 of title 5, United States
18 Code, for each day (including travel time) during which
19 they are engaged in the actual performance of duties vest-
20 ed in the Council.

21 (f) CHAIRPERSON.—The Chairperson of the Council
22 shall be elected by and from the members for a term of
23 1 year.

1 **Subtitle C—Transfers of Functions**
2 **and Offices**

3 **SEC. 521. TRANSFER OF THE BUREAU OF LABOR STATIS-**
4 **TICS.**

5 There is transferred to the Service the Bureau of
6 Labor Statistics of the Department of Labor, along with
7 all of its functions and offices.

8 **SEC. 522. TRANSFER DATE.**

9 The transfers of functions and offices under this title
10 shall be effective on the date specified in section 102(e).

11 **Subtitle D—Administrative**
12 **Provisions**

13 **SEC. 531. OFFICERS AND EMPLOYEES.**

14 The Administrator may appoint and fix the com-
15 pensation of such officers and employees as may be nec-
16 essary to carry out the functions of the Administrator and
17 the Service. Except as otherwise provided by law, such of-
18 ficers and employees shall be appointed in accordance with
19 the civil service laws and their compensation shall be fixed
20 in accordance with title 5, United States Code.

21 **SEC. 532. EXPERTS AND CONSULTANTS.**

22 The Administrator, as may be provided in appropria-
23 tion Acts, obtain the services of experts and consultants
24 in accordance with section 3109 of title 5, United States
25 Code, and may compensate such experts and consultants

1 at rates not to exceed the daily rate prescribed for level
2 IV of the Executive Schedule under section 5315 of title
3 5, United States Code.

4 **SEC. 533. ACCEPTANCE OF VOLUNTARY SERVICES.**

5 (a) IN GENERAL.—Notwithstanding section 1342 of
6 title 31, United States Code, the Administrator may ac-
7 cept, subject to regulations issued by the Office of Person-
8 nel Management, voluntary services if such services—

9 (1) are to be uncompensated; and

10 (2) are not used to displace any employee.

11 (b) TREATMENT.—Any individual who provides vol-
12 untary services under this section shall not be considered
13 a Federal employee for any purpose other than for pur-
14 poses of chapter 81 of title 5, United States Code (relating
15 to compensation for injury) and sections 2671 through
16 2680 of title 28, United States Code (relating to tort
17 claims).

18 **SEC. 534. GENERAL AUTHORITY.**

19 In carrying out any function transferred by this Act,
20 the Administrator, or any officer or employee of the Serv-
21 ice, may exercise any authority available by law with re-
22 spect to such function to the official or agency from which
23 such function is transferred, and the actions of the Admin-
24 istrator in exercising such authority shall have the same

1 force and effect as when exercised by such official or agen-
2 cy.

3 **SEC. 535. DELEGATION.**

4 Except as otherwise provided in this title, the Admin-
5 istrator may delegate any function to such officers and
6 employees of the Service as the Administrator may des-
7 ignate, and may authorize such successive redelegations
8 of such functions within the Service as may be necessary
9 or appropriate. No delegation of functions by the Adminis-
10 trator under this section or under any other provision of
11 this title shall relieve the Administrator of responsibility
12 for the Administration of such functions.

13 **SEC. 536. REORGANIZATION.**

14 The Administrator may allocate or reallocate func-
15 tions among the officers of the Service, and to establish,
16 consolidate, alter, or abolish such offices or positions with-
17 in the Service as may be necessary or appropriate.

18 **SEC. 537. CONTRACTS.**

19 (a) IN GENERAL.—Subject to the Federal Property
20 and Administrative Services Act of 1949 and other appli-
21 cable Federal law, the Administrator may make, enter
22 into, and perform such contracts, grants, leases, coopera-
23 tive agreements, and other similar transactions with Fed-
24 eral or other public agencies (including State and local
25 governments) and private organizations and persons, and

1 to make such payments, by way of advance or reimburse-
2 ment, as the Administrator may determine necessary or
3 appropriate to carry out functions of the Administrator
4 or the Service.

5 (b) APPROPRIATION AUTHORITY REQUIRED.—No
6 authority to enter into contracts or to make payments
7 under this title shall be effective except to such extent or
8 in such amounts as are provided in advance under appro-
9 priation Acts.

10 **SEC. 538. REGULATIONS.**

11 The Administrator may prescribe such rules and reg-
12 ulations as the Administrator considers necessary or ap-
13 propriate to administer and manage the functions of the
14 Administrator or the Service, in accordance with chapter
15 5 of title 5, United States Code.

16 **SEC. 539. SEAL.**

17 The Administrator shall cause a seal of office to be
18 made for the Service of such design as the Administrator
19 shall approve. Judicial notice shall be taken of such seal.

20 **SEC. 540. ANNUAL REPORT.**

21 The Administrator, in consultation with the Council,
22 shall, as soon as practicable after the close of each fiscal
23 year, make a single, comprehensive report to the President
24 for transmission to Congress on the activities of the Serv-
25 ice during such fiscal year.

1 **Subtitle E—Miscellaneous**

2 **SEC. 541. INCIDENTAL TRANSFERS.**

3 The Director of the Office of Management and Budg-
4 et, in consultation with the Administrator, shall make such
5 determinations as may be necessary with regard to the
6 functions, offices, or portions thereof transferred by this
7 title, and make such additional incidental dispositions of
8 personnel, assets, liabilities, grants, contracts, property,
9 records, and unexpended balances of appropriations, au-
10 thorizations, allocations, and other funds held, used, aris-
11 ing from, available to, or to be made available in connec-
12 tion with such functions, offices, or portions thereof, as
13 may be necessary to carry out this title. The Director shall
14 provide for the termination of the affairs of all entities
15 terminated by this title and, in consultation with the Ad-
16 ministrator, for such further measures and dispositions as
17 may be necessary to effectuate the purposes of this title.

18 **SEC. 542. REFERENCES.**

19 With respect to any function transferred by this title
20 and exercised on or after the date of such transfer, any
21 reference in any other Federal law to any department,
22 commission, or agency or any officer or office the func-
23 tions of which so transferred shall be deemed to refer to
24 the Administrator, other official, or component of the
25 Service to which this title transfers such functions.

1 **SEC. 543. PROPOSED CHANGES IN LAW.**

2 Not later than 90 days after the date of enactment
3 of this Act, the President shall submit to Congress a de-
4 scription of any changes in Federal law necessary to re-
5 flect any transfers or other measures under this title.

6 **SEC. 544. TRANSITION.**

7 (a) **USE OF FUNDS.**—Funds available to any depart-
8 ment or agency (or any official or component thereof), the
9 functions or offices of which are transferred to the Admin-
10 istrator or the Service by this title, may, with the approval
11 of the Director of the Office of Management and Budget,
12 be used to pay the compensation and expenses of any offi-
13 cer appointed pursuant to this title and other transitional
14 and planning expenses associated with the establishment
15 of the Service or transfer of functions or offices thereto
16 until such time as funds for such purposes are otherwise
17 available.

18 (b) **USE OF PERSONNEL.**—With the consent of the
19 appropriate department or agency head concerned, the Ad-
20 ministrator may utilize the services of such officers, em-
21 ployees, and other personnel of the departments and agen-
22 cies from which functions or offices have been transferred
23 to the Administrator or the Service, for such period of
24 time as may reasonably be needed to facilitate the orderly
25 implementation of this title.

1 **SEC. 545. INTERIM APPOINTMENTS.**

2 (a) **AUTHORITY TO APPOINT.**—Notwithstanding any
3 other provision of law, in the event that 1 or more officers
4 required by this title to be appointed by and with the ad-
5 vice and consent of the Senate shall not have entered upon
6 office on the date of the transfer of functions and offices
7 under section 203 or subtitle C, the President may des-
8 ignate an officer in the executive branch to act in such
9 office for 120 days or until the office is filled as provided
10 in this title, whichever occurs first.

11 (b) **COMPENSATION.**—Any officer acting in an office
12 in the Department pursuant to the provisions of sub-
13 section (a) shall receive compensation at the rate pre-
14 scribed for such office under this title.

15 **SEC. 546. CONFORMING AMENDMENTS.**

16 (a) **DIRECTOR, BUREAU OF LABOR STATISTICS.**—
17 Section 5315 of title 5, United States Code, as amended
18 by this Act, is further amended by adding at the end the
19 following new item:

20 “Director, Bureau of Labor Statistics.”

21 (b) **GENERAL COUNSEL; INSPECTOR GENERAL.**—
22 Section 5315 of title 5, United States Code, as amended
23 by subsection (a), is further amended by adding at the
24 end the following new items:

25 “General Counsel, Bureau of Labor Statistics.

1 “Inspector General, Bureau of Labor Statis-
2 tics.”.

3 (c) BUREAU DIRECTORS.—Section 5315 of title 5,
4 United States Code, as amended by subsection (b), is fur-
5 ther amended—

6 (1) by striking “The Commissioner of Labor
7 Statistics, Department of Labor”; and

8 (2) by inserting after the item relating to the
9 Director of the Census, the following new items:

10 “Director of the Bureau of Labor Statistics,
11 Federal Statistical Service.

12 “Director of the Bureau of Economic Analysis,
13 Federal Statistical Service.”.

14 (d) DEPUTY ADMINISTRATOR.—Section 5314 of title
15 5, United States Code, is amended by adding at the end
16 the following new item:

17 “Deputy Administrator, Federal Statistical
18 Service.”.

19 (e) ADMINISTRATOR.—Section 5313 of title 5, United
20 States Code, is amended by adding at the end the follow-
21 ing new item:

22 “Administrator, Federal Statistical Service.”.

1 **TITLE VI—MISCELLANEOUS**
2 **PROVISIONS**

3 **SEC. 601. REFERENCES.**

4 Any reference in any other Federal law, Executive
5 order, rule, regulation, or delegation of authority, or any
6 document of or pertaining to a department or office from
7 which a function is transferred by this Act—

8 (1) to the head of such department or office is
9 deemed to refer to the head of the department or of-
10 fice to which such function is transferred; or

11 (2) to such department or office is deemed to
12 refer to the department or office to which such func-
13 tion is transferred.

14 **SEC. 602. EXERCISE OF AUTHORITIES.**

15 Except as otherwise provided by law, a Federal offi-
16 cial to whom a function is transferred by this Act may,
17 for purposes of performing the function, exercise all au-
18 thorities under any other provision of law that were avail-
19 able with respect to the performance of that function to
20 the official responsible for the performance of the function
21 immediately before the effective date of the transfer of the
22 function under this Act.

1 **SEC. 603. SAVINGS PROVISIONS.**

2 (a) **LEGAL DOCUMENTS.**—All orders, determinations,
3 rules, regulations, permits, grants, loans, contracts, agree-
4 ments, certificates, licenses, and privileges—

5 (1) that have been issued, made, granted, or al-
6 lowed to become effective by the President, the Sec-
7 retary of Commerce, the United States Trade Rep-
8 resentative, any officer or employee of any office
9 transferred by this Act, or any other Government of-
10 ficial, or by a court of competent jurisdiction, in the
11 performance of any function that is transferred by
12 this Act; and

13 (2) that are in effect on the effective date of
14 such transfer (or become effective after such date
15 pursuant to their terms as in effect on such effective
16 date),

17 shall continue in effect according to their terms until
18 modified, terminated, superseded, set aside, or revoked in
19 accordance with law by the President, any other author-
20 ized official, a court of competent jurisdiction, or operation
21 of law.

22 (b) **PROCEEDINGS.**—This Act shall not affect any
23 proceedings or any application for any benefits, service,
24 license, permit, certificate, or financial assistance pending
25 on the date of enactment of this Act before an office trans-
26 ferred by this Act, but such proceedings and applications

1 shall be continued. Orders shall be issued in such proceed-
2 ings, appeals shall be taken therefrom, and payments shall
3 be made pursuant to such orders, as if this Act had not
4 been enacted, and orders issued in any such proceeding
5 shall continue in effect until modified, terminated, super-
6 seded, or revoked by a duly authorized official, by a court
7 of competent jurisdiction, or by operation of law. Nothing
8 in this subsection shall be considered to prohibit the dis-
9 continuance or modification of any such proceeding under
10 the same terms and conditions and to the same extent that
11 such proceeding could have been discontinued or modified
12 if this Act had not been enacted.

13 (c) SUITS.—This Act shall not affect suits com-
14 menced before the date of enactment of this Act, and in
15 all such suits, proceeding shall be had, appeals taken, and
16 judgments rendered in the same manner and with the
17 same effect as if this Act had not been enacted.

18 (d) NONABATEMENT OF ACTIONS.—No suit, action,
19 or other proceeding commenced by or against the Depart-
20 ment of Commerce or the Secretary of Commerce, or by
21 or against any individual in the official capacity of such
22 individual as an officer or employee of an office trans-
23 ferred by this Act, shall abate by reason of the enactment
24 of this Act.

1 (e) CONTINUANCE OF SUITS.—If any Government of-
2 ficer in the official capacity of such officer is party to a
3 suit with respect to a function of the officer, and under
4 this Act such function is transferred to any other officer
5 or office, then such suit shall be continued with the other
6 officer or the head of such other office, as applicable, sub-
7 stituted or added as a party.

8 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-
9 VIEW.—Except as otherwise provided by this Act, any
10 statutory requirements relating to notice, hearings, action
11 upon the record, or administrative or judicial review that
12 apply to any function transferred by this Act shall apply
13 to the exercise of such function by the head of the Federal
14 agency, and other officers of the agency, to which such
15 function is transferred by this Act.

16 **SEC. 604. TRANSFER OF ASSETS.**

17 Except as otherwise provided in this Act, so much
18 of the personnel, property, records, and unexpended bal-
19 ances of appropriations, allocations, and other funds em-
20 ployed, used, held, available, or to be made available in
21 connection with a function transferred to an official or
22 agency by this Act shall be available to the official or the
23 head of that agency, respectively, at such time or times
24 as the Director of the Office of Management and Budget

1 directs for use in connection with the functions trans-
2 ferred.

3 **SEC. 605. DELEGATION AND ASSIGNMENT.**

4 Except as otherwise expressly prohibited by law or
5 otherwise provided in this Act, an official to whom func-
6 tions are transferred under this Act (including the head
7 of any office to which functions are transferred under this
8 Act) may delegate any of the functions so transferred to
9 such officers and employees of the office of the official as
10 the official may designate, and may authorize successive
11 redelegations of such functions as may be necessary or ap-
12 propriate. No delegation of functions under this section
13 or under any other provision of this Act shall relieve the
14 official to whom a function is transferred under this Act
15 of responsibility for the administration of the function.

16 **SEC. 606. AUTHORITY OF DIRECTOR OF THE OFFICE OF**
17 **MANAGEMENT AND BUDGET WITH RESPECT**
18 **TO FUNCTIONS TRANSFERRED.**

19 (a) DETERMINATIONS.—If necessary, the Director
20 shall make any determination of the functions that are
21 transferred under this Act.

22 (b) INCIDENTAL TRANSFERS.—The Director, at such
23 time or times as the Director shall provide, may make
24 such determinations as may be necessary with regard to
25 the functions transferred by this Act, and to make such

1 additional incidental dispositions of personnel, assets, li-
2 abilities, grants, contracts, property, records, and unex-
3 pended balances of appropriations, authorizations, alloca-
4 tions, and other funds held, used, arising from, available
5 to, or to be made available in connection with such func-
6 tions, as may be necessary to carry out the provisions of
7 this Act. The Director shall provide for the termination
8 of the affairs of all entities terminated by this Act and
9 for such further measures and dispositions as may be nec-
10 essary to effectuate the purposes of this Act.

11 **SEC. 607. CERTAIN VESTING OF FUNCTIONS CONSIDERED**
12 **TRANSFERS.**

13 For purposes of this Act, the vesting of a function
14 in a department or office pursuant to reestablishment of
15 an office shall be considered to be the transfer of the
16 function.

17 **SEC. 608. AVAILABILITY OF EXISTING FUNDS.**

18 Existing appropriations and funds available for the
19 performance of functions, programs, and activities termi-
20 nated pursuant to this Act shall remain available, for the
21 duration of their period of availability, for necessary ex-
22 penses in connection with the termination and resolution
23 of such functions, programs, and activities.

24 **SEC. 609. DEFINITIONS.**

25 For purposes of this Act—

1 (1) the term “function” includes any duty, obli-
2 gation, power, authority, responsibility, right, privi-
3 lege, activity, or program; and

4 (2) the term ‘office’ includes any office, admin-
5 istration, agency, bureau, institute, council, unit, or-
6 ganizational entity, or component thereof.

7 **SEC. 610. CONFORMING AMENDMENTS.**

8 Section 11 of the Inspector General Act of 1978 (5
9 U.S.C. App.) is amended—

10 (1) in paragraph (1), by striking “or the Com-
11 missioner of the Social Security Administration;”
12 and inserting “the Commissioner of the Social Secu-
13 rity Administration; the Administrator of the Na-
14 tional Oceanic and Atmospheric Administration; or
15 the Administrator of the Federal Statistical Serv-
16 ice;”; and

17 (2) in paragraph (2), by striking “or the Social
18 Security Administration” and inserting “the Na-
19 tional Oceanic and Atmospheric Administration, the
20 Federal Statistical Service, or the Social Security
21 Administration”.

○