

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 852

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 19, 2005

Mr. SPECTER (for himself, Mr. LEAHY, Mr. HATCH, Mrs. FEINSTEIN, Mr. GRASSLEY, Mr. DEWINE, Mr. BAUCUS, and Mr. VOINOVICH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 16, 2005

Reported by Mr. SPECTER, with amendments

[Omit the part struck through and insert the part printed in italic]

FEBRUARY 8, 2006

Considered

FEBRUARY 9, 2006

Committee amendments withdrawn

FEBRUARY 14, 2006

Recommitted to the Committee on the Judiciary pursuant to section 312(f) of the Congressional Budget Act

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## A BILL

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
 3 “Fairness in Asbestos Injury Resolution Act of 2005” or  
 4 the “FAIR Act of 2005”.

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

Sec. 1. Short title; table of contents.  
 Sec. 2. Findings and purpose.  
 Sec. 3. Definitions.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

Sec. 101. Establishment of Office of Asbestos Disease Compensation.  
 Sec. 102. Advisory Committee on Asbestos Disease Compensation.  
 Sec. 103. Medical Advisory Committee.  
 Sec. 104. Claimant assistance.  
 Sec. 105. Physicians Panels.  
 Sec. 106. Program startup.  
 Sec. 107. Authority of the Administrator.

Subtitle B—Asbestos Disease Compensation Procedures

Sec. 111. Essential elements of eligible claim.  
 Sec. 112. General rule concerning no-fault compensation.  
 Sec. 113. Filing of claims.  
 Sec. 114. Eligibility determinations and claim awards.  
 Sec. 115. Medical evidence auditing procedures.

Subtitle C—Medical Criteria

Sec. 121. Medical criteria requirements.

Subtitle D—Awards

Sec. 131. Amount.  
 Sec. 132. Medical monitoring.  
 Sec. 133. Payment.  
 Sec. 134. Reduction in benefit payments for collateral sources.  
 Sec. 135. Certain claims not affected by payment of awards.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

Sec. 201. Definitions.  
 Sec. 202. Authority and tiers.  
 Sec. 203. Subtiers.  
 Sec. 204. Assessment administration.  
 Sec. 205. Stepdowns and funding holidays.

Subtitle B—Asbestos Insurers Commission

- Sec. 210. Definition.
- Sec. 211. Establishment of Asbestos Insurers Commission.
- Sec. 212. Duties of Asbestos Insurers Commission.
- Sec. 213. Powers of Asbestos Insurers Commission.
- Sec. 214. Personnel matters.
- Sec. 215. Termination of Asbestos Insurers Commission.
- Sec. 216. Expenses and costs of Commission.

Subtitle C—Asbestos Injury Claims Resolution Fund

- Sec. 221. Establishment of Asbestos Injury Claims Resolution Fund.
- Sec. 222. Management of the Fund.
- Sec. 223. Enforcement of payment obligations.
- Sec. 224. Interest on underpayment or nonpayment.
- Sec. 225. Education, consultation, screening, and monitoring.

TITLE III—JUDICIAL REVIEW

- Sec. 301. Judicial review of rules and regulations.
- Sec. 302. Judicial review of award decisions.
- Sec. 303. Judicial review of participants' assessments.
- Sec. 304. Other judicial challenges.
- Sec. 305. Stays, exclusivity, and constitutional review.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. False information.
- Sec. 402. Effect on bankruptcy laws.
- Sec. 403. Effect on other laws and existing claims.
- Sec. 404. Effect on insurance and reinsurance contracts.
- Sec. 405. Annual report of the Administrator and sunset of the Act.
- Sec. 406. Rules of construction relating to liability of the United States Government.
- Sec. 407. Rules of construction.
- Sec. 408. Violation of environmental health and safety requirements.
- Sec. 409. Nondiscrimination of health insurance.

TITLE V—ASBESTOS BAN

- Sec. 501. Prohibition on asbestos containing products.

**1 SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Millions of Americans have been exposed to  
 4 forms of asbestos that can have devastating health  
 5 effects.

1           (2) Various injuries can be caused by exposure  
2           to some forms of asbestos, including pleural disease  
3           and some forms of cancer.

4           (3) The injuries caused by asbestos can have la-  
5           tency periods of up to 40 years, and even limited ex-  
6           posure to some forms of asbestos may result in in-  
7           jury in some cases.

8           (4) Asbestos litigation has had a significant  
9           detrimental effect on the country's economy, driving  
10          companies into bankruptcy, diverting resources from  
11          those who are truly sick, and endangering jobs and  
12          pensions.

13          (5) The scope of the asbestos litigation crisis  
14          cuts across every State and virtually every industry.

15          (6) The United States Supreme Court has rec-  
16          ognized that Congress must act to create a more ra-  
17          tional asbestos claims system. In 1991, a Judicial  
18          Conference Ad Hoc Committee on Asbestos Litiga-  
19          tion, appointed by Chief Justice William Rehnquist,  
20          found that the "ultimate solution should be legisla-  
21          tion recognizing the national proportions of the  
22          problem . . . and creating a national asbestos dis-  
23          pute resolution scheme . . .". The Court found in  
24          1997 in *Amchem Products Inc. v. Windsor*, 521  
25          U.S. 591, 595 (1997), that "[t]he argument is sen-

1 sibly made that a nationwide administrative claims  
2 processing regime would provide the most secure,  
3 fair, and efficient means of compensating victims of  
4 asbestos exposure.” In 1999, the Court in *Ortiz v.*  
5 *Fibreboard Corp.*, 527 U.S. 819, 821 (1999), found  
6 that the “elephantine mass of asbestos cases . . .  
7 defies customary judicial administration and calls  
8 for national legislation.” That finding was again rec-  
9 ognized in 2003 by the Court in *Norfolk & Western*  
10 *Railway Co. v. Ayers*, 123 S. Ct. 1210 (2003).

11 (7) This crisis, and its significant effect on the  
12 health and welfare of the people of the United  
13 States, on interstate and foreign commerce, and on  
14 the bankruptcy system, compels Congress to exercise  
15 its power to regulate interstate commerce and create  
16 this legislative solution in the form of a national as-  
17 bestos injury claims resolution program to supersede  
18 all existing methods to compensate those injured by  
19 asbestos, except as specified in this Act.

20 (8) This crisis has also imposed a deleterious  
21 burden upon the United States bankruptcy courts,  
22 which have assumed a heavy burden of admin-  
23 istering complicated and protracted bankruptcies  
24 with limited personnel.

1           (9) This crisis has devastated many commu-  
2           nities across the country, but hardest hit has been  
3           Libby, Montana, where tremolite asbestos, 1 of the  
4           most deadly forms of asbestos, was contained in the  
5           vermiculite ore mined from the area and despite on-  
6           going cleanup by the Environmental Protection  
7           Agency, many still suffer from the deadly dust.

8           (b) PURPOSE.—The purpose of this Act is to—

9           (1) create a privately funded, publicly adminis-  
10          tered fund to provide the necessary resources for a  
11          fair and efficient system to resolve asbestos injury  
12          claims that will provide compensation for legitimate  
13          present and future claimants of asbestos exposure as  
14          provided in this Act;

15          (2) provide compensation to those present and  
16          future victims based on the severity of their injuries,  
17          while establishing a system flexible enough to accom-  
18          modate individuals whose conditions worsens;

19          (3) relieve the Federal and State courts of the  
20          burden of the asbestos litigation; and

21          (4) increase economic stability by resolving the  
22          asbestos litigation crisis that has bankrupted compa-  
23          nies with asbestos liability, diverted resources from  
24          the truly sick, and endangered jobs and pensions.

1 **SEC. 3. DEFINITIONS.**

2 In this Act, the following definitions shall apply:

3 (1) ADMINISTRATOR.—The term “Adminis-  
4 trator” means the Administrator of the Office of As-  
5 bestos Disease Compensation appointed under sec-  
6 tion 101(b).

7 (2) ASBESTOS.—The term “asbestos” in-  
8 cludes—

9 (A) chrysotile;

10 (B) amosite;

11 (C) crocidolite;

12 (D) tremolite asbestos;

13 (E) winchite asbestos;

14 (F) richterite asbestos;

15 (G) anthophyllite asbestos;

16 (H) actinolite asbestos;

17 (I) amphibole asbestos;

18 (J) any of the minerals listed under sub-  
19 paragraphs (A) through (I) that has been  
20 chemically treated or altered, and any  
21 asbestiform variety, type, or component thereof;  
22 and

23 (K) asbestos-containing material, such as  
24 asbestos-containing products, automotive or in-  
25 dustrial parts or components, equipment, im-  
26 provements to real property, and any other ma-

1           terial that contains asbestos in any physical or  
2           chemical form.

3           (3) ASBESTOS CLAIM.—

4                   (A) IN GENERAL.—The term “asbestos  
5           claim” means any claim, premised on any the-  
6           ory, allegation, or cause of action for damages  
7           or other relief presented in a civil action or  
8           bankruptcy proceeding, directly, indirectly, or  
9           derivatively arising out of, based on, or related  
10          to, in whole or part, the health effects of expo-  
11          sure to asbestos, including loss of consortium,  
12          wrongful death, and any derivative claim made  
13          by, or on behalf of, any exposed person or any  
14          representative, spouse, parent, child, or other  
15          relative of any exposed person.

16                  (B) EXCLUSION.—The term does not in-  
17          clude—

18                          (i) claims alleging damage or injury to  
19                          tangible property;

20                          (ii) claims for benefits under a work-  
21                          ers’ compensation law or veterans’ benefits  
22                          program;

23                          (iii) claims arising under any govern-  
24                          mental or private health, welfare, dis-



1 ability, death or compensation policy, pro-  
2 gram or plan;

3 (iv) claims arising under any employ-  
4 ment contract or collective bargaining  
5 agreement; or

6 (v) claims arising out of medical mal-  
7 practice.

8 (4) ASBESTOS CLAIMANT.—The term “asbestos  
9 claimant” means an individual who files a claim  
10 under section 113.

11 (5) CIVIL ACTION.—The term “civil action”  
12 means all suits of a civil nature in State or Federal  
13 court, whether cognizable as cases at law or in eq-  
14 uity or in admiralty, but does not include an action  
15 relating to any workers’ compensation law, or a pro-  
16 ceeding for benefits under any veterans’ benefits  
17 program.

18 (6) COLLATERAL SOURCE COMPENSATION.—  
19 The term “collateral source compensation” means  
20 the compensation that the claimant received, or is  
21 entitled to receive, from a defendant or an insurer  
22 of that defendant, or compensation trust as a result  
23 of a final judgment or settlement for an asbestos-re-  
24 lated injury that is the subject of a claim filed under  
25 section 113.

1           (7) ELIGIBLE DISEASE OR CONDITION.—The  
2 term “eligible disease or condition” means the extent  
3 that an illness meets the medical criteria require-  
4 ments established under subtitle C of title I.

5           (8) EMPLOYERS’ LIABILITY ACT.—The term  
6 “Act of April 22, 1908 (45 U.S.C. 51 et seq.), com-  
7 monly known as the Employer’s Liability Act” shall,  
8 for all purposes of this Act, include the Act of June  
9 5, 1920 (46 U.S.C. App. 688), commonly known as  
10 the Jones Act, and the related phrase “operations as  
11 a common carrier by railroad” shall include oper-  
12 ations as an employer of seamen.

13           (9) FUND.—The term “Fund” means the As-  
14 bestos Injury Claims Resolution Fund established  
15 under section 221.

16           (10) INSURANCE RECEIVERSHIP PRO-  
17 CEEDING.—The term “insurance receivership pro-  
18 ceeding” means any State proceeding with respect to  
19 a financially impaired or insolvent insurer or rein-  
20 surer including the liquidation, rehabilitation, con-  
21 servation, supervision, or ancillary receivership of an  
22 insurer under State law.

23           (11) LAW.—The term “law” includes all law,  
24 judicial or administrative decisions, rules, regula-

1 tions, or any other principle or action having the ef-  
2 fect of law.

3 (12) PARTICIPANT.—

4 (A) IN GENERAL.—The term “participant”  
5 means any person subject to the funding re-  
6 quirements of title II, including—

7 (i) any defendant participant subject  
8 to liability for payments under subtitle A  
9 of that title;

10 (ii) any insurer participant subject to  
11 a payment under subtitle B of that title;  
12 and

13 (iii) any successor in interest of a par-  
14 ticipant.

15 (B) EXCEPTION.—

16 (i) IN GENERAL.—A defendant partic-  
17 ipant shall not include any person pro-  
18 tected from any asbestos claim by reason  
19 of an injunction entered in connection with  
20 a plan of reorganization under chapter 11  
21 of title 11, United States Code, that has  
22 been confirmed by a duly entered order or  
23 judgment of a court that is no longer sub-  
24 ject to any appeal or judicial review, and  
25 the substantial consummation, as such

1 term is defined in section 1101(2) of title  
2 11, United States Code, of such plan of re-  
3 organization has occurred.

4 (ii) APPLICABILITY.—Clause (i) shall  
5 not apply to a person who may be liable  
6 under subtitle A of title II based on prior  
7 asbestos expenditures related to asbestos  
8 claims that are not covered by an injunc-  
9 tion described under clause (i).

10 (13) PERSON.—The term “person”—

11 (A) means an individual, trust, firm, joint  
12 stock company, partnership, association, insur-  
13 ance company, reinsurance company, or cor-  
14 poration; and

15 (B) does not include the United States,  
16 any State or local government, or subdivision  
17 thereof, including school districts and any gen-  
18 eral or special function governmental unit es-  
19 tablished under State law.

20 (14) STATE.—The term “State” means any  
21 State of the United States and also includes the Dis-  
22 trict of Columbia, Commonwealth of Puerto Rico,  
23 the Northern Mariana Islands, the Virgin Islands,  
24 Guam, American Samoa, and any other territory or

1 possession of the United States or any political sub-  
2 division of any of the entities under this paragraph.

3 (15) SUBSTANTIALLY CONTINUES.—The term  
4 “substantially continues” means that the business  
5 operations have not been significantly modified by  
6 the change in ownership.

7 (16) SUCCESSOR IN INTEREST.—The term  
8 “successor in interest” means any person that ac-  
9 quires assets, and substantially continues the busi-  
10 ness operations, of a participant. The factors to be  
11 considered in determining whether a person is a suc-  
12 cessor in interest include—

13 (A) retention of the same facilities or loca-  
14 tion;

15 (B) retention of the same employees;

16 (C) maintaining the same job under the  
17 same working conditions;

18 (D) retention of the same supervisory per-  
19 sonnel;

20 (E) continuity of assets;

21 (F) production of the same product or  
22 offer of the same service;

23 (G) retention of the same name;

24 (H) maintenance of the same customer  
25 base;

1 (I) identity of stocks, stockholders, and di-  
2 rectors between the asset seller and the pur-  
3 chaser; or

4 (J) whether the successor holds itself out  
5 as continuation of previous enterprise, but ex-  
6 pressly does not include whether the person ac-  
7 tually knew of the liability of the participant  
8 under this Act.

9 (17) VETERANS' BENEFITS PROGRAM.—The  
10 term “veterans’ benefits program” means any pro-  
11 gram for benefits in connection with military service  
12 administered by the Veterans’ Administration under  
13 title 38, United States Code.

14 (18) WORKERS' COMPENSATION LAW.—The  
15 term “workers’ compensation law”—

16 (A) means a law respecting a program ad-  
17 ministered by a State or the United States to  
18 provide benefits, funded by a responsible em-  
19 ployer or its insurance carrier, for occupational  
20 diseases or injuries or for disability or death  
21 caused by occupational diseases or injuries;

22 (B) includes the Longshore and Harbor  
23 Workers’ Compensation Act (33 U.S.C. 901 et  
24 seq.) and chapter 81 of title 5, United States  
25 Code; and

1 (C) does not include the Act of April 22,  
 2 1908 (45 U.S.C. 51 et seq.), commonly known  
 3 as the Employers' Liability Act, or damages re-  
 4 covered by any employee in a liability action  
 5 against an employer.

6 **TITLE I—ASBESTOS CLAIMS**  
 7 **RESOLUTION**  
 8 **Subtitle A—Office of Asbestos**  
 9 **Disease Compensation**

10 **SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DIS-**  
 11 **EASE COMPENSATION.**

12 (a) IN GENERAL.—

13 (1) ESTABLISHMENT.—There is established  
 14 within the Department of Labor the Office of Asbes-  
 15 tos Disease Compensation (hereinafter referred to in  
 16 this Act as the “Office”), which shall be headed by  
 17 an Administrator.

18 (2) PURPOSE.—The purpose of the Office is to  
 19 provide timely, fair compensation, in the amounts  
 20 and under the terms specified in this Act, on a no-  
 21 fault basis and in a non-adversarial manner, to indi-  
 22 viduals whose health has been adversely affected by  
 23 exposure to asbestos.

24 (3) EXPENSES.—There shall be available from  
 25 the Asbestos Injury Claims Resolution Fund to the

1 Administrator such sums as are necessary for the  
2 administrative expenses of the Office, including the  
3 sums necessary for conducting the studies provided  
4 for in section 121(e).

5 (b) APPOINTMENT OF ADMINISTRATOR.—

6 (1) IN GENERAL.—The Administrator of the  
7 Office of Asbestos Disease Compensation shall be  
8 appointed by the President, by and with the advice  
9 and consent of the Senate. The Administrator shall  
10 serve for a term of 5 years.

11 (2) REPORTING.—The Administrator shall re-  
12 port directly to the Assistant Secretary of Labor for  
13 the Employment Standards Administration.

14 (c) DUTIES OF ADMINISTRATOR.—

15 (1) IN GENERAL.—The Administrator shall be  
16 responsible for—

17 (A) processing claims for compensation for  
18 asbestos-related injuries and paying compensa-  
19 tion to eligible claimants under the criteria and  
20 procedures established under title I;

21 (B) determining, levying, and collecting as-  
22 sessments on participants under title II;

23 (C) appointing or contracting for the serv-  
24 ices of such personnel, making such expendi-  
25 tures, and taking any other actions as may be



1 necessary and appropriate to carry out the re-  
2 sponsibilities of the Office, including entering  
3 into cooperative agreements with other Federal  
4 agencies or State agencies and entering into  
5 contracts with nongovernmental entities;

6 (D) conducting such audits and additional  
7 oversight as necessary to assure the integrity of  
8 the program;

9 (E) managing the Asbestos Injury Claims  
10 Resolution Fund established under section 221,  
11 including—

12 (i) administering, in a fiduciary capac-  
13 ity, the assets of the Fund for the exclu-  
14 sive purpose of providing benefits to asbes-  
15 tos claimants and their beneficiaries;

16 (ii) defraying the reasonable expenses  
17 of administering the Fund;

18 (iii) investing the assets of the Fund  
19 in accordance with section 222(b);

20 (iv) retaining advisers, managers, and  
21 custodians who possess the necessary fa-  
22 cilities and expertise to provide for the  
23 skilled and prudent management of the  
24 Fund, to assist in the development, imple-  
25 mentation and maintenance of the Fund's

1 investment policies and investment activi-  
2 ties, and to provide for the safekeeping and  
3 delivery of the Fund's assets; and

4 (v) borrowing amounts authorized by  
5 section 221(b) on appropriate terms and  
6 conditions, including pledging the assets of  
7 or payments to the Fund as collateral;

8 (F) promulgating such rules, regulations,  
9 and procedures as may be necessary and appro-  
10 priate to implement the provisions of this Act;

11 (G) making such expenditures as may be  
12 necessary and appropriate in the administration  
13 of this Act;

14 (H) excluding evidence and disqualifying or  
15 debarring any attorney, physician, provider of  
16 medical or diagnostic services, including labora-  
17 tories and others who provide evidence in sup-  
18 port of a claimant's application for compensa-  
19 tion where the Administrator determines that  
20 materially false, fraudulent, or fictitious state-  
21 ments or practices have been submitted or en-  
22 gaged in by such individuals or entities; and

23 (I) having all other powers incidental, nec-  
24 essary, or appropriate to carrying out the func-  
25 tions of the Office.

1           (2) CERTAIN ENFORCEMENTS.—For each in-  
2           fraction relating to paragraph (1)(H), the Adminis-  
3           trator also may impose a civil penalty not to exceed  
4           \$10,000 on any person or entity found to have sub-  
5           mitted or engaged in a materially false, fraudulent,  
6           or fictitious statement or practice under this Act.  
7           The Administrator shall prescribe appropriate regu-  
8           lations to implement paragraph (1)(H).

9           (3) SELECTION OF DEPUTY ADMINISTRA-  
10          TORS.—The Administrator shall select a Deputy Ad-  
11          ministrators for Claims Administration to carry out  
12          the Administrator’s responsibilities under this title  
13          and a Deputy Administrator for Fund Management  
14          to carry out the Administrator’s responsibilities  
15          under title II of this Act. The Deputy Administra-  
16          tors shall report directly to the Administrator and  
17          shall be in the Senior Executive Service.

18          (d) EXPEDITIOUS DETERMINATIONS.—The Adminis-  
19          trator shall prescribe rules to expedite claims for asbestos  
20          claimants with exigent circumstances in order to expedite  
21          the payment of such claims as soon as possible after start-  
22          up of the Fund. The Administrator shall contract out the  
23          processing of such claims.

24          (e) AUDIT AND PERSONNEL REVIEW PROCE-  
25          DURES.—The Administrator shall establish audit and per-

1 sonnel review procedures for evaluating the accuracy of  
2 eligibility recommendations of agency and contract per-  
3 sonnel.

4 (f) APPLICATION OF FOIA.—

5 (1) IN GENERAL.—Section 552 of title 5,  
6 United States Code (commonly referred to as the  
7 Freedom of Information Act) shall apply to the Of-  
8 fice of Asbestos Disease Compensation and the As-  
9 bestos Insurers Commission.

10 (2) CONFIDENTIALITY.—Any person may des-  
11 ignate any record submitted under this section as a  
12 confidential commercial or financial record for pur-  
13 poses of section 552 of title 5, United States Code.  
14 The Administrator and the Chairman of the Asbes-  
15 tos Insurers Commission shall adopt procedures for  
16 designating such records as confidential. Information  
17 on reserves and asbestos-related liabilities submitted  
18 by any participant for the purpose of the allocation  
19 of payments under subtitles A and B of title II shall  
20 be deemed to be confidential financial records.

21 **SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE**  
22 **COMPENSATION.**

23 (a) ESTABLISHMENT.—

24 (1) IN GENERAL.—Not later than 120 days  
25 after the date of enactment of this Act, the Adminis-

1       trator shall establish an Advisory Committee on As-  
2       bestos Disease Compensation (hereinafter the “Advi-  
3       sory Committee”).

4               (2) COMPOSITION AND APPOINTMENT.—The  
5       Advisory Committee shall be composed of 24 mem-  
6       bers, appointed as follows—

7               (A) The Majority and Minority Leaders of  
8       the Senate, the Speaker of the House, and the  
9       Minority Leader of the House shall each ap-  
10      point 4 members. Of the 4—

11              (i) 2 shall be selected to represent the  
12      interests of claimants, at least 1 of whom  
13      shall be selected from among individuals  
14      recommended by recognized national labor  
15      federations; and

16              (ii) 2 shall be selected to represent the  
17      interests of participants, 1 of whom shall  
18      be selected to represent the interests of the  
19      insurer participants and 1 of whom shall  
20      be selected to represent the interests of the  
21      defendant participants.

22              (B) The Administrator shall appoint 8  
23      members, who shall be individuals with quali-  
24      fications and expertise in occupational or pul-  
25      monary medicine, occupational health, workers’

1 compensation programs, financial administra-  
2 tion, investment of funds, program auditing, or  
3 other relevant fields.

4 (3) QUALIFICATIONS.—All of the members de-  
5 scribed in paragraph (2) shall have expertise or ex-  
6 perience relevant to the asbestos compensation pro-  
7 gram, including experience or expertise in diagnosing  
8 asbestos-related diseases and conditions, assessing  
9 asbestos exposure and health risks, filing asbestos  
10 claims, administering a compensation or insurance  
11 program, or as actuaries, auditors, or investment  
12 managers. None of the members described in para-  
13 graph (2)(B) shall be individuals who, for each of  
14 the 5 years before their appointments, earned more  
15 than 15 percent of their income by serving in mat-  
16 ters related to asbestos litigation as consultants or  
17 expert witnesses.

18 (b) DUTIES.—The Advisory Committee shall advise  
19 the Administrator on—

20 (1) claims filing and claims processing proce-  
21 dures;

22 (2) claimant assistance programs;

23 (3) audit procedures and programs to ensure  
24 the quality and integrity of the compensation pro-  
25 gram;

1           (4) the development of a list of industries, occu-  
2           pations and time periods for which there is a pre-  
3           sumption of substantial occupational exposure to as-  
4           bestos;

5           (5) recommended analyses or research that  
6           should be conducted to evaluate past claims and to  
7           project future claims under the program;

8           (6) the annual report required to be submitted  
9           to Congress under section 405; and

10          (7) such other matters related to the implemen-  
11          tation of this Act as the Administrator considers ap-  
12          propriate.

13          (c) OPERATION OF THE COMMITTEE.—

14           (1) Each member of the Advisory Committee  
15           shall be appointed for a term of 3 years, except that,  
16           of the members first appointed—

17           (A) 8 shall be appointed for a term of 1  
18           year;

19           (B) 8 shall be appointed for a term of 2  
20           years; and

21           (C) 8 shall be appointed for a term of 3  
22           years, as determined by the Administrator at  
23           the time of appointment.

1           (2) Any member appointed to fill a vacancy oc-  
2           curring before the expiration of the term shall be ap-  
3           pointed only for the remainder of such term.

4           (3) The Administrator shall designate a Chair-  
5           person and Vice Chairperson from among members  
6           of the Advisory Committee appointed under sub-  
7           section (a)(2)(B).

8           (4) The Advisory Committee shall meet at the  
9           call of the Chairperson or the majority of its mem-  
10          bers, and at a minimum shall meet at least 4 times  
11          per year during the first 5 years of the asbestos  
12          compensation program, and at least 2 times per year  
13          thereafter.

14          (5) The Administrator shall provide to the  
15          Committee such information as is necessary and ap-  
16          propriate for the Committee to carry out its respon-  
17          sibilities under this section. The Administrator may,  
18          upon request of the Advisory Committee, secure di-  
19          rectly from any Federal, State, or local department  
20          or agency such information as may be necessary and  
21          appropriate to enable the Advisory Committee to  
22          carry out its duties under this section. Upon request  
23          of the Administrator, the head of such department  
24          or agency shall furnish such information to the Advi-  
25          sory Committee.



1           (6) The Administrator shall provide the Advi-  
2           sory Committee with such administrative support as  
3           is reasonably necessary to enable it to perform its  
4           functions.

5           (d) EXPENSES.—Members of the Advisory Com-  
6           mittee, other than full-time employees of the United  
7           States, while attending meetings of the Advisory Com-  
8           mittee or while otherwise serving at the request of the Ad-  
9           ministrator, and while serving away from their homes or  
10          regular places of business, shall be allowed travel and meal  
11          expenses, including per diem in lieu of subsistence, as au-  
12          thorized by section 5703 of title 5, United States Code,  
13          for individuals in the Government serving without pay.

14       **SEC. 103. MEDICAL ADVISORY COMMITTEE.**

15          (a) IN GENERAL.—The Administrator shall establish  
16          a Medical Advisory Committee to provide expert advice re-  
17          garding medical issues arising under the statute.

18          (b) QUALIFICATIONS.—None of the members of the  
19          Medical Advisory Committee shall be individuals who, for  
20          each of the 5 years before their appointments, earned  
21          more than 15 percent of their income by serving in mat-  
22          ters related to asbestos litigation as consultants or expert  
23          witnesses.

1 **SEC. 104. CLAIMANT ASSISTANCE.**

2 (a) ESTABLISHMENT.—Not later than 180 days after  
3 the enactment of this Act, the Administrator shall estab-  
4 lish a comprehensive asbestos claimant assistance program  
5 to—

6 (1) publicize and provide information to poten-  
7 tial claimants about the availability of benefits for  
8 eligible claimants under this Act, and the procedures  
9 for filing claims and for obtaining assistance in fil-  
10 ing claims;

11 (2) provide assistance to potential claimants in  
12 preparing and submitting claims, including assist-  
13 ance in obtaining the documentation necessary to  
14 support a claim;

15 (3) respond to inquiries from claimants and po-  
16 tential claimants;

17 (4) provide training with respect to the applica-  
18 ble procedures for the preparation and filing of  
19 claims to persons who provide assistance or rep-  
20 resentation to claimants; and

21 (5) provide for the establishment of a website  
22 where claimants may access all relevant forms and  
23 information.

24 (b) RESOURCE CENTERS.—The claimant assistance  
25 program shall provide for the establishment of resource  
26 centers in areas where there are determined to be large

1 concentrations of potential claimants. These centers shall  
2 be located, to the extent feasible, in facilities of the De-  
3 partment of Labor or other Federal agencies.

4 (c) CONTRACTS.—The claimant assistance program  
5 may be carried out in part through contracts with labor  
6 organizations, community-based organizations, and other  
7 entities which represent or provide services to potential  
8 claimants, except that such organizations may not have  
9 a financial interest in the outcome of claims filed with the  
10 Office.

11 (d) LEGAL ASSISTANCE.—

12 (1) IN GENERAL.—As part of the program es-  
13 tablished under subsection (a), the Administrator  
14 shall establish a legal assistance program to provide  
15 assistance to asbestos claimants concerning legal  
16 representation issues.

17 (2) LIST OF QUALIFIED ATTORNEYS.—As part  
18 of the program, the Administrator shall maintain a  
19 roster of qualified attorneys who have agreed to pro-  
20 vide pro bono services to asbestos claimants under  
21 rules established by the Administrator. The claim-  
22 ants shall not be required to use the attorneys listed  
23 on such roster.

24 (3) NOTICE.—

1 (A) NOTICE BY ADMINISTRATOR.—The  
2 Administrator shall provide asbestos claimants  
3 with notice of, and information relating to—

4 (i) pro bono services for legal assist-  
5 ance available to those claimants; and

6 (ii) any limitations on attorneys fees  
7 for claims filed under this title.

8 (B) NOTICE BY ATTORNEYS.—Before a  
9 person becomes a client of an attorney with re-  
10 spect to an asbestos claim, that attorney shall  
11 provide notice to that person of pro bono serv-  
12 ices for legal assistance available for that claim.

13 (e) ATTORNEY'S FEES.—

14 (1) IN GENERAL.—Notwithstanding any con-  
15 tract, the representative of an individual may not re-  
16 ceive, for services rendered in connection with the  
17 claim of an individual under the Fund, more than 5  
18 percent of a final award made (whether by the Ad-  
19 ministrator initially or as a result of administrative  
20 review) under the Fund on such claim.

21 (2) PENALTY.—Any representative of an asbes-  
22 tos claimant who violates this subsection shall be  
23 fined not more than the greater of—

24 (A) \$5,000; or

1                   (B) twice the amount received by the rep-  
2                   resentative for services rendered in connection  
3                   with each such violation.

4 **SEC. 105. PHYSICIANS PANELS.**

5           (a) APPOINTMENT.—The Administrator shall, in ac-  
6           cordance with section 3109 of title 5, United States Code,  
7           appoint physicians with experience and competency in di-  
8           agnosing asbestos-related diseases to be available to serve  
9           on Physicians Panels, as necessary to carry out this Act.

10           (b) FORMATION OF PANELS.—

11                   (1) IN GENERAL.—The Administrator shall pe-  
12                   riodically determine—

13                           (A) the number of Physicians Panels nec-  
14                           essary for the efficient conduct of the medical  
15                           review process under section 121;

16                           (B) the number of Physicians Panels nec-  
17                           essary for the efficient conduct of the excep-  
18                           tional medical claims process under section 121;

19                           and

20                           (C) the particular expertise necessary for  
21                           each panel.

22                   (2) EXPERTISE.—Each Physicians Panel shall  
23                   be composed of members having the particular ex-  
24                   pertise determined necessary by the Administrator,

1 randomly selected from among the physicians ap-  
2 pointed under subsection (a) having such expertise.

3 (3) PANEL MEMBERS.—

4 (A) IN GENERAL.—Except as provided  
5 under subparagraph (B), each Physicians Panel  
6 shall consist of 3 physicians, 2 of whom shall be  
7 designated to participate in each case submitted  
8 to the Physicians Panel, and the third of whom  
9 shall be consulted in the event of disagreement.

10 (B) WAIVER.—The Administrator may  
11 waive the provisions of subparagraph (A) and  
12 may provide for panels of less than 3 physi-  
13 cians, if the Administrator determines that—

14 (i) there is a shortage of qualified  
15 physicians available for service on panels;

16 and

17 (ii) such shortage will result in admin-  
18 istrative delay in the claims process.

19 (c) QUALIFICATIONS.—To be eligible to serve on a  
20 Physicians Panel under subsection (a), a person shall be—

21 (1) a physician licensed in any State;

22 (2) board-certified in pulmonary medicine, occu-  
23 pational medicine, internal medicine, oncology, or  
24 pathology; and

1           (3) an individual who, for each of the 5 years  
2 before and during his or her appointment to a Phy-  
3 sicians Panel, has earned not more than 15 percent  
4 of his or her income as an employee of a partici-  
5 pating defendant or insurer or a law firm rep-  
6 resenting any party in asbestos litigation or as a  
7 consultant or expert witness in matters related to  
8 asbestos litigation.

9           (d) DUTIES.—Members of a Physicians Panel shall—

10           (1) make such medical determinations as are  
11 required to be made by Physicians Panels under sec-  
12 tion 121; and

13           (2) perform such other functions as required  
14 under this Act.

15           (e) COMPENSATION.—Notwithstanding any limitation  
16 otherwise established under section 3109 of title 5, United  
17 States Code, the Administrator shall be authorized to pay  
18 members of a Physician Panel such compensation as is  
19 reasonably necessary to obtain their services.

20           (f) FEDERAL ADVISORY COMMITTEE ACT.—A Physi-  
21 cians Panel established under this section shall not be sub-  
22 ject to the Federal Advisory Committee Act (5 U.S.C.  
23 App. 2).

1 **SEC. 106. PROGRAM STARTUP.**

2 (a) INTERIM REGULATIONS.—Not later than 90 days  
3 after the date of enactment of this Act, the Administrator  
4 shall promulgate interim regulations and procedures for  
5 the processing of claims under title I and the operation  
6 of the Fund under title II, including procedures for the  
7 expediting of exigent health claims.

8 (b) INTERIM PERSONNEL.—The Secretary of Labor  
9 and the Assistant Secretary of Labor for the Employment  
10 Standards Administration may make available to the Ad-  
11 ministrator on a temporary basis such personnel and other  
12 resources as may be necessary to facilitate the expeditious  
13 startup of the program. The Administrator may in addi-  
14 tion contract with individuals or entities having relevant  
15 experience to assist in the expeditious startup of the pro-  
16 gram. Such relevant experience shall include, but not be  
17 limited to, experience with the review of workers' com-  
18 pensation, occupational disease, or similar claims and with  
19 financial matters relevant to the operation of the program.

20 (c) EXIGENT HEALTH CLAIMS.—

21 (1) IN GENERAL.—The Administrator shall de-  
22 velop procedures to provide for an expedited process  
23 to categorize, evaluate, and pay exigent health  
24 claims. Such procedures shall include, pending pro-  
25 mulgation of final regulations, adoption of interim



1 regulations as needed for processing of exigent  
2 health claims.

3 (2) ELIGIBLE EXIGENT HEALTH CLAIMS.—A  
4 claim shall qualify for treatment as an exigent  
5 health claim if the claimant is living and the claim-  
6 ant provides—

7 (A) a diagnosis of mesothelioma meeting  
8 the requirements of section 121(d)(10); or

9 (B) a declaration or affidavit, from a phy-  
10 sician who has examined the claimant within  
11 120 days before the date of such declaration or  
12 affidavit, that the physician has diagnosed the  
13 claimant as being terminally ill from an asbes-  
14 tos-related illness and having a life expectancy  
15 of less than 1 year.

16 (3) ADDITIONAL EXIGENT HEALTH CLAIMS.—  
17 The Administrator may, in final regulations promul-  
18 gated under section 101(c), designate additional cat-  
19 egories of claims that qualify as exigent health  
20 claims under this subsection.

21 (4) CLAIMS FACILITY.—To facilitate the prompt  
22 payment of exigent health claims, the Administrator  
23 shall contract with a claims facility, which applying  
24 the medical criteria of section 121, may enter into  
25 settlements with claimants. In the absence of an

1 offer of judgment as provided under section  
2 106(f)(2), the claimant may submit a claim to that  
3 claims facility. The claims facility shall receive the  
4 claimant's submissions and evaluate the claim in ac-  
5 cordance with subtitles B and C. The claims facility  
6 shall then submit the file to the Administrator for  
7 payment in accordance with subtitle D. This sub-  
8 section shall not apply to exceptional medical claims  
9 under section 121(f). A claimant may appeal any de-  
10 cision at a claims facility with the Administrator in  
11 accordance with section 114.

12 (5) AUTHORIZATION FOR CONTRACTS WITH  
13 CLAIMS FACILITIES.—The Administrator may enter  
14 into contracts with claims facilities for the proc-  
15 essing of claims (except for exceptional medical  
16 claims) in accordance with this title.

17 (d) EXTREME FINANCIAL HARDSHIP CLAIMS.—The  
18 Administrator shall, in final regulations promulgated  
19 under section 101(c), designate categories of claims to be  
20 handled on an expedited basis as a result of extreme finan-  
21 cial hardship.

22 (e) INTERIM ADMINISTRATOR.—Until an Adminis-  
23 trator is appointed and confirmed under section 101(b),  
24 the responsibilities of the Administrator under this Act  
25 shall be performed by the Assistant Secretary of Labor

1 for the Employment Standards Administration, who shall  
2 have all the authority conferred by this Act on the Admin-  
3 istrator and who shall be deemed to be the Administrator  
4 for purposes of this Act. Before final regulations being  
5 promulgated relating to claims processing, the Interim Ad-  
6 ministrator may prioritize claims processing, without re-  
7 gard to the time requirements prescribed in subtitle B of  
8 this title, based on severity of illness and likelihood that  
9 the illness in question was caused by exposure to asbestos.

10 (f) STAY OF CLAIMS; RETURN TO TORT SYSTEM.—

11 (1) STAY OF CLAIMS.—Notwithstanding any  
12 other provision of this Act, any asbestos claim pend-  
13 ing as of the date of enactment of this Act, other  
14 than a claim to which section 403(d)(2)(A) applies,  
15 shall be subject to a stay.

16 (2) EXIGENT HEALTH CLAIMS.—

17 (A) PROCEDURES FOR SETTLEMENT OF  
18 EXIGENT HEALTH CLAIMS.—

19 (i) IN GENERAL.—Any person that  
20 has filed a timely exigent health claim  
21 seeking a judgment or order for monetary  
22 damages in any Federal or State court be-  
23 fore or after the date of enactment of this  
24 Act, may immediately seek an offer of

1 judgment of such claim in accordance with  
2 this subparagraph.

3 (ii) FILING.—

4 (I) IN GENERAL.—The claimant  
5 shall file with the Administrator and  
6 serve upon all defendants in the pend-  
7 ing court action an election to pursue  
8 an offer of judgment—

9 (aa) within 60 days after the  
10 date of enactment of this Act, if  
11 the claim was filed in a Federal  
12 or State court before such date  
13 of enactment; and

14 (bb) within 60 days after  
15 the date of the filing of the  
16 claim, if the claim is filed in a  
17 Federal or State court on or  
18 after the date of enactment of  
19 this Act.

20 (II) STAY.—If the claimant fails  
21 to file and serve a timely election  
22 under this clause, the stay under sub-  
23 paragraph (B) shall remain in effect.

24 (iii) INFORMATION.—A claimant who  
25 has filed a timely election under clause (ii)

1 shall within 60 days after filing provide to  
2 each defendant and to the Administrator—

3 (I) the amount received or due to  
4 be received as a result of all settle-  
5 ments that would qualify as a collat-  
6 eral source under section 134, to-  
7 gether with copies of all settlement  
8 agreements and related documents  
9 sufficient to show the accuracy of that  
10 amount;

11 (II) all information that the  
12 claimant would be required to provide  
13 to the Administrator in support of a  
14 claim under sections 115 and 121;  
15 and

16 (III) a certification by the claim-  
17 ant that the information provided is  
18 true and complete.

19 (iv) CERTIFICATION.—The certifi-  
20 cation provided under clause (iii) shall be  
21 subject to the same penalties for false or  
22 misleading statements that would be appli-  
23 cable with regard to information provided  
24 to the Administrator in support of a claim.

1                   (v) OFFER OF JUDGMENT.—Within  
2                   30 days after service of a complete set of  
3                   the information described in clause (iii),  
4                   any defendant may file and serve on all  
5                   parties a good faith offer of judgment in  
6                   an aggregate amount not to exceed the  
7                   total amount to which the claimant may be  
8                   entitled under section 131 after adjust-  
9                   ment for collateral sources under section  
10                  134. If the aggregate amount offered by all  
11                  defendants exceeds the limitation in this  
12                  clause, all offers shall be deemed reduced  
13                  pro-rata until the aggregate amount equals  
14                  the amount provided under section 131.

15                  (vi) ACCEPTANCE OR REJECTION.—  
16                  Within 20 days after the service of the last  
17                  offer of judgment, the claimant shall either  
18                  accept or reject such offers. If the amount  
19                  of the offer made by any defendant individ-  
20                  ually, or by any defendants jointly, equals  
21                  or exceeds 100 percent of what the claim-  
22                  ant would receive under the Fund, the  
23                  claimant shall accept such offer and re-  
24                  lease any outstanding asbestos claims.

1 (vii) LUMP SUM PAYMENT.—Any ac-  
2 cepted offer of judgment shall be payable  
3 within 30 days and in 1 lump sum in order  
4 to settle the pending claim.

5 (viii) RECOVERY OF COSTS.—Any de-  
6 fendant whose offer of judgment is accept-  
7 ed and has settled an asbestos claim under  
8 clauses (vi) and (vii) may recover the cost  
9 of such settlement by deducting from its  
10 next and subsequent contributions to the  
11 Fund for the full amount of the payment  
12 made by such defendant to the exigent  
13 health claimant, unless the Administrator  
14 finds, on the basis of clear and convincing  
15 evidence, that—

16 (I) the claimant did not meet the  
17 requirements of an exigent health  
18 claim; and

19 (II) the defendant's offer was col-  
20 lusive or otherwise not in good faith.

21 (ix) INDEMNIFICATION.—In any case  
22 in which the Administrator refuses to  
23 grant full indemnification under clause  
24 (viii), the Administrator may provide such  
25 partial indemnification as may be fair and

1 just in the circumstances. If Administrator  
2 denies indemnification, the defendant may  
3 seek contribution from other non-settling  
4 defendants, as well as reimbursement  
5 under the defendant's applicable insurance  
6 policies. If the Administrator refuses to  
7 grant full or partial indemnification based  
8 on collusive action, the defendant may pur-  
9 sue any available remedy against the  
10 claimant.

11 (x) REFUSAL TO MAKE OFFER.—If a  
12 defendant refuses to make an offer of  
13 judgment, the claimant may continue to  
14 seek a judgment or order for monetary  
15 damages from the court where the case is  
16 currently pending in an amount not to ex-  
17 ceed 150 percent of what the claimant  
18 would receive if the claimant had filed a  
19 claim with the Fund. Such a judgment or  
20 order may also provide an award for claim-  
21 ant's attorneys' fees and the costs of litiga-  
22 tion.

23 (xi) REJECTION OF OFFER.—If the  
24 claimant rejects the offer as less than what  
25 the claimant would qualify to receive under



1 section 131, the claimant may immediately  
2 pursue the claim in court where the claim-  
3 ant shall demonstrate, in addition to all  
4 other essential elements of the claimant's  
5 claim against any defendant, that the  
6 claimant meets the requirements of section  
7 121.

8 (B) PURSUAL OF EXIGENT HEALTH  
9 CLAIMS.—

10 (i) STAY.—If a claimant does not  
11 elect to seek an offer of judgment under  
12 subparagraph (A), the pending claim is  
13 stayed for 9 months after the date of en-  
14 actment of this Act.

15 (ii) DEFENDANT OFFER.—If a claim-  
16 ant does not elect to seek an offer of judg-  
17 ment under subparagraph (A), the defend-  
18 ant may elect to make an offer according  
19 to the provisions of this paragraph, except  
20 that a claimant shall not be required to ac-  
21 cept that offer. The claimant shall accept  
22 or reject the offer within 20 days.

23 (iii) CLAIMS FACILITY.—If a claimant  
24 does not elect to seek an offer of judgment  
25 under subparagraph (A), the claimant may

1 seek an award from the Fund through the  
2 claims facility under section 106 (c)(4).

3 (iv) CONTINUANCE OF CLAIMS.—If,  
4 after 9 months after the date of enactment  
5 of this Act, the Administrator cannot cer-  
6 tify to Congress that the Fund is oper-  
7 ational and paying exigent health claims at  
8 a reasonable rate, each person that has  
9 filed an exigent health claim before such  
10 date of enactment and stayed under this  
11 paragraph may continue their exigent  
12 health claims in the court where the case  
13 was pending on the date of enactment of  
14 this Act. For exigent claims filed after the  
15 date of enactment of this Act, by claimants  
16 who do not elect to seek an offer of judg-  
17 ment under subparagraph (A), the pending  
18 claim is stayed for 9 months after the date  
19 the claim is filed, unless during that period  
20 the Administrator can certify to Congress  
21 that the Fund is operational and paying  
22 valid claims at a reasonable rate.

23 (C) CREDIT OF CLAIM AND EFFECT OF  
24 OPERATIONAL FUND.—If an asbestos claim is  
25 pursued in Federal or State court in accordance

1 with this paragraph, any recovery by the claim-  
2 ant shall be a collateral source compensation  
3 for purposes of section 134.

4 (3) PURSUAL OF ASBESTOS CLAIMS IN FED-  
5 ERAL OR STATE COURT.—

6 (A) IN GENERAL.—Notwithstanding any  
7 other provision of this Act, if, not later than 24  
8 months after the date of enactment of this Act,  
9 the Administrator cannot certify to Congress  
10 that the Fund is operational and paying all  
11 valid claims at a reasonable rate, any person  
12 with a non-exigent asbestos claim stayed under  
13 this paragraph, except for any person whose  
14 claim does not exceed a Level I claim, may pur-  
15 sue that claim in the Federal district court or  
16 State court located within—

17 (i) the State of residence of the claim-  
18 ant; or

19 (ii) the State in which the asbestos ex-  
20 posure arose.

21 (B) DEFENDANTS NOT FOUND.—If any  
22 defendant cannot be found in the State de-  
23 scribed in clause (i) or (ii) of subparagraph (A),  
24 the claim may be pursued in the Federal dis-

1           trict court or State court located within any  
2           State in which the defendant may be found.

3           (C) DETERMINATION OF MOST APPRO-  
4           PRIATE FORUM.—If a person alleges that the  
5           asbestos exposure occurred in more than 1  
6           county (or Federal district), the trial court shall  
7           determine which State and county (or Federal  
8           district) is the most appropriate forum for the  
9           claim. If the court determines that another  
10          forum would be the most appropriate forum for  
11          a claim, the court shall dismiss the claim. Any  
12          otherwise applicable statute of limitations shall  
13          be tolled beginning on the date the claim was  
14          filed and ending on the date the claim is dis-  
15          missed under this subparagraph.

16          (D) STATE VENUE REQUIREMENTS.—  
17          Nothing in this paragraph shall preempt or su-  
18          persede any State’s law relating to venue re-  
19          quirements within that State which are more  
20          restrictive.

21          (E) CREDIT OF CLAIM AND EFFECT OF  
22          OPERATIONAL OR NONOPERATIONAL FUND.—

23                  (i) CREDIT OF CLAIM.—If an asbestos  
24                  claim is pursued in Federal or State court  
25                  in accordance with this paragraph, any re-

1 covery by the claimant shall be a collateral  
2 source compensation for purposes of sec-  
3 tion 134.

4 (ii) OPERATIONAL FUND.—If the Ad-  
5 ministrator subsequently certifies to Con-  
6 gress that the Fund has become oper-  
7 ational and paying all valid asbestos claims  
8 at a reasonable rate, any claim in a civil  
9 action in Federal or State court that is not  
10 actually on trial before a jury which has  
11 been impaneled and presentation of evi-  
12 dence has commenced, but before its delib-  
13 eration, or before a judge and is at the  
14 presentation of evidence, may, at the op-  
15 tion of the claimant, be deemed a rein-  
16 stated claim against the Fund and the civil  
17 action before the Federal or State court  
18 shall be null and void.

19 (iii) NONOPERATIONAL FUND.—Not-  
20 withstanding any other provision of this  
21 Act, if the Administrator subsequently cer-  
22 tifies to Congress that the Fund cannot be-  
23 come operational and paying all valid as-  
24 bestos claims at a reasonable rate, all as-

1                   bestos claims that have a stay may be filed  
2                   or reinstated.

3 **SEC. 107. AUTHORITY OF THE ADMINISTRATOR.**

4           The Administrator, on any matter within the jurisdic-  
5 tion of the Administrator under this Act, may—

6                   (1) issue subpoenas for and compel the attend-  
7                   ance of witnesses within a radius of 200 miles;

8                   (2) administer oaths;

9                   (3) examine witnesses;

10                  (4) require the production of books, papers,  
11                  documents, and other evidence; and

12                  (5) request assistance from other Federal agen-  
13                  cies with the performance of the duties of the Ad-  
14                  ministrator under this Act.

15                   **Subtitle B—Asbestos Disease**  
16                   **Compensation Procedures**

17 **SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.**

18           To be eligible for an award under this Act for an as-  
19 bestos-related disease or injury, an individual shall—

20                   (1) file a claim in a timely manner in accord-  
21                   ance with section 113; and

22                   (2) prove, by a preponderance of the evidence,  
23                   that the claimant suffers from an eligible disease or  
24                   condition, as demonstrated by evidence that meets  
25                   the requirements established under subtitle C.

1 **SEC. 112. GENERAL RULE CONCERNING NO-FAULT COM-**  
2 **PENSATION.**

3 An asbestos claimant shall not be required to dem-  
4 onstrate that the asbestos-related injury for which the  
5 claim is being made resulted from the negligence or other  
6 fault of any other person.

7 **SEC. 113. FILING OF CLAIMS.**

8 (a) WHO MAY SUBMIT.—

9 (1) IN GENERAL.—Any individual who has suf-  
10 fered from a disease or condition that is believed to  
11 meet the requirements established under subtitle C  
12 (or the personal representative of the individual, if  
13 the individual is deceased or incompetent) may file  
14 a claim with the Office for an award with respect to  
15 such injury.

16 (2) DEFINITION.—In this Act, the term “per-  
17 sonal representative” shall have the same meaning  
18 as that term is defined in section 104.4 of title 28  
19 of the Code of Federal Regulations, as in effect on  
20 December 31, 2004.

21 (3) LIMITATION.—A claim may not be filed by  
22 any person seeking contribution or indemnity.

23 (b) STATUTE OF LIMITATIONS.—

24 (1) IN GENERAL.—Except as otherwise pro-  
25 vided in this subsection, if an individual fails to file

1 a claim with the Office under this section within 5  
2 years after the date on which the individual first—

3 (A) received a medical diagnosis of an eli-  
4 gible disease or condition as provided for under  
5 this subtitle and subtitle C; or

6 (B) discovered facts that would have led a  
7 reasonable person to obtain a medical diagnosis  
8 with respect to an eligible disease or condition,  
9 any claim relating to that injury, and any other as-  
10 bestos claim related to that injury, shall be extin-  
11 guished, and any recovery thereon shall be prohib-  
12 ited.

13 (2) EXCEPTION.—The statute of limitations in  
14 paragraph (1) does not apply to the progression of  
15 nonmalignant diseases once the initial claim has  
16 been filed.

17 (3) EFFECT ON PENDING CLAIMS.—

18 (A) IN GENERAL.—If, on the date of en-  
19 actment of this Act, an asbestos claimant has  
20 any timely filed asbestos claim that is pre-  
21 empted under section 403(e), such claimant  
22 shall file a claim under this section within 5  
23 years after such date of enactment, or any  
24 claim relating to that injury, and any other as-  
25 bestos claim related to that injury shall be ex-



1           tinguished, and recovery there shall be prohib-  
2           ited.

3           (B) SPECIAL RULE.—For purposes of this  
4           paragraph, a claim shall not be treated as pend-  
5           ing with a trust established under title 11,  
6           United States Code, solely because a claimant  
7           whose claim was previously compensated by the  
8           trust has or alleges—

9                   (i) a non-contingent right to the pay-  
10                  ment of future installments of a fixed  
11                  award; or

12                   (ii) a contingent right to recover some  
13                  additional amount from the trust on the  
14                  occurrence of a future event, such as the  
15                  reevaluation of the trust's funding ade-  
16                  quacy or projected claims experience.

17           (4) EFFECT OF MULTIPLE INJURIES.—

18           (A) IN GENERAL.—An asbestos claimant  
19           who receives an award under this title for an el-  
20           igible disease or condition, and who subse-  
21           quently develops another such injury, shall be  
22           eligible for additional awards under this title  
23           (subject to appropriate setoffs for such prior re-  
24           covery of any award under this title and from  
25           any other collateral source) and the statute of

1 limitations under paragraph (1) shall not begin  
2 to run with respect to such subsequent injury  
3 until such claimant obtains a medical diagnosis  
4 of such other injury or discovers facts that  
5 would have led a reasonable person to obtain  
6 such a diagnosis.

7 (B) SETOFFS.—Except as provided in sub-  
8 paragraph (C), any amounts paid or to be paid  
9 for a prior award under this Act shall be de-  
10 ducted as a setoff against amounts payable for  
11 the second injury claim.

12 (C) EXCEPTION.—Any amounts paid or to  
13 be paid for a prior claim for a nonmalignant  
14 disease (Levels I through V) filed against the  
15 Fund shall not be deducted as a setoff against  
16 amounts payable for the second injury claim for  
17 a malignant disease (Levels VI through IX),  
18 unless the malignancy was diagnosed, or the as-  
19 bestos claimant had discovered facts that would  
20 have led a reasonable person to obtain such a  
21 diagnosis, before the date on which the non-  
22 malignancy claim was compensated.

23 (c) REQUIRED INFORMATION.—A claim filed under  
24 subsection (a) shall be in such form, and contain such in-  
25 formation in such detail, as the Administrator shall by

1 regulation prescribe. At a minimum, a claim shall in-  
2 clude—

3           (1) the name, social security number, gender,  
4           date of birth, and, if applicable, date of death of the  
5           claimant;

6           (2) information relating to the identity of de-  
7           pendents and beneficiaries of the claimant;

8           (3) an employment history sufficient to estab-  
9           lish required asbestos exposure, accompanied by so-  
10          cial security or other payment records or a signed  
11          release permitting access to such records;

12          (4) a description of the asbestos exposure of the  
13          claimant, including, to the extent known, informa-  
14          tion on the site, or location of exposure, and dura-  
15          tion and intensity of exposure;

16          (5) a description of the tobacco product use his-  
17          tory of the claimant, including frequency and dura-  
18          tion;

19          (6) an identification and description of the as-  
20          bestos-related diseases or conditions of the claimant,  
21          accompanied by a written report by the claimant's  
22          physician with medical diagnoses and x-ray films,  
23          and other test results necessary to establish eligi-  
24          bility for an award under this Act;

1           (7) a description of any prior or pending civil  
2           action or other claim brought by the claimant for as-  
3           bestos-related injury or any other pulmonary, paren-  
4           chymal, or pleural injury, including an identification  
5           of any recovery of compensation or damages through  
6           settlement, judgment, or otherwise; and

7           (8) for any claimant who asserts that he or she  
8           is a nonsmoker or an ex-smoker, as defined in sec-  
9           tion 131, for purposes of an award under Malignant  
10          Level VI, Malignant Level VII, or Malignant Level  
11          VIII, evidence to support the assertion of non-  
12          smoking or ex-smoking, including relevant medical  
13          records.

14          (d) DATE OF FILING.—A claim shall be considered  
15          to be filed on the date that the claimant mails the claim  
16          to the Office, as determined by postmark, or on the date  
17          that the claim is received by the Office, whichever is the  
18          earliest determinable date.

19          (e) INCOMPLETE CLAIMS.—If a claim filed under  
20          subsection (a) is incomplete, the Administrator shall notify  
21          the claimant of the information necessary to complete the  
22          claim and inform the claimant of such services as may  
23          be available through the Claimant Assistance Program es-  
24          tablished under section 104 to assist the claimant in com-  
25          pleting the claim. Any time periods for the processing of

1 the claim shall be suspended until such time as the claim-  
2 ant submits the information necessary to complete the  
3 claim. If such information is not received within 1 year  
4 after the date of such notification, the claim shall be dis-  
5 missed.

6 **SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM**  
7 **AWARDS.**

8 (a) IN GENERAL.—

9 (1) REVIEW OF CLAIMS.—The Administrator  
10 shall, in accordance with this section, determine  
11 whether each claim filed under the Fund or claims  
12 facility satisfies the requirements for eligibility for  
13 an award under this Act and, if so, the value of the  
14 award. In making such determinations, the Adminis-  
15 trator shall consider the claim presented by the  
16 claimant, the factual and medical evidence submitted  
17 by the claimant in support of the claim, the medical  
18 determinations of any Physicians Panel to which a  
19 claim is referred under section 121, and the results  
20 of such investigation as the Administrator may deem  
21 necessary to determine whether the claim satisfies  
22 the criteria for eligibility established by this Act.

23 (2) ADDITIONAL EVIDENCE.—The Adminis-  
24 trator may request the submission of medical evi-  
25 dence in addition to the minimum requirements of

1 section 113(c) if necessary or appropriate to make  
2 a determination of eligibility for an award, in which  
3 case the cost of obtaining such additional informa-  
4 tion or testing shall be borne by the Office.

5 (b) PROPOSED DECISIONS.—Not later than 90 days  
6 after the filing of a claim, the Administrator shall provide  
7 to the claimant (and the claimant’s representative) a pro-  
8 posed decision accepting or rejecting the claim in whole  
9 or in part and specifying the amount of the proposed  
10 award, if any. The proposed decision shall be in writing,  
11 shall contain findings of fact and conclusions of law, and  
12 shall contain an explanation of the procedure for obtaining  
13 review of the proposed decision.

14 (c) PAYMENTS IF NO TIMELY PROPOSED DECI-  
15 SION.—If the Administrator has received a complete claim  
16 and has not provided a proposed decision to the claimant  
17 under subsection (b) within 180 days after the filing of  
18 the claim, the claim shall be deemed accepted and the  
19 claimant shall be entitled to payment under section  
20 133(a)(2). If the Administrator subsequently rejects the  
21 claim the claimant shall receive no further payments under  
22 section 133. If the Administrator subsequently rejects the  
23 claim in part, the Administrator shall adjust future pay-  
24 ments due the claimant under section 133 accordingly. In

1 no event may the Administrator recover amounts properly  
2 paid under this section from a claimant.

3 (d) REVIEW OF PROPOSED DECISIONS.—

4 (1) RIGHT TO HEARING.—

5 (A) IN GENERAL.—Any claimant not satis-  
6 fied with a proposed decision of the Adminis-  
7 trator under subsection (b) shall be entitled, on  
8 written request made within 90 days after the  
9 date of the issuance of the decision, to a hear-  
10 ing on the claim of that claimant before a rep-  
11 resentative of the Administrator. At the hear-  
12 ing, the claimant shall be entitled to present  
13 oral evidence and written testimony in further  
14 support of that claim.

15 (B) CONDUCT OF HEARING.—When prac-  
16 ticable, the hearing will be set at a time and  
17 place convenient for the claimant. In conducting  
18 the hearing, the representative of the Adminis-  
19 trator shall not be bound by common law or  
20 statutory rules of evidence, by technical or for-  
21 mal rules of procedure, or by section 554 of  
22 title 5, United States Code, except as provided  
23 by this Act, but shall conduct the hearing in  
24 such manner as to best ascertain the rights of  
25 the claimant. For this purpose, the representa-

1           tive shall receive such relevant evidence as the  
2           claimant adduces and such other evidence as  
3           the representative determines necessary or use-  
4           ful in evaluating the claim.

5           (C) REQUEST FOR SUBPOENAS.—

6           (i) IN GENERAL.—A claimant may re-  
7           quest a subpoena but the decision to grant  
8           or deny such a request is within the discre-  
9           tion of the representative of the Adminis-  
10          trator. The representative may issue sub-  
11          poenas for the attendance and testimony of  
12          witnesses, and for the production of books,  
13          records, correspondence, papers, or other  
14          relevant documents. Subpoenas are issued  
15          for documents only if such documents are  
16          relevant and cannot be obtained by other  
17          means, and for witnesses only where oral  
18          testimony is the best way to ascertain the  
19          facts.

20          (ii) REQUEST.—A claimant may re-  
21          quest a subpoena only as part of the hear-  
22          ing process. To request a subpoena, the re-  
23          quester shall—

24                  (I) submit the request in writing  
25                  and send it to the representative as



1 early as possible, but no later than 30  
2 days after the date of the original  
3 hearing request; and

4 (II) explain why the testimony or  
5 evidence is directly relevant to the  
6 issues at hand, and a subpoena is the  
7 best method or opportunity to obtain  
8 such evidence because there are no  
9 other means by which the documents  
10 or testimony could have been ob-  
11 tained.

12 (iii) FEES AND MILEAGE.—Any per-  
13 son required by such subpoena to attend as  
14 a witness shall be allowed and paid the  
15 same fees and mileage as are paid wit-  
16 nesses in the district courts of the United  
17 States. Such fees and mileage shall be paid  
18 from the Fund.

19 (2) REVIEW OF WRITTEN RECORD.—In lieu of  
20 a hearing under paragraph (1), any claimant not  
21 satisfied with a proposed decision of the Adminis-  
22 trator shall have the option, on written request made  
23 within 90 days after the date of the issuance of the  
24 decision, of obtaining a review of the written record  
25 by a representative of the Administrator. If such re-

1 view is requested, the claimant shall be afforded an  
2 opportunity to submit any written evidence or argu-  
3 ment which the claimant believes relevant.

4 (e) FINAL DECISIONS.—

5 (1) IN GENERAL.—If the period of time for re-  
6 questing review of the proposed decision expires and  
7 no request has been filed, or if the claimant waives  
8 any objections to the proposed decision, the Admin-  
9 istrator shall issue a final decision. If such decision  
10 materially differs from the proposed decision, the  
11 claimant shall be entitled to review of the decision  
12 under subsection (d).

13 (2) TIME AND CONTENT.—If the claimant re-  
14 quests review of all or part of the proposed decision  
15 the Administrator shall issue a final decision on the  
16 claim not later than 180 days after the request for  
17 review is received, if the claimant requests a hearing,  
18 or not later than 90 days after the request for re-  
19 view is received, if the claimant requests review of  
20 the written record. Such decision shall be in writing  
21 and contain findings of fact and conclusions of law.

22 (f) REPRESENTATION.—A claimant may authorize an  
23 attorney or other individual to represent him or her in any  
24 proceeding under this Act.

1 **SEC. 115. MEDICAL EVIDENCE AUDITING PROCEDURES.**

2 (a) IN GENERAL.—

3 (1) DEVELOPMENT.—The Administrator shall  
4 develop methods for auditing and evaluating the  
5 medical evidence submitted as part of a claim. The  
6 Administrator may develop additional methods for  
7 auditing and evaluating other types of evidence or  
8 information received by the Administrator.

9 (2) REFUSAL TO CONSIDER CERTAIN EVI-  
10 DENCE.—

11 (A) IN GENERAL.—If the Administrator  
12 determines that an audit conducted in accord-  
13 ance with the methods developed under para-  
14 graph (1) demonstrates that the medical evi-  
15 dence submitted by a specific physician or med-  
16 ical facility is not consistent with prevailing  
17 medical practices or the applicable requirements  
18 of this Act, any medical evidence from such  
19 physician or facility shall be unacceptable for  
20 purposes of establishing eligibility for an award  
21 under this Act.

22 (B) NOTIFICATION.—Upon a determina-  
23 tion by the Administrator under subparagraph  
24 (A), the Administrator shall notify the physi-  
25 cian or medical facility involved of the results of  
26 the audit. Such physician or facility shall have

1 a right to appeal such determination under pro-  
2 cedures issued by the Administrator.

3 (b) REVIEW OF CERTIFIED B-READERS.—

4 (1) IN GENERAL.—At a minimum, the Adminis-  
5 trator shall prescribe procedures to randomly assign  
6 claims for evaluation by an independent certified B-  
7 reader of x-rays submitted in support of a claim, the  
8 cost of which shall be borne by the Office.

9 (2) DISAGREEMENT.—If an independent cer-  
10 tified B-reader assigned under paragraph (1) dis-  
11 agrees with the quality grading or ILO level as-  
12 signed to an x-ray submitted in support of a claim,  
13 the Administrator shall require a review of such x-  
14 rays by a second independent certified B-reader.

15 (3) EFFECT ON CLAIM.—If neither certified B-  
16 reader under paragraph (2) agrees with the quality  
17 grading and the ILO grade level assigned to an x-  
18 ray as part of the claim, the Administrator shall  
19 take into account the findings of the 2 independent  
20 B readers in making the determination on such  
21 claim.

22 (4) CERTIFIED B-READERS.—The Adminis-  
23 trator shall maintain a list of a minimum of 50 cer-  
24 tified B-readers eligible to participate in the inde-  
25 pendent reviews, chosen from all certified B-readers.

1 When an x-ray is sent for independent review, the  
2 Administrator shall choose the certified B-reader at  
3 random from that list.

4 (c) SMOKING ASSESSMENT.—

5 (1) IN GENERAL.—

6 (A) RECORDS AND DOCUMENTS.—To aid  
7 in the assessment of the accuracy of claimant  
8 representations as to their smoking status for  
9 purposes of determining eligibility and amount  
10 of award under Malignant Level VI, Malignant  
11 Level VII, or Malignant Level VIII, and excep-  
12 tional medical claims, the Administrator shall  
13 have the authority to obtain relevant records  
14 and documents, including—

15 (i) records of past medical treatment  
16 and evaluation;

17 (ii) affidavits of appropriate individ-  
18 uals;

19 (iii) applications for insurance and  
20 supporting materials; and

21 (iv) employer records of medical ex-  
22 aminations.

23 (B) CONSENT.—The claimant shall provide  
24 consent for the Administrator to obtain such  
25 records and documents where required.

1           (2) REVIEW.—The frequency of review of  
2 records and documents submitted under paragraph  
3 (1)(A) shall be at the discretion of the Adminis-  
4 trator, but shall address at least 5 percent of the  
5 claimants asserting status as nonsmokers or ex-  
6 smokers.

7           (3) CONSENT.—The Administrator may require  
8 the performance of blood tests or any other appro-  
9 priate medical test, such as serum cotinine screen-  
10 ing, where claimants assert they are nonsmokers or  
11 ex-smokers for purposes of an award under Malignant  
12 Level VI, Malignant Level VII, or Malignant  
13 Level VIII, or as an exceptional medical claim, the  
14 cost of which shall be borne by the Office.

15           (4) PENALTY FOR FALSE STATEMENTS.—Any  
16 false information submitted under this subsection  
17 shall be subject to criminal prosecution or civil pen-  
18 alties as provided under section 1348 of title 18,  
19 United States Code (as added by this Act) and sec-  
20 tion 101(c)(2).

## 21           **Subtitle C—Medical Criteria**

### 22           **SEC. 121. MEDICAL CRITERIA REQUIREMENTS.**

23           (a) DEFINITIONS.—In this section, the following defi-  
24 nitions shall apply:

1           (1) ASBESTOSIS DETERMINED BY PATHOL-  
2           OGY.—The term “asbestosis determined by pathol-  
3           ogy” means indications of asbestosis based on the  
4           pathological grading system for asbestosis described  
5           in the Special Issues of the Archives of Pathology  
6           and Laboratory Medicine, “Asbestos-associated Dis-  
7           eases”, Vol. 106, No. 11, App. 3 (October 8, 1982).

8           (2) BILATERAL ASBESTOS-RELATED NONMALIGNANT  
9           DISEASE.—The term “bilateral asbestos-re-  
10          lated nonmalignant disease” means a diagnosis of  
11          bilateral asbestos-related nonmalignant disease  
12          based on—

13                 (A) an x-ray reading of 1/0 or higher  
14                 based on the ILO grade scale;

15                 (B) bilateral pleural plaques;

16                 (C) bilateral pleural thickening; or

17                 (D) bilateral pleural calcification.

18          (3) BILATERAL PLEURAL DISEASE OF B2.—The  
19          term “bilateral pleural disease of B2” means a chest  
20          wall pleural thickening or plaque with a maximum  
21          width of at least 5 millimeters and a total length of  
22          at least  $\frac{1}{4}$  of the projection of the lateral chest wall.

23          (4) CERTIFIED B-READER.—The term “cer-  
24          tified B-reader” means an individual who is certified  
25          by the National Institute of Occupational Safety and

1 Health and whose certification by the National Insti-  
2 tute of Occupational Safety and Health is up to  
3 date.

4 (5) DIFFUSE PLEURAL THICKENING.—The  
5 term “diffuse pleural thickening” means blunting of  
6 either costophrenic angle and bilateral pleural plaque  
7 or bilateral pleural thickening.

8 (6) DLCO.—The term “DLCO” means the sin-  
9 gular-breath diffusing capacity of the lung (carbon  
10 monoxide) technique used to measure the volume of  
11 carbon monoxide transferred from the alveoli to  
12 blood in the pulmonary capillaries for each unit of  
13 driving pressure of the carbon monoxide.

14 (7) FEV1.—The term “FEV1” means forced  
15 expiratory volume (1 second), which is the maximal  
16 volume of air expelled in 1 second during perform-  
17 ance of the spirometric test for forced vital capacity.

18 (8) FVC.—The term “FVC” means forced vital  
19 capacity, which is the maximal volume of air expired  
20 with a maximally forced effort from a position of  
21 maximal inspiration.

22 (9) ILO GRADE.—The term “ILO grade”  
23 means the radiological ratings for the presence of  
24 lung changes as determined from a chest x-ray, all



1 as established from time to time by the International  
2 Labor Organization.

3 (10) LOWER LIMITS OF NORMAL.—The term  
4 “lower limits of normal” means the fifth percentile  
5 of healthy populations as defined in the American  
6 Thoracic Society statement on lung function testing  
7 (Amer. Rev. Resp. Disease 1991, 144:1202–1218)  
8 and any future revision of the same statement.

9 (11) NONSMOKER.—The term “nonsmoker”  
10 means a claimant who—

11 (A) never smoked; or

12 (B) has smoked fewer than 100 cigarettes  
13 or the equivalent amount of other tobacco prod-  
14 ucts during the claimant’s lifetime.

15 (12) PO<sub>2</sub>.—The term “PO<sub>2</sub>” means the partial  
16 pressure (tension) of oxygen, which measures the  
17 amount of dissolved oxygen in the blood.

18 (13) PULMONARY FUNCTION TESTING.—The  
19 term “pulmonary function testing” means  
20 spirometry testing that is in material compliance  
21 with the quality criteria established by the American  
22 Thoracic Society and is performed on equipment  
23 which is in material compliance with the standards  
24 of the American Thoracic Society for technical qual-  
25 ity and calibration.

1           (14) SUBSTANTIAL OCCUPATIONAL EXPOSURE  
2 TO ASBESTOS.—

3           (A) IN GENERAL.—The term “substantial  
4 occupational exposure” means employment in  
5 an industry and an occupation where for a sub-  
6 stantial portion of a normal work year for that  
7 occupation, the claimant—

8                   (i) handled raw asbestos fibers;

9                   (ii) fabricated asbestos-containing  
10 products so that the claimant in the fab-  
11 rication process was exposed to raw asbes-  
12 tos fibers;

13                   (iii) altered, repaired, or otherwise  
14 worked with an asbestos-containing prod-  
15 uct such that the claimant was exposed on  
16 a regular basis to asbestos fibers; or

17                   (iv) worked in close proximity to other  
18 workers engaged in the activities described  
19 under clause (i), (ii), or (iii), such that the  
20 claimant was exposed on a regular basis to  
21 asbestos fibers.

22           (B) REGULAR BASIS.—In this paragraph,  
23 the term “on a regular basis” means on a fre-  
24 quent or recurring basis.

1           (15) TLC.—The term “TLC” means total lung  
2 capacity, which is the total volume of air in the lung  
3 after maximal inspiration.

4           (16) WEIGHTED OCCUPATIONAL EXPOSURE.—

5           (A) IN GENERAL.—The term “weighted oc-  
6 cupational exposure” means exposure for a pe-  
7 riod of years calculated according to the expo-  
8 sure weighting formula under subparagraphs  
9 (B) through (E).

10          (B) MODERATE EXPOSURE.—Subject to  
11 subparagraph (E), each year that a claimant’s  
12 primary occupation, during a substantial por-  
13 tion of a normal work year for that occupation,  
14 involved working in areas immediate to where  
15 asbestos-containing products were being in-  
16 stalled, repaired, or removed under cir-  
17 cumstances that involved regular airborne emis-  
18 sions of asbestos fibers, shall count as 1 year  
19 of substantial occupational exposure.

20          (C) HEAVY EXPOSURE.—Subject to sub-  
21 paragraph (E), each year that a claimant’s pri-  
22 mary occupation, during a substantial portion  
23 of a normal work year for that occupation, in-  
24 volved the direct installation, repair, or removal  
25 of asbestos-containing products such that the

1 person was exposed on a regular basis to asbes-  
2 tos fibers, shall count as 2 years of substantial  
3 occupational exposure.

4 (D) VERY HEAVY EXPOSURE.—Subject to  
5 subparagraph (E), each year that a claimant’s  
6 primary occupation, during a substantial por-  
7 tion of a normal work year for that occupation,  
8 was in primary asbestos manufacturing, a  
9 World War II shipyard, or the asbestos insula-  
10 tion trades, such that the person was exposed  
11 on a regular basis to asbestos fibers, shall count  
12 as 4 years of substantial occupational exposure.

13 (E) DATES OF EXPOSURE.—Each year of  
14 exposure calculated under subparagraphs (B),  
15 (C), and (D) that occurred before 1976 shall be  
16 counted at its full value. Each year from 1976  
17 to 1986 shall be counted as  $\frac{1}{2}$  of its value.  
18 Each year after 1986 shall be counted as  $\frac{1}{10}$   
19 of its value.

20 (F) OTHER CLAIMS.—Individuals who do  
21 not meet the provisions of subparagraphs (A)  
22 through (E) and believe their post-1976 or  
23 post-1986 exposures exceeded the Occupational  
24 Safety and Health Administration standard  
25 may submit evidence, documentation, work his-

1 tory, or other information to substantiate non-  
2 compliance with the Occupational Safety and  
3 Health Administration standard (such as lack  
4 of engineering or work practice controls, or pro-  
5 tective equipment) such that exposures would  
6 be equivalent to exposures before 1976 or 1986,  
7 or to documented exposures in similar jobs or  
8 occupations where control measures had not  
9 been implemented. Claims under this subpara-  
10 graph shall be evaluated on an individual basis  
11 by a Physicians Panel.

12 (b) MEDICAL EVIDENCE.—

13 (1) LATENCY.—Unless otherwise specified, all  
14 diagnoses of an asbestos-related disease for a level  
15 under this section shall be accompanied by—

16 (A) a statement by the physician providing  
17 the diagnosis that at least 10 years have  
18 elapsed between the date of first exposure to as-  
19 bestos or asbestos-containing products and the  
20 diagnosis; or

21 (B) a history of the claimant's exposure  
22 that is sufficient to establish a 10-year latency  
23 period between the date of first exposure to as-  
24 bestos or asbestos-containing products and the  
25 diagnosis.

1           (2) DIAGNOSTIC GUIDELINES.—All diagnoses of  
2 asbestos-related diseases shall be based upon—

3           (A) for disease Levels I through V, in the  
4 case of a claimant who was living at the time  
5 the claim was filed—

6           (i) a physical examination of the  
7 claimant by the physician providing the di-  
8 agnosis;

9           (ii) an evaluation of smoking history  
10 and exposure history before making a diag-  
11 nosis;

12           (iii) an x-ray reading by a certified B-  
13 reader; and

14           (iv) pulmonary function testing in the  
15 case of disease Levels III, IV, and V;

16           (B) for disease Levels I through V, in the  
17 case of a claimant who was deceased at the  
18 time the claim was filed, a report from a physi-  
19 cian based upon a review of the claimant's med-  
20 ical records which shall include—

21           (i) pathological evidence of the non-  
22 malignant asbestos-related disease; or

23           (ii) an x-ray reading by a certified B-  
24 reader;

1 (C) for disease Levels VI through IX, in  
2 the case of a claimant who was living at the  
3 time the claim was filed—

4 (i) a physical examination by the  
5 claimant's physician providing the diag-  
6 nosis; or

7 (ii) a diagnosis of such a malignant  
8 asbestos-related disease, as described in  
9 this section, by a board-certified patholo-  
10 gist; and

11 (D) for disease Levels VI through IX, in  
12 the case of a claimant who was deceased at the  
13 time the claim was filed—

14 (i) a diagnosis of such a malignant as-  
15 bestos-related disease, as described in this  
16 section, by a board-certified pathologist;  
17 and

18 (ii) a report from a physician based  
19 upon a review of the claimant's medical  
20 records.

21 (3) CREDIBILITY OF MEDICAL EVIDENCE.—To  
22 ensure the medical evidence provided in support of  
23 a claim is credible and consistent with recognized  
24 medical standards, a claimant under this title may  
25 be required to submit—

- 1 (A) x-rays or computerized tomography;
- 2 (B) detailed results of pulmonary function
- 3 tests;
- 4 (C) laboratory tests;
- 5 (D) tissue samples;
- 6 (E) results of medical examinations;
- 7 (F) reviews of other medical evidence; and
- 8 (G) medical evidence that complies with
- 9 recognized medical standards regarding equip-
- 10 ment, testing methods, and procedure to ensure
- 11 the reliability of such evidence as may be sub-
- 12 mitted.

13 (c) EXPOSURE EVIDENCE.—

14 (1) IN GENERAL.—To qualify for any disease  
15 level, the claimant shall demonstrate—

- 16 (A) a minimum exposure to asbestos or as-
- 17 bestos-containing products;
- 18 (B) the exposure occurred in the United
- 19 States, its territories or possessions, or while a
- 20 United States citizen, while an employee of an
- 21 entity organized under any Federal or State law
- 22 regardless of location, or while a United States
- 23 citizen while serving on any United States
- 24 flagged or owned ship, provided the exposure
- 25 results from such employment or service; and



1 (C) any additional asbestos exposure re-  
2 quirement under this section.

3 (2) PROOF OF EXPOSURE.—

4 (A) AFFIDAVITS.—Exposure to asbestos  
5 sufficient to satisfy the exposure requirements  
6 for any disease level may be established by an  
7 affidavit of—

8 (i) the claimant; or

9 (ii) if the claimant is deceased, a co-  
10 worker or a family member, if the affidavit  
11 of the claimant, co-worker, or family mem-  
12 ber is found in proceedings under this title  
13 to be reasonably reliable, attesting to the  
14 claimant's exposure; and is credible and is  
15 not contradicted by other evidence.

16 (B) OTHER PROOF.—Exposure to asbestos  
17 may alternatively be established by invoices,  
18 construction or other similar records, or any  
19 other reasonably reliable evidence.

20 (3) TAKE-HOME EXPOSURE.—

21 (A) IN GENERAL.—A claimant may alter-  
22 natively satisfy the medical criteria require-  
23 ments of this section where a claim is filed by  
24 a person who alleges their exposure to asbestos  
25 was the result of living with a person who, if

1           the claim had been filed by that person, would  
2           have met the exposure criteria for the given dis-  
3           ease level, and the claimant lived with such per-  
4           son for the time period necessary to satisfy the  
5           exposure requirement, for the claimed disease  
6           level.

7           (B) REVIEW.—Except for claims for dis-  
8           ease Level IX (mesothelioma), all claims alleg-  
9           ing take-home exposure shall be submitted as  
10          an exceptional medical claim under section  
11          121(f) for review by a Physicians Panel.

12          (4) WAIVER FOR WORKERS AND RESIDENTS OF  
13          LIBBY, MONTANA.—Because of the unique nature of  
14          the asbestos exposure related to the vermiculite min-  
15          ing and milling operations in Libby, Montana, the  
16          Administrator shall waive the exposure requirements  
17          under this subtitle for individuals who worked at the  
18          vermiculite mining and milling facility in Libby,  
19          Montana, or lived or worked within a 20-mile radius  
20          of Libby, Montana, for at least 12 consecutive  
21          months before December 31, 2004. Claimants under  
22          this section shall provide such supporting docu-  
23          mentation as the Administrator shall require.

24          (5) EXPOSURE PRESUMPTIONS.—

1           (A) IN GENERAL.—The Administrator  
2 shall prescribe rules identifying specific indus-  
3 tries, occupations within such industries, and  
4 time periods in which workers employed in  
5 those industries or occupations typically had  
6 substantial occupational exposure to asbestos as  
7 defined under section 121(a). Until 5 years  
8 after the Administrator certifies that the Fund  
9 is paying claims at a reasonable rate, the indus-  
10 tries, occupations and time periods identified by  
11 the Administrator shall at a minimum include  
12 those identified in the 2002 Trust Distribution  
13 Process of the Manville Personal Injury Settle-  
14 ment Trust as of January 1, 2005, as indus-  
15 tries, occupations and time periods in which  
16 workers were presumed to have had significant  
17 occupational exposure to asbestos. Thereafter,  
18 the Administrator may by rule modify or elimi-  
19 nate those exposure presumptions required to  
20 be adopted from the Manville Personal Injury  
21 Settlement Trust, if there is evidence that dem-  
22 onstrates that the typical exposure for workers  
23 in such industries and occupations during such  
24 time periods did not constitute substantial occu-  
25 pational exposure in asbestos.

1           (B) CLAIMANTS ENTITLED TO PRESUMP-  
2           TIONS.—Any claimant who demonstrates  
3           through meaningful and credible evidence that  
4           such claimant was employed during relevant  
5           time periods in industries or occupations identi-  
6           fied under subparagraph (A) shall be entitled to  
7           a presumption that the claimant had substan-  
8           tial occupational exposure to asbestos during  
9           those time periods. That presumption shall not  
10          be conclusive, and the Administrator may find  
11          that the claimant does not have substantial oc-  
12          cupational exposure if other information dem-  
13          onstrates that the claimant did not in fact have  
14          substantial occupational exposure during any  
15          part of the relevant time periods.

16          (6) PENALTY FOR FALSE STATEMENT.—Any  
17          false information submitted under this subsection  
18          shall be subject to section 1348 of title 18, United  
19          States Code (as added by this Act).

20          (d) ASBESTOS DISEASE LEVELS.—

21                  (1) NONMALIGNANT LEVEL I.—To receive Level  
22          I compensation, a claimant shall provide—

23                          (A) a diagnosis of bilateral asbestos-related  
24                          nonmalignant disease; and

1 (B) evidence of 5 years cumulative occupa-  
2 tional exposure to asbestos.

3 (2) NONMALIGNANT LEVEL II.—To receive  
4 Level II compensation, a claimant shall provide—

5 (A) a diagnosis of bilateral asbestos-related  
6 nonmalignant disease with ILO grade of 1/1 or  
7 greater, and showing small irregular opacities  
8 of shape or size, either ss, st, or tt, and present  
9 in both lower lung zones, or asbestosis deter-  
10 mined by pathology, or blunting of either  
11 costophrenic angle and bilateral pleural plaque  
12 or bilateral pleural thickening of at least grade  
13 B2 or greater, or bilateral pleural disease of  
14 grade B2 or greater;

15 (B) evidence of TLC less than 80 percent  
16 or FVC less than the lower limits of normal,  
17 and FEV1/FVC ratio less than 65 percent;

18 (C) evidence of 5 or more weighted years  
19 of substantial occupational exposure to asbes-  
20 tos; and

21 (D) supporting medical documentation es-  
22 tablishing asbestos exposure as a substantial  
23 contributing factor in causing the pulmonary  
24 condition in question.

1           (3) NONMALIGNANT LEVEL III.—To receive  
2           Level III compensation a claimant shall provide—

3                   (A) a diagnosis of bilateral asbestos-related  
4                   nonmalignant disease with ILO grade of 1/0 or  
5                   greater and showing small irregular opacities of  
6                   shape or size, either ss, st, or tt, and present  
7                   in both lower lung zones, or asbestosis deter-  
8                   mined by pathology, or diffuse pleural thick-  
9                   ening, or bilateral pleural disease of B2 or  
10                  greater;

11                  (B) evidence of TLC less than 80 percent,  
12                  FVC less than the lower limits of normal and  
13                  FEV1/FVC ratio greater than or equal to 65  
14                  percent, or evidence of a decline in FVC of 20  
15                  percent or greater, after allowing for the ex-  
16                  pected decrease due to aging, and an FEV1/  
17                  FVC ratio greater than or equal to 65 percent  
18                  documented with a second spirometry;

19                  (C) evidence of 5 or more weighted years  
20                  of substantial occupational exposure to asbes-  
21                  tos; and

22                  (D) supporting medical documentation—

23                          (i) establishing asbestos exposure as a  
24                          substantial contributing factor in causing  
25                          the pulmonary condition in question; and

1 (ii) excluding other more likely causes  
2 of that pulmonary condition.

3 (4) NONMALIGNANT LEVEL IV.—To receive  
4 Level IV compensation a claimant shall provide—

5 (A) diagnosis of bilateral asbestos-related  
6 nonmalignant disease with ILO grade of 1/1 or  
7 greater and showing small irregular opacities of  
8 shape or size, either ss, st, or tt, and present  
9 in both lower lung zones, or asbestosis deter-  
10 mined by pathology, or diffuse pleural thick-  
11 ening, or bilateral pleural disease of B2 or  
12 greater;

13 (B) evidence of TLC less than 60 percent  
14 or FVC less than 60 percent, and FEV1/FVC  
15 ratio greater than or equal to 65 percent;

16 (C) evidence of 5 or more weighted years  
17 of substantial occupational exposure to asbestos  
18 before diagnosis; and

19 (D) supporting medical documentation—

20 (i) establishing asbestos exposure as a  
21 substantial contributing factor in causing  
22 the pulmonary condition in question; and

23 (ii) excluding other more likely causes  
24 of that pulmonary condition.

1           (5) NONMALIGNANT LEVEL V.—To receive  
2           Level V compensation a claimant shall provide—

3           (A) diagnosis of bilateral asbestos-related  
4           nonmalignant disease with ILO grade of 1/1 or  
5           greater and showing small irregular opacities of  
6           shape or size, either ss, st, or tt, and present  
7           in both lower lung zones, or asbestosis deter-  
8           mined by pathology, or diffuse pleural thick-  
9           ening, or bilateral pleural disease of B2 or  
10          greater;

11          (B)(i) evidence of TLC less than 50 per-  
12          cent or FVC less than 50 percent, and FEV1/  
13          FVC ratio greater than or equal to 65 percent;

14          (ii) DLCO less than 40 percent of pre-  
15          dicted, plus a FEV1/FVC ratio not less than 65  
16          percent; or

17          (iii) PO<sub>2</sub> less than 55 mm/Hg, plus a  
18          FEV1/FVC ratio not less than 65 percent;

19          (C) evidence of 5 or more weighted years  
20          of substantial occupational exposure to asbes-  
21          tos; and

22          (D) supporting medical documentation—

23                 (i) establishing asbestos exposure as a  
24                 substantial contributing factor in causing  
25                 the pulmonary condition in question; and



1 (ii) excluding other more likely causes  
2 of that pulmonary condition.

3 (6) MALIGNANT LEVEL VI.—

4 (A) IN GENERAL.—To receive Level VI  
5 compensation a claimant shall provide—

6 (i) a diagnosis of a primary colorectal,  
7 laryngeal, esophageal, pharyngeal, or stom-  
8 ach cancer on the basis of findings by a  
9 board certified pathologist;

10 (ii) evidence of a bilateral asbestos-re-  
11 lated nonmalignant disease;

12 (iii) evidence of 15 or more weighted  
13 years of substantial occupational exposure  
14 to asbestos; and

15 (iv) supporting medical documentation  
16 establishing asbestos exposure as a sub-  
17 stantial contributing factor in causing the  
18 cancer in question.

19 (B) REFERRAL TO PHYSICIANS PANEL.—

20 All claims filed with respect to Level VI under  
21 this paragraph shall be referred to a Physicians  
22 Panel for a determination that it is more prob-  
23 able than not that asbestos exposure was a sub-  
24 stantial contributing factor in causing the other  
25 cancer in question. If the claimant meets the

1 requirements of subparagraph (A), there shall  
2 be a presumption of eligibility for the scheduled  
3 value of compensation unless there is evidence  
4 determined by the Physicians Panel that rebuts  
5 that presumption. In making its determination  
6 under this subparagraph, the Physicians Panel  
7 shall consider the intensity and duration of ex-  
8 posure, smoking history, and the quality of evi-  
9 dence relating to exposure and smoking. Claim-  
10 ants shall bear the burden of producing mean-  
11 ingful and credible evidence of their smoking  
12 history as part of their claim submission.

13 (7) MALIGNANT LEVEL VII.—

14 (A) IN GENERAL.—To receive Level VII  
15 compensation, a claimant shall provide—

16 (i) a diagnosis of a primary lung can-  
17 cer disease on the basis of findings by a  
18 board certified pathologist;

19 (ii) evidence of bilateral pleural  
20 plaques or bilateral pleural thickening or  
21 bilateral pleural calcification;

22 (iii) evidence of 12 or more weighted  
23 years of substantial occupational exposure  
24 to asbestos; and

1 (iv) supporting medical documentation  
2 establishing asbestos exposure as a sub-  
3 stantial contributing factor in causing the  
4 lung cancer in question.

5 (B) PHYSICIANS PANEL.—A claimant filing  
6 a claim relating to Level VII under this para-  
7 graph may request that the claim be referred to  
8 a Physicians Panel for a determination of  
9 whether the claimant qualifies for the disease  
10 category and relevant smoking status. In mak-  
11 ing its determination under this subparagraph,  
12 the Physicians Panel shall consider the inten-  
13 sity and duration of exposure, smoking history,  
14 and the quality of evidence relating to exposure  
15 and smoking. Claimants shall bear the burden  
16 of producing meaningful and credible evidence  
17 of their smoking history as part of their claim  
18 submission.

19 (8) MALIGNANT LEVEL VIII.—

20 (A) IN GENERAL.—To receive Level VIII  
21 compensation, a claimant shall provide a diag-  
22 nosis—

23 (i) of a primary lung cancer disease  
24 on the basis of findings by a board cer-  
25 tified pathologist;

1 (ii)(I) of—

2 (aa) asbestosis based on a chest  
3 x-ray of at least 1/0 on the ILO scale  
4 and showing small irregular opacities  
5 of shape or size, either ss, st, or tt,  
6 and present in both lower lung zones;  
7 and

8 (bb) 10 or more weighted years  
9 of substantial occupational exposure  
10 to asbestos;

11 (II) of—

12 (aa) asbestosis based on a chest  
13 x-ray of at least 1/1 on the ILO scale  
14 and showing small irregular opacities  
15 of shape or size, either ss, st, or tt,  
16 and present in both lower lung zones;  
17 and

18 (bb) 8 or more weighted years of  
19 substantial occupational exposure to  
20 asbestos;

21 (III) asbestosis determined by pathol-  
22 ogy and 10 or more weighted years of sub-  
23 stantial occupational exposure to asbestos;  
24 or

1 (IV) asbestosis as determined by CT  
2 Scan, the cost of which shall not be borne  
3 by the Fund. The CT Scan must be inter-  
4 preted by a board certified radiologist and  
5 confirmed by a board certified radiologist;  
6 and

7 (iii) supporting medical documenta-  
8 tion establishing asbestos exposure as a  
9 substantial contributing factor in causing  
10 the lung cancer in question; and 10 or  
11 more weighted years of substantial occupa-  
12 tional exposure to asbestos.

13 (B) PHYSICIANS PANEL.—A claimant filing  
14 a claim with respect to Level VIII under this  
15 paragraph may request that the claim be re-  
16 ferred to a Physicians Panel for a determina-  
17 tion of whether the claimant qualifies for the  
18 disease category and relevant smoking status.  
19 In making its determination under this sub-  
20 paragraph, the Physicians Panel shall consider  
21 the intensity and duration of exposure, smoking  
22 history, and the quality of evidence relating to  
23 exposure and smoking. Claimants shall bear the  
24 burden of producing meaningful and credible

1 evidence of their smoking history as part of  
2 their claim submission.

3 (9) MALIGNANT LEVEL IX.—To receive Level  
4 IX compensation, a claimant shall provide—

5 (A) a diagnosis of malignant mesothelioma  
6 disease on the basis of findings by a board cer-  
7 tified pathologist; and

8 (B) credible evidence of identifiable expo-  
9 sure to asbestos resulting from—

10 (i) occupational exposure to asbestos;

11 (ii) exposure to asbestos fibers  
12 brought into the home of the claimant by  
13 a worker occupationally exposed to asbes-  
14 tos;

15 (iii) exposure to asbestos fibers result-  
16 ing from living or working in the proxi-  
17 mate vicinity of a factory, shipyard, build-  
18 ing demolition site, or other operation that  
19 regularly released asbestos fibers into the  
20 air due to operations involving asbestos at  
21 that site; or

22 (iv) other identifiable exposure to as-  
23 bestos fibers, in which case the claim shall  
24 be reviewed by a Physicians Panel under

1 section 121(f) for a determination of eligi-  
2 bility.

3 (e) INSTITUTE OF MEDICINE STUDY.—Not later  
4 than April 1, 2006, the Institute of Medicine of the Na-  
5 tional Academy of Sciences shall complete a study con-  
6 tracted with the National Institutes of Health of the caus-  
7 al link between asbestos exposure and other cancers, in-  
8 cluding colorectal, laryngeal, esophageal, pharyngeal, and  
9 stomach cancers, except for mesothelioma and lung can-  
10 cers. The Institute of Medicine shall issue a report on its  
11 findings on causation, which shall be transmitted to Con-  
12 gress, the Administrator, the Advisory Committee on As-  
13 bestos Disease Compensation or the Medical Advisory  
14 Committee, and the Physicians Panels. The Institute of  
15 Medicine report shall be binding on the Administrator and  
16 the Physicians Panels for purposes of determining whether  
17 asbestos exposure is a substantial contributing factor  
18 under section 121(d)(6)(B).

19 (f) EXCEPTIONAL MEDICAL CLAIMS.—

20 (1) IN GENERAL.—A claimant who does not  
21 meet the medical criteria requirements under this  
22 section may apply for designation of the claim as an  
23 exceptional medical claim.

1           (2) APPLICATION.—When submitting an appli-  
2 cation for review of an exceptional medical claim, the  
3 claimant shall—

4           (A) state that the claim does not meet the  
5 medical criteria requirements under this sec-  
6 tion; or

7           (B) seek designation as an exceptional  
8 medical claim within 60 days after a determina-  
9 tion that the claim is ineligible solely for failure  
10 to meet the medical criteria requirements under  
11 subsection (d).

12           (3) REPORT OF PHYSICIAN.—

13           (A) IN GENERAL.—Any claimant applying  
14 for designation of a claim as an exceptional  
15 medical claim shall support an application filed  
16 under paragraph (1) with a report from a phy-  
17 sician meeting the requirements of this section.

18           (B) CONTENTS.—A report filed under sub-  
19 paragraph (A) shall include—

20           (i) a complete review of the claimant's  
21 medical history and current condition;

22           (ii) such additional material by way of  
23 analysis and documentation as shall be  
24 prescribed by rule of the Administrator;  
25 and



1 (iii) a detailed explanation as to why  
2 the claim meets the requirements of para-  
3 graph (4)(B).

4 (4) REVIEW.—

5 (A) IN GENERAL.—The Administrator  
6 shall refer all applications and supporting docu-  
7 mentation submitted under paragraph (2) to a  
8 Physicians Panel for review for eligibility as an  
9 exceptional medical claim.

10 (B) STANDARD.—A claim shall be des-  
11 ignated as an exceptional medical claim if the  
12 claimant, for reasons beyond the control of the  
13 claimant, cannot satisfy the requirements under  
14 this section, but is able, through comparably re-  
15 liable evidence that meets the standards under  
16 this section, to show that the claimant has an  
17 asbestos-related condition that is substantially  
18 comparable to that of a medical condition that  
19 would satisfy the requirements of a category  
20 under this section.

21 (C) ADDITIONAL INFORMATION.—A Physi-  
22 cians Panel may request additional reasonable  
23 testing to support the claimant's application.

24 (D) CT SCAN.—A claimant may submit a  
25 CT Scan in addition to an x-ray.

1 (5) APPROVAL.—

2 (A) IN GENERAL.—If the Physicians Panel  
3 determines that the medical evidence is suffi-  
4 cient to show a comparable asbestos-related  
5 condition, it shall issue a certificate of medical  
6 eligibility designating the category of asbestos-  
7 related injury under this section for which the  
8 claimant shall be eligible to seek compensation.

9 (B) REFERRAL.—Upon the issuance of a  
10 certificate under subparagraph (A), the Physi-  
11 cians Panel shall submit the claim to the Ad-  
12 ministrator, who shall give due consideration to  
13 the recommendation of the Physicians Panel in  
14 determining whether the claimant meets the re-  
15 quirements for compensation under this Act.

16 (6) RESUBMISSION.—Any claimant whose appli-  
17 cation for designation as an exceptional medical  
18 claim is rejected may resubmit an application if new  
19 evidence becomes available. The application shall  
20 identify any prior applications and state the new evi-  
21 dence that forms the basis of the resubmission.

22 (7) RULES.—The Administrator shall promul-  
23 gate rules governing the procedures for seeking des-  
24 ignation of a claim as an exceptional medical claim.

25 (8) LIBBY, MONTANA.—

1           (A) IN GENERAL.—A Libby, Montana,  
2           claimant may elect to have the claimant's  
3           claims designated as exceptional medical claims  
4           and referred to a Physicians Panel for review.  
5           In reviewing the medical evidence submitted by  
6           a Libby, Montana claimant in support of that  
7           claim, the Physicians Panel shall take into con-  
8           sideration the unique and serious nature of as-  
9           bestos exposure in Libby, Montana, including  
10          the nature of the pleural disease related to as-  
11          bestos exposure in Libby, Montana.

12          (B) CLAIMS.—For all claims for Levels II  
13          through IV filed by Libby, Montana claimants,  
14          as described under subsection (c)(4), once the  
15          Administrator or the Physicians Panel issues a  
16          certificate of medical eligibility to a Libby,  
17          Montana claimant, and notwithstanding the dis-  
18          ease category designated in the certificate or  
19          the eligible disease or condition established in  
20          accordance with this section, or the value of the  
21          award determined in accordance with section  
22          114, the Libby, Montana claimant shall be enti-  
23          tled to an award that is not less than that  
24          awarded to claimants who suffer from asbes-  
25          tosis, Level IV. For all malignant claims filed

1 by Libby, Montana claimants, the Libby, Mon-  
 2 tana claimant shall be entitled to an award that  
 3 corresponds to the malignant disease category  
 4 designated by the Administrator or the Physi-  
 5 cians Panel.

## 6 **Subtitle D—Awards**

### 7 **SEC. 131. AMOUNT.**

8 (a) IN GENERAL.—An asbestos claimant who meets  
 9 the requirements of section 111 shall be entitled to an  
 10 award in an amount determined by reference to the benefit  
 11 table and the matrices developed under subsection (b).

### 12 (b) BENEFIT TABLE.—

13 (1) IN GENERAL.—An asbestos claimant with  
 14 an eligible disease or condition established in accord-  
 15 ance with section 121 shall be eligible for an award  
 16 as determined under this subsection. The award for  
 17 all asbestos claimants with an eligible disease or con-  
 18 dition established in accordance with section 121  
 19 shall be according to the following schedule:

<b>Level</b>	<b>Scheduled Condi- tion or Disease</b>	<b>Scheduled Value</b>
I	Asbestosis/Pleural Disease A	Medical Monitoring
II	Mixed Disease With Impairment	\$25,000
III	Asbestosis/Pleural Disease B	\$100,000
IV	Severe Asbestosis	\$400,000
V	Disabling Asbestosis	\$850,000
VI	Other Cancer	\$200,000

VII	Lung Cancer With Pleural Disease	smokers, \$300,000; ex-smokers, \$725,000; non-smokers, \$800,000
VIII	Lung Cancer With As- bestosis	smokers, \$600,000; ex-smokers, \$975,000; non-smokers, \$1,100,000
IX	Mesothelioma	\$1,100,000

1           (2) DEFINITIONS.—In this section—

2                   (A) the term “nonsmoker” means a claim-  
3           ant who—

4                           (i) never smoked; or

5                           (ii) has smoked fewer than 100 ciga-  
6           rettes or the equivalent of other tobacco  
7           products during the claimant’s lifetime;  
8           and

9                   (B) the term “ex-smoker” means a claim-  
10           ant who has not smoked during any portion of  
11           the 12-year period preceding the diagnosis of  
12           lung cancer.

13           (3) LEVEL IX ADJUSTMENTS.—

14                   (A) IN GENERAL.—If the Administrator  
15           determines that the impact of all adjustments  
16           under this paragraph on the Fund is cost neu-  
17           tral, the Administrator may—

18                           (i) increase awards for Level IX  
19           claimants who are less than 51 years of  
20           age with dependent children; and

21                           (ii) decrease awards for Level IX  
22           claimants who are at least 65 years of age,

1 but in no case shall an award for Level IX  
2 be less than \$1,000,000.

3 (B) IMPLEMENTATION.—Before making  
4 adjustments under this paragraph, the Admin-  
5 istrator shall publish in the Federal Register  
6 notice of, and a plan for, making such adjust-  
7 ments.

8 (4) SPECIAL ADJUSTMENT FOR FELA CASES.—

9 (A) IN GENERAL.—A claimant who would  
10 be eligible to bring a claim under the Act of  
11 April 22, 1908 (45 U.S.C. 51 et seq.), com-  
12 monly known as the Employers' Liability Act,  
13 but for section 403 of this Act, shall be eligible  
14 for a special adjustment under this paragraph.

15 (B) REGULATIONS.—

16 (i) IN GENERAL.—Not later than 90  
17 days after the date of enactment of this  
18 Act, the Administrator shall promulgate  
19 regulations relating to special adjustments  
20 under this paragraph.

21 (ii) JOINT PROPOSAL.—Not later than  
22 45 days after the date of enactment of this  
23 Act, representatives of railroad manage-  
24 ment and representatives of railroad labor  
25 shall submit to the Administrator a joint

1 proposal for regulations describing the eli-  
2 gibility for and amount of special adjust-  
3 ments under this paragraph. If a joint pro-  
4 posal is submitted, the Administrator shall  
5 promulgate regulations that reflect the  
6 joint proposal.

7 (iii) ABSENCE OF JOINT PROPOSAL.—

8 If railroad management and railroad labor  
9 are unable to agree on a joint proposal  
10 within 45 days after the date of enactment  
11 of this Act, the benefits prescribed in sub-  
12 paragraph (E) shall be the benefits avail-  
13 able to claimants, and the Administrator  
14 shall promulgate regulations containing  
15 such benefits.

16 (iv) REVIEW.—The parties partici-

17 pating in the arbitration may file in the  
18 United States District Court for the Dis-  
19 trict of Columbia a petition for review of  
20 the Administrator's order. The court shall  
21 have jurisdiction to affirm the order of the  
22 Administrator, or to set it aside, in whole  
23 or in part, or it may remand the pro-  
24 ceedings to the Administrator for such fur-  
25 ther action as it may direct. On such re-

1 view, the findings and order of the Admin-  
2 istrator shall be conclusive on the parties,  
3 except that the order of the Administrator  
4 may be set aside, in whole or in parts or  
5 remanded to the Administrator, for failure  
6 of the Administrator to comply with the re-  
7 quirements of this section, for failure of  
8 the order to conform, or confine itself, to  
9 matters within the scope of the Adminis-  
10 trator's jurisdiction, or for fraud or cor-  
11 ruption.

12 (C) ELIGIBILITY.—An individual eligible to  
13 file a claim under the Act of April 22, 1908 (45  
14 U.S.C. 51 et seq.), commonly known as the  
15 Employers' Liability Act, shall be eligible for a  
16 special adjustment under this paragraph if such  
17 individual meets the criteria set forth in sub-  
18 paragraph (F).

19 (D) AMOUNT.—

20 (i) IN GENERAL.—The amount of the  
21 special adjustment shall be based on the  
22 type and severity of asbestos disease, and  
23 shall be 110 percent of the average amount  
24 an injured individual with a disease caused  
25 by asbestos, as described in section 121(d)



1 of this Act, would have received, during  
2 the 5-year period before the enactment of  
3 this Act, adjusted for inflation. This ad-  
4 justment shall be in addition to any other  
5 award for which the claimant is eligible  
6 under this Act. The amount of the special  
7 adjustment shall be reduced by an amount  
8 reasonably calculated to take into account  
9 all expenses of litigation normally borne by  
10 plaintiffs, including attorney's fees.

11 (ii) LIMITATION.—The amount under  
12 clause (i) may not exceed the amount the  
13 claimant is eligible to receive before apply-  
14 ing the special adjustment under that  
15 clause.

16 (E) ARBITRATED BENEFITS.—If railroad  
17 management and railroad labor are unable to  
18 agree on a joint proposal within 45 days after  
19 the date of enactment of this Act, the Adminis-  
20 trator shall appoint an arbitrator to determine  
21 the benefits under subparagraph (D). The Ad-  
22 ministrator shall appoint an arbitrator who  
23 shall be acceptable to both railroad manage-  
24 ment and railroad labor. Railroad management  
25 and railroad labor shall each designate their

1 representatives to participate in the arbitration.  
2 The arbitrator shall submit the benefits levels  
3 to the Administrator not later than 30 days  
4 after appointment and such benefits levels shall  
5 be based on information provided by rail labor  
6 and rail management. The information sub-  
7 mitted to the arbitrator by railroad manage-  
8 ment and railroad labor shall be considered con-  
9 fidential and shall be disclosed to the other  
10 party upon execution of an appropriate con-  
11 fidentiality agreement. Unless the submitting  
12 party provides written consent, neither the arbi-  
13 trator nor either party to the arbitration shall  
14 divulge to any third party any information or  
15 data, in any form, submitted to the arbitrator  
16 under this section. Nor shall either party use  
17 such information or data for any purpose other  
18 than participation in the arbitration proceeding,  
19 and each party shall return to the other any in-  
20 formation it has received from the other party  
21 as soon the arbitration is concluded. Informa-  
22 tion submitted to the arbitrator may not be ad-  
23 mitted into evidence, nor discovered, in any civil  
24 litigation in Federal or State court. The nature  
25 of the information submitted to the arbitrator

1 shall be within the sole discretion of the submit-  
2 ting party, and the arbitrator may not require  
3 a party to submit any particular information,  
4 including information subject to a prior con-  
5 fidentiality agreement.

6 (F) DEMONSTRATION OF ELIGIBILITY.—

7 (i) IN GENERAL.—A claimant under  
8 this paragraph shall be required to dem-  
9 onstrate—

10 (I) employment of the claimant  
11 in the railroad industry;

12 (II) exposure of the claimant to  
13 asbestos as part of that employment;  
14 and

15 (III) the nature and severity of  
16 the asbestos-related injury.

17 (ii) MEDICAL CRITERIA.—In order to  
18 be eligible for a special adjustment a  
19 claimant shall meet the criteria set forth in  
20 section 121 that would qualify a claimant  
21 for a payment under Level II or greater.

22 (5) MEDICAL MONITORING.—An asbestos claim-  
23 ant with asymptomatic exposure, based on the cri-  
24 teria under section 121(d)(1), shall only be eligible

1 for medical monitoring reimbursement as provided  
2 under section 132.

3 (6) COST-OF-LIVING ADJUSTMENT.—

4 (A) IN GENERAL.—Beginning January 1,  
5 2007, award amounts under paragraph (1)  
6 shall be annually increased by an amount equal  
7 to such dollar amount multiplied by the cost-of-  
8 living adjustment, rounded to the nearest  
9 \$1,000 increment.

10 (B) CALCULATION OF COST-OF-LIVING AD-  
11 JUSTMENT.—For the purposes of subparagraph  
12 (A), the cost-of-living adjustment for any cal-  
13 endar year shall be the percentage, if any, by  
14 which the consumer price index for the suc-  
15 ceeding calendar year exceeds the consumer  
16 price index for calendar year 2005.

17 (C) CONSUMER PRICE INDEX.—

18 (i) IN GENERAL.—For the purposes of  
19 subparagraph (B), the consumer price  
20 index for any calendar year is the average  
21 of the consumer price index as of the close  
22 of the 12-month period ending on August  
23 31 of such calendar year.

24 (ii) DEFINITION.—For purposes of  
25 clause (i), the term “consumer price

1 index” means the consumer price index  
2 published by the Department of Labor.  
3 The consumer price index series to be used  
4 for award escalations shall include the con-  
5 sumer price index used for all-urban con-  
6 sumers, with an area coverage of the  
7 United States city average, for all items,  
8 based on the 1982–1984 index based pe-  
9 riod, as published by the Department of  
10 Labor.

11 **SEC. 132. MEDICAL MONITORING.**

12 (a) RELATION TO STATUTE OF LIMITATIONS.—The  
13 filing of a claim under this Act that seeks reimbursement  
14 for medical monitoring shall not be considered as evidence  
15 that the claimant has discovered facts that would other-  
16 wise commence the period applicable for purposes of the  
17 statute of limitations under section 113(b).

18 (b) COSTS.—Reimbursable medical monitoring costs  
19 shall include the costs of a claimant not covered by health  
20 insurance for an examination by the claimant’s physician,  
21 x-ray tests, and pulmonary function tests every 3 years.

22 (c) REGULATIONS.—The Administrator shall promul-  
23 gate regulations that establish—

24 (1) the reasonable costs for medical monitoring  
25 that is reimbursable; and

1           (2) the procedures applicable to asbestos claim-  
2           ants.

3 **SEC. 133. PAYMENT.**

4           (a) STRUCTURED PAYMENTS.—

5           (1) IN GENERAL.—An asbestos claimant who is  
6           entitled to an award should receive the amount of  
7           the award through structured payments from the  
8           Fund, made over a period of 3 years, and in no  
9           event more than 4 years after the date of final adju-  
10          dication of the claim.

11          (2) PAYMENT PERIOD AND AMOUNT.—There  
12          shall be a presumption that any award paid under  
13          this subsection shall provide for payment of—

14                 (A) 40 percent of the total amount in year  
15                 1;

16                 (B) 30 percent of the total amount in year  
17                 2; and

18                 (C) 30 percent of the total amount in year  
19                 3.

20          (3) EXTENSION OF PAYMENT PERIOD.—

21                 (A) IN GENERAL.—The Administrator  
22                 shall develop guidelines to provide for the pay-  
23                 ment period of an award under subsection (a)  
24                 to be extended to a 4-year period if such action  
25                 is warranted in order to preserve the overall sol-

1 vency of the Fund. Such guidelines shall include  
2 reference to the number of claims made to the  
3 Fund and the awards made and scheduled to be  
4 paid from the Fund as provided under section  
5 405.

6 (B) LIMITATIONS.—In no event shall less  
7 than 50 percent of an award be paid in the first  
8 2 years of the payment period under this sub-  
9 section.

10 (4) ACCELERATED PAYMENTS.—The Adminis-  
11 trator shall develop guidelines to provide for acceler-  
12 ated payments to asbestos claimants who are meso-  
13 thelioma victims and who are alive on the date on  
14 which the Administrator receives notice of the eligi-  
15 bility of the claimant. Such payments shall be cred-  
16 ited against the first regular payment under the  
17 structured payment plan for the claimant.

18 (5) EXPEDITED PAYMENTS.—The Adminis-  
19 trator shall develop guidelines to provide for expe-  
20 dited payments to asbestos claimants in cases of exi-  
21 gent circumstances or extreme hardship caused by  
22 asbestos-related injury.

23 (6) ANNUITY.—An asbestos claimant may elect  
24 to receive any payments to which that claimant is  
25 entitled under this title in the form of an annuity.

1 (b) LIMITATION ON TRANSFERABILITY.—A claim  
2 filed under this Act shall not be assignable or otherwise  
3 transferable under this Act.

4 (c) CREDITORS.—An award under this title shall be  
5 exempt from all claims of creditors and from levy, execu-  
6 tion, and attachment or other remedy for recovery or col-  
7 lection of a debt, and such exemption may not be waived.

8 (d) MEDICARE AS SECONDARY PAYER.—No award  
9 under this title shall be deemed a payment for purposes  
10 of section 1862 of the Social Security Act (42 U.S.C.  
11 1395y).

12 (e) EXEMPT PROPERTY IN ASBESTOS CLAIMANT'S  
13 BANKRUPTCY CASE.—If an asbestos claimant files a peti-  
14 tion for relief under section 301 of title 11, United States  
15 Code, no award granted under this Act shall be treated  
16 as property of the bankruptcy estate of the asbestos claim-  
17 ant in accordance with section 541(b)(6) of title 11,  
18 United States Code.

19 **SEC. 134. REDUCTION IN BENEFIT PAYMENTS FOR COLLAT-**  
20 **ERAL SOURCES.**

21 (a) IN GENERAL.—The amount of an award other-  
22 wise available to an asbestos claimant under this title shall  
23 be reduced by the amount of collateral source compensa-  
24 tion.



1 (b) EXCLUSIONS.—In no case shall statutory benefits  
2 under workers' compensation laws, special adjustments  
3 made under section 131(b)(3), occupational or total dis-  
4 ability benefits under the Railroad Retirement Act (45  
5 U.S.C. 201 et seq.), sickness benefits under the Railroad  
6 Unemployment Insurance Act (45 U.S.C 351 et seq.), and  
7 veterans' benefits programs be deemed as collateral source  
8 compensation for purposes of this section.

9 **SEC. 135. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT**  
10 **OF AWARDS.**

11 (a) IN GENERAL.—The payment of an award under  
12 section 106 or 133 shall not be considered a form of com-  
13 pensation or reimbursement for a loss for purposes of im-  
14 posing liability on any asbestos claimant receiving such  
15 payment to repay any—

16 (1) insurance carrier for insurance payments;

17 or

18 (2) person or governmental entity on account of  
19 worker's compensation, health care, or disability  
20 payments.

21 (b) NO EFFECT ON CLAIMS.—The payment of an  
22 award to an asbestos claimant under section 106 or 133  
23 shall not affect any claim of an asbestos claimant  
24 against—

1 (1) an insurance carrier with respect to insur-  
2 ance; or

3 (2) against any person or governmental entity  
4 with respect to worker’s compensation, healthcare,  
5 or disability.

## 6 **TITLE II—ASBESTOS INJURY**

### 7 **CLAIMS RESOLUTION FUND**

#### 8 **Subtitle A—Asbestos Defendants**

#### 9 **Funding Allocation**

#### 10 **SEC. 201. DEFINITIONS.**

11 In this subtitle, the following definitions shall apply:

12 (1) **AFFILIATED GROUP.**—The term “affiliated  
13 group”—

14 (A) means a defendant participant that is  
15 an ultimate parent and any person whose entire  
16 beneficial interest is directly or indirectly owned  
17 by that ultimate parent on the date of enact-  
18 ment of this Act; and

19 (B) shall not include any person that is a  
20 debtor or any direct or indirect majority-owned  
21 subsidiary of a debtor.

22 (2) **CLASS ACTION TRUST.**—The term “class ac-  
23 tion trust” means a trust or similar entity estab-  
24 lished to hold assets for the payment of asbestos

1 claims asserted against a debtor or participating de-  
2 fendant, under a settlement that—

3 (A) is a settlement of class action claims  
4 under rule 23 of the Federal Rules of Civil Pro-  
5 cedure; and

6 (B) has been approved by a final judgment  
7 of a United States district court before the date  
8 of enactment of this Act.

9 (3) DEBTOR.—The term “debtor”—

10 (A) means—

11 (i) a person that is subject to a case  
12 pending under a chapter of title 11, United  
13 States Code, on the date of enactment of  
14 this Act or at any time during the 1-year  
15 period immediately preceding that date, ir-  
16 respective of whether the debtor’s case  
17 under that title has been dismissed; and

18 (ii) all of the direct or indirect major-  
19 ity-owned subsidiaries of a person de-  
20 scribed under clause (i), regardless of  
21 whether any such majority-owned sub-  
22 sidiary has a case pending under title 11,  
23 United States Code; and

24 (B) shall not include an entity—

1           (i) subject to chapter 7 of title 11,  
2           United States Code, if a final decree clos-  
3           ing the estate shall have been entered be-  
4           fore the date of enactment of this Act; or  
5           (ii) subject to chapter 11 of title 11,  
6           United States Code, if a plan of reorga-  
7           nization for such entity shall have been  
8           confirmed by a duly entered order or judg-  
9           ment of a court that is no longer subject  
10          to any appeal or judicial review, and the  
11          substantial consummation, as such term is  
12          defined in section 1101(2) of title 11,  
13          United States Code, of such plan of reor-  
14          ganization has occurred.

15           (4) INDEMNIFIABLE COST.—The term  
16          “indemnifiable cost” means a cost, expense, debt,  
17          judgment, or settlement incurred with respect to an  
18          asbestos claim that, at any time before December  
19          31, 2002, was or could have been subject to indem-  
20          nification, contribution, surety, or guaranty.

21           (5) INDEMNITEE.—The term “indemnitee”  
22          means a person against whom any asbestos claim  
23          has been asserted before December 31, 2002, who  
24          has received from any other person, or on whose be-  
25          half a sum has been paid by such other person to

1 any third person, in settlement, judgment, defense,  
2 or indemnity in connection with an alleged duty with  
3 respect to the defense or indemnification of such  
4 person concerning that asbestos claim, other than  
5 under a policy of insurance or reinsurance.

6 (6) INDEMNITOR.—The term “indemnitor”  
7 means a person who has paid under a written agree-  
8 ment at any time before December 31, 2002, a sum  
9 in settlement, judgment, defense, or indemnity to or  
10 on behalf of any person defending against an asbes-  
11 tos claim, in connection with an alleged duty with  
12 respect to the defense or indemnification of such  
13 person concerning that asbestos claim, except that  
14 payments by an insurer or reinsurer under a con-  
15 tract of insurance or reinsurance shall not make the  
16 insurer or reinsurer an indemnitor for purposes of  
17 this subtitle.

18 (7) PRIOR ASBESTOS EXPENDITURES.—The  
19 term “prior asbestos expenditures”—

20 (A) means the gross total amount paid by  
21 or on behalf of a person at any time before De-  
22 cember 31, 2002, in settlement, judgment, de-  
23 fense, or indemnity costs related to all asbestos  
24 claims against that person;

1 (B) includes payments made by insurance  
2 carriers to or for the benefit of such person or  
3 on such person's behalf with respect to such as-  
4 bestos claims, except as provided in section  
5 204(g);

6 (C) shall not include any payment made by  
7 a person in connection with or as a result of  
8 changes in insurance reserves required by con-  
9 tract or any activity or dispute related to insur-  
10 ance coverage matters for asbestos-related li-  
11 abilities; and

12 (D) shall not include any payment made by  
13 or on behalf of persons who are or were com-  
14 mon carriers by railroad for asbestos claims  
15 brought under the Act of April 22, 1908 (45  
16 U.S.C. 51 et seq.), commonly known as the  
17 Employers' Liability Act, as a result of oper-  
18 ations as a common carrier by railroad, includ-  
19 ing settlement, judgment, defense, or indemnity  
20 costs associated with these claims.

21 (8) TRUST.—The term “trust” means any  
22 trust, as described in sections 524(g)(2)(B)(i) or  
23 524(h) of title 11, United States Code, or estab-  
24 lished in conjunction with an order issued under sec-  
25 tion 105 of title 11, United States Code, established

1 or formed under the terms of a chapter 11 plan of  
2 reorganization, which in whole or in part provides  
3 compensation for asbestos claims.

4 (9) ULTIMATE PARENT.—The term “ultimate  
5 parent” means a person—

6 (A) that owned, as of December 31, 2002,  
7 the entire beneficial interest, directly or indi-  
8 rectly, of at least 1 other person; and

9 (B) whose entire beneficial interest was not  
10 owned, on December 31, 2002, directly or indi-  
11 rectly, by any other single person (other than a  
12 natural person).

13 **SEC. 202. AUTHORITY AND TIERS.**

14 (a) LIABILITY FOR PAYMENTS TO THE FUND.—

15 (1) IN GENERAL.—Defendant participants shall  
16 be liable for payments to the Fund in accordance  
17 with this section based on tiers and subtiers as-  
18 signed to defendant participants.

19 (2) AGGREGATE PAYMENT OBLIGATIONS  
20 LEVEL.—The total payments required of all defend-  
21 ant participants over the life of the Fund shall not  
22 exceed a sum equal to \$90,000,000,000 less any  
23 bankruptcy trust credits under section 222(e). The  
24 Administrator shall have the authority to allocate

1 the payments required of the defendant participants  
2 among the tiers as provided in this title.

3 (3) ABILITY TO ENTER REORGANIZATION.—

4 Notwithstanding any other provision of this Act, all  
5 debtors that, together with all of their direct or indi-  
6 rect majority-owned subsidiaries, have prior asbestos  
7 expenditures less than \$1,000,000 may proceed with  
8 the filing, solicitation, and confirmation of a plan of  
9 reorganization that does not comply with the re-  
10 quirements of this Act, including a trust and chan-  
11 neling injunction under section 524(g) of title 11,  
12 United States Code. Any asbestos claim made in  
13 conjunction with a plan of reorganization allowable  
14 under the preceding sentence shall be subject to sec-  
15 tion 403(d) of this Act.

16 (b) TIER I.—Tier I shall include all debtors that, to-  
17 gether with all of their direct or indirect majority-owned  
18 subsidiaries, have prior asbestos expenditures greater than  
19 \$1,000,000.

20 (c) TREATMENT OF TIER I BUSINESS ENTITIES IN  
21 BANKRUPTCY.—

22 (1) DEFINITION.—

23 (A) IN GENERAL.—In this subsection, the  
24 term “bankrupt business entity” means a per-  
25 son that is not a natural person that—



1 (i) filed a petition for relief under  
2 chapter 11, of title 11, United States  
3 Code, before January 1, 2003;

4 (ii) has not substantially con-  
5 sumed, as such term is defined under  
6 section 1101(2) of title 11, United States  
7 Code, a plan of reorganization as of the  
8 date of enactment of this Act; and

9 (iii) the bankruptcy court presiding  
10 over the business entity's case determines,  
11 after notice and a hearing upon motion  
12 filed by the entity within 30 days after the  
13 date of enactment of this Act, that asbes-  
14 tos liability was not the sole or precipi-  
15 tating cause of the entity's chapter 11 fil-  
16 ing.

17 (B) MOTION AND RELATED MATTERS.—A  
18 motion under subparagraph (A)(iii) shall be  
19 supported by—

20 (i) an affidavit or declaration of the  
21 chief executive officer, chief financial offi-  
22 cer, or chief legal officer of the business  
23 entity; and

24 (ii) copies of the entity's public state-  
25 ments and securities filings made in con-

1           nection with the entity's filing for chapter  
2           11 protection.

3           Notice of such motion shall be as directed by  
4           the bankruptcy court, and the hearing shall be  
5           limited to consideration of the question of  
6           whether or not asbestos liability was the sole or  
7           precipitating cause of the entity's chapter 11  
8           filing. The bankruptcy court shall hold a hear-  
9           ing and make its determination with respect to  
10          the motion within 60 days after the date the  
11          motion is filed. In making its determination,  
12          the bankruptcy court shall take into account  
13          the affidavits, public statements, and securities  
14          filings, and other information, if any, submitted  
15          by the entity and all other facts and cir-  
16          cumstances presented by an objecting party.  
17          Any review of this determination shall be an ex-  
18          pedited appeal and limited to whether the deci-  
19          sion was against the weight of the evidence.  
20          Any appeal of a determination shall be an expe-  
21          dited review to the United States Circuit Court  
22          of Appeals for the circuit in which the bank-  
23          ruptcy is filed.

24           (2)   PROCEEDING   WITH   REORGANIZATION  
25          PLAN.—A bankrupt business entity may proceed

1 with the filing, solicitation, confirmation, and con-  
2 summation of a plan of reorganization that does not  
3 comply with the requirements of this Act, including  
4 a trust and channeling injunction described in sec-  
5 tion 524(g) of title 11, United States Code, notwith-  
6 standing any other provisions of this Act, if the  
7 bankruptcy court makes a favorable determination  
8 under paragraph (1)(B), unless the bankruptcy  
9 court's determination is overruled on appeal and all  
10 appeals are final. Such a bankrupt business entity  
11 may continue to so proceed, if—

12 (A) on request of a party in interest or on  
13 a motion of the court, and after a notice and  
14 a hearing, the bankruptcy court presiding over  
15 the chapter 11 case of the bankrupt business  
16 entity determines that—

17 (i) confirmation is necessary to permit  
18 the reorganization of that entity and as-  
19 sure that all creditors and that entity are  
20 treated fairly and equitably; and

21 (ii) confirmation is clearly favored by  
22 the balance of the equities; and

23 (B) an order confirming the plan of reor-  
24 ganization is entered by the bankruptcy court  
25 within 9 months after the date of enactment of

1           this Act or such longer period of time approved  
2           by the bankruptcy court for cause shown.

3           (3) APPLICABILITY.—If the bankruptcy court  
4           does not make the determination required under  
5           paragraph (2), or if an order confirming the plan is  
6           not entered within 9 months after the date of enact-  
7           ment of this Act or such longer period of time ap-  
8           proved by the bankruptcy court for cause shown, the  
9           provisions of this Act shall apply to the bankrupt  
10          business entity notwithstanding the certification.  
11          Any timely appeal under title 11, United States  
12          Code, from a confirmation order entered during the  
13          applicable time period shall automatically extend the  
14          time during which this Act is inapplicable to the  
15          bankrupt business entity, until the appeal is fully  
16          and finally resolved.

17          (4) OFFSETS.—

18                 (A) PAYMENTS BY INSURERS.—To the ex-  
19                 tent that a bankrupt business entity or debtor  
20                 successfully confirms a plan of reorganization,  
21                 including a trust, and channeling injunction  
22                 that involves payments by insurers who are oth-  
23                 erwise subject to this Act as described under  
24                 section 524(g) of title 11, United States Code,  
25                 an insurer who makes payments to the trust

1 shall obtain a dollar-for-dollar reduction in the  
2 amount otherwise payable by that insurer under  
3 this Act to the Fund.

4 (B) CONTRIBUTIONS TO FUND.—Any cash  
5 payments by a bankrupt business entity, if any,  
6 to a trust described under section 524(g) of  
7 title 11, United States Code, may be counted as  
8 a contribution to the Fund.

9 (d) TIERS II THROUGH VI.—Except as provided in  
10 section 204 and subsection (b) of this section, persons or  
11 affiliated groups are included in Tier II, III, IV, V, or  
12 VI, according to the prior asbestos expenditures paid by  
13 such persons or affiliated groups as follows:

14 (1) Tier II: \$75,000,000 or greater.

15 (2) Tier III: \$50,000,000 or greater, but less  
16 than \$75,000,000.

17 (3) Tier IV: \$10,000,000 or greater, but less  
18 than \$50,000,000.

19 (4) Tier V: \$5,000,000 or greater, but less than  
20 \$10,000,000.

21 (5) Tier VI: \$1,000,000 or greater, but less  
22 than \$5,000,000.

23 (e) TIER PLACEMENT AND COSTS.—

24 (1) PERMANENT TIER PLACEMENT.—After a  
25 defendant participant or affiliated group is assigned

1 to a tier and subtier under section 204(i)(6), the  
2 participant or affiliated group shall remain in that  
3 tier and subtier throughout the life of the Fund, re-  
4 gardless of subsequent events, including—

5 (A) the filing of a petition under a chapter  
6 of title 11, United States Code;

7 (B) a discharge of debt in bankruptcy;

8 (C) the confirmation of a plan of reorga-  
9 nization; or

10 (D) the sale or transfer of assets to any  
11 other person or affiliated group, unless the Ad-  
12 ministrator finds that the information sub-  
13 mitted by the participant or affiliated group to  
14 support its inclusion in that tier was inaccurate.

15 (2) COSTS.—Payments to the Fund by all per-  
16 sons that are the subject of a case under a chapter  
17 of title 11, United States Code, after the date of en-  
18 actment of this Act—

19 (A) shall constitute costs and expenses of  
20 administration of the case under section 503 of  
21 title 11, United States Code, and shall be pay-  
22 able in accordance with the payment provisions  
23 under this subtitle notwithstanding the pend-  
24 ency of the case under that title 11;

1           (B) shall not be stayed or affected as to  
2 enforcement or collection by any stay or injunc-  
3 tion power of any court; and

4           (C) shall not be impaired or discharged in  
5 any current or future case under title 11,  
6 United States Code.

7 (f) SUPERSEDING PROVISIONS.—

8           (1) IN GENERAL.—All of the following shall be  
9 superseded in their entireties by this Act:

10           (A) The treatment of any asbestos claim in  
11 any plan of reorganization with respect to any  
12 debtor included in Tier I.

13           (B) Any asbestos claim against any debtor  
14 included in Tier I.

15           (C) Any agreement, understanding, or un-  
16 dertaking by any such debtor or any third party  
17 with respect to the treatment of any asbestos  
18 claim filed in a debtor's bankruptcy case or  
19 with respect to a debtor before the date of en-  
20 actment of this Act, whenever such debtor's  
21 case is either still pending, if such case is pend-  
22 ing under a chapter other than chapter 11 of  
23 title 11, United States Code, or subject to con-  
24 firmation or substantial consummation of a

1           plan of reorganization under chapter 11 of title  
2           11, United States Code.

3           (2) **PRIOR AGREEMENTS OF NO EFFECT.**—Not-  
4           withstanding section 403(c)(3), any plan of reorga-  
5           nization, agreement, understanding, or undertaking  
6           by any debtor (including any pre-petition agreement,  
7           understanding, or undertaking that requires future  
8           performance) or any third party under paragraph  
9           (1), and any agreement, understanding, or under-  
10          taking entered into in anticipation, contemplation, or  
11          furtherance of a plan of reorganization, to the extent  
12          it relates to any asbestos claim, shall be of no force  
13          or effect, and no person shall have any right or  
14          claim with respect to any such agreement, under-  
15          standing, or undertaking.

16 **SEC. 203. SUBTIERS.**

17          (a) **IN GENERAL.**—

18               (1) **SUBTIER LIABILITY.**—Except as otherwise  
19               provided under subsections (b), (d), and (l) of sec-  
20               tion 204, persons or affiliated groups shall be in-  
21               cluded within Tiers I through VII and shall pay  
22               amounts to the Fund in accordance with this sec-  
23               tion.

24               (2) **REVENUES.**—



1 (A) IN GENERAL.—For purposes of this  
2 section, revenues shall be determined in accord-  
3 ance with generally accepted accounting prin-  
4 ciples, consistently applied, using the amount  
5 reported as revenues in the annual report filed  
6 with the Securities and Exchange Commission  
7 in accordance with the Securities Exchange Act  
8 of 1934 (15 U.S.C. 78a et seq.) for the most  
9 recent fiscal year ending on or before December  
10 31, 2002. If the defendant participant or affili-  
11 ated group does not file reports with the Securi-  
12 ties and Exchange Commission, revenues shall  
13 be the amount that the defendant participant or  
14 affiliated group would have reported as reve-  
15 nues under the rules of the Securities and Ex-  
16 change Commission in the event that it had  
17 been required to file.

18 (B) INSURANCE PREMIUMS.—Any portion  
19 of revenues of a defendant participant that is  
20 derived from insurance premiums shall not be  
21 used to calculate the payment obligation of that  
22 defendant participant under this subtitle.

23 (C) DEBTORS.—Each debtor’s revenues  
24 shall include the revenues of the debtor and all  
25 of the direct or indirect majority-owned subsidi-

1 aries of that debtor, except that the pro forma  
2 revenues of a person that is included in Subtier  
3 2 of Tier I shall not be included in calculating  
4 the revenues of any debtor that is a direct or  
5 indirect majority owner of such Subtier 2 per-  
6 son. If a debtor or affiliated group includes a  
7 person in respect of whose liabilities for asbes-  
8 tos claims a class action trust has been estab-  
9 lished, there shall be excluded from the 2002  
10 revenues of such debtor or affiliated group—

11 (i) all revenues of the person in re-  
12 spect of whose liabilities for asbestos  
13 claims the class action trust was estab-  
14 lished; and

15 (ii) all revenues of the debtor and af-  
16 filiated group attributable to the historical  
17 business operations or assets of such per-  
18 son, regardless of whether such business  
19 operations or assets were owned or con-  
20 ducted during the year 2002 by such per-  
21 son or by any other person included within  
22 such debtor and affiliated group.

23 (b) TIER I SUBTIERS.—

1           (1) IN GENERAL.—Each debtor in Tier I shall  
2           be included in subtiers and shall pay amounts to the  
3           Fund as provided under this section.

4           (2) SUBTIER 1.—

5           (A) IN GENERAL.—All persons that are  
6           debtors with prior asbestos expenditures of  
7           \$1,000,000 or greater, shall be included in  
8           Subtier 1.

9           (B) PAYMENT.—Each debtor included in  
10          Subtier 1 shall pay on an annual basis 1.67024  
11          percent of the debtor's 2002 revenues.

12          (C) OTHER ASSETS.—The Administrator,  
13          at the sole discretion of the Administrator, may  
14          allow a Subtier 1 debtor to satisfy its funding  
15          obligation under this paragraph with assets  
16          other than cash if the Administrator determines  
17          that requiring an all-cash payment of the debt-  
18          or's funding obligation would render the debt-  
19          or's reorganization infeasible.

20          (D) LIABILITY.—

21           (i) IN GENERAL.—If a person who is  
22           subject to a case pending under a chapter  
23           of title 11, United States Code, as defined  
24           in section 201(3)(A)(i), does not pay when  
25           due any payment obligation for the debtor,

1 the Administrator shall have the right to  
2 seek payment of all or any portion of the  
3 entire amount due (as well as any other  
4 amount for which the debtor may be liable  
5 under sections 223 and 224) from any of  
6 the direct or indirect majority-owned sub-  
7 sidiaries under section 201(3)(A)(ii).

8 (ii) CAUSE OF ACTION.—Notwith-  
9 standing section 221(e), this Act shall not  
10 preclude actions among persons within a  
11 debtor under section 201(3)(A) (i) and (ii)  
12 with respect to the payment obligations  
13 under this Act.

14 (iii) RIGHT OF CONTRIBUTION.—

15 (I) IN GENERAL.—Notwith-  
16 standing any other provision of this  
17 Act, if a direct or indirect majority-  
18 owned foreign subsidiary of a debtor  
19 participant (with such relationship to  
20 the debtor participant as determined  
21 on the date of enactment of this Act)  
22 is or becomes subject to any foreign  
23 insolvency proceedings, and such for-  
24 eign direct or indirect-majority owned  
25 subsidiary is liquidated in connection

1 with such foreign insolvency pro-  
2 ceedings (or if the debtor participant's  
3 interest in such foreign subsidiary is  
4 otherwise canceled or terminated in  
5 connection with such foreign insol-  
6 vency proceedings), the debtor partici-  
7 pant shall have a claim against such  
8 foreign subsidiary or the estate of  
9 such foreign subsidiary in an amount  
10 equal to the greater of—

11 (aa) the estimated amount  
12 of all current and future asbestos  
13 liabilities against such foreign  
14 subsidiary; or

15 (bb) the foreign subsidiary's  
16 allocable share of the debtor par-  
17 ticipant's funding obligations to  
18 the Fund as determined by such  
19 foreign subsidiary's allocable  
20 share of the debtor participant's  
21 2002 gross revenue.

22 (II) DETERMINATION OF CLAIM  
23 AMOUNT.—The claim amount under  
24 subclause (I) (aa) or (bb) shall be de-

1           terminated by a court of competent ju-  
2           risdiction in the United States.

3                   (III) EFFECT ON PAYMENT OBLI-  
4           GATION.—The right to, or recovery  
5           under, any such claim shall not re-  
6           duce, limit, delay, or otherwise affect  
7           the debtor participant’s payment obli-  
8           gations under this Act.

9                   (iv) MAXIMUM ANNUAL PAYMENT OB-  
10          LIGATION.—Subject to any payments  
11          under sections 204(l) and 222(d), and  
12          paragraphs (3), (4), and (5) of this sub-  
13          section, the annual payment obligation by  
14          a debtor under subparagraph (B) of this  
15          paragraph shall not exceed \$80,000,000.

16          (3) SUBTIER 2.—

17                   (A) IN GENERAL.—Notwithstanding para-  
18          graph (2), all persons that are debtors that  
19          have no material continuing business operations  
20          but hold cash or other assets that have been al-  
21          located or earmarked for the settlement of as-  
22          bestos claims shall be included in Subtier 2.

23                   (B) ASSIGNMENT OF ASSETS.—Not later  
24          than 90 days after the date of enactment of

1 this Act, each person included in Subtier 2 shall  
2 assign all of its assets to the Fund.

3 (4) SUBTIER 3.—

4 (A) IN GENERAL.—Notwithstanding para-  
5 graph (2), all persons that are debtors other  
6 than those included in Subtier 2, which have no  
7 material continuing business operations and no  
8 cash or other assets allocated or earmarked for  
9 the settlement of any asbestos claim, shall be  
10 included in Subtier 3.

11 (B) ASSIGNMENT OF UNENCUMBERED AS-  
12 SETS.—Not later than 90 days after the date of  
13 enactment of this Act, each person included in  
14 Subtier 3 shall contribute an amount equal to  
15 50 percent of its total unencumbered assets.

16 (C) CALCULATION OF UNENCUMBERED AS-  
17 SETS.—Unencumbered assets shall be cal-  
18 culated as the Subtier 3 person's total assets,  
19 excluding insurance-related assets, less—

20 (i) all allowable administrative ex-  
21 penses;

22 (ii) allowable priority claims under  
23 section 507 of title 11, United States  
24 Code; and

25 (iii) allowable secured claims.

1           (5) CLASS ACTION TRUST.—The assets of any  
2 class action trust that has been established in re-  
3 spect of the liabilities for asbestos claims of any per-  
4 son included within a debtor and affiliated group  
5 that has been included in Tier I (exclusive of any as-  
6 sets needed to pay previously incurred expenses and  
7 asbestos claims within the meaning of section  
8 403(d)(1), before the date of enactment of this Act)  
9 shall be transferred to the Fund not later than 6  
10 months after the date of enactment of this Act.

11       (c) TIER II SUBTIERS.—

12           (1) IN GENERAL.—Each person or affiliated  
13 group in Tier II shall be included in 1 of the 5  
14 subtiers of Tier II, based on the person’s or affili-  
15 ated group’s revenues. Such subtiers shall each con-  
16 tain as close to an equal number of total persons  
17 and affiliated groups as possible, with—

18                   (A) those persons or affiliated groups with  
19 the highest revenues included in Subtier 1;

20                   (B) those persons or affiliated groups with  
21 the next highest revenues included in Subtier 2;

22                   (C) those persons or affiliated groups with  
23 the lowest revenues included in Subtier 5;



1 (D) those persons or affiliated groups with  
 2 the next lowest revenues included in Subtier 4;  
 3 and

4 (E) those persons or affiliated groups re-  
 5 maining included in Subtier 3.

6 (2) PAYMENTS.—Each person or affiliated  
 7 group within each subtier shall pay, on an annual  
 8 basis, the following:

9 (A) Subtier 1: \$27,500,000.

10 (B) Subtier 2: \$24,750,000.

11 (C) Subtier 3: \$22,000,000.

12 (D) Subtier 4: \$19,250,000.

13 (E) Subtier 5: \$16,500,000.

14 (d) TIER III SUBTIERS.—

15 (1) IN GENERAL.—Each person or affiliated  
 16 group in Tier III shall be included in 1 of the 5  
 17 subtiers of Tier III, based on the person’s or affili-  
 18 ated group’s revenues. Such subtiers shall each con-  
 19 tain as close to an equal number of total persons  
 20 and affiliated groups as possible, with—

21 (A) those persons or affiliated groups with  
 22 the highest revenues included in Subtier 1;

23 (B) those persons or affiliated groups with  
 24 the next highest revenues included in Subtier 2;

1 (C) those persons or affiliated groups with  
2 the lowest revenues included in Subtier 5;

3 (D) those persons or affiliated groups with  
4 the next lowest revenues included in Subtier 4;  
5 and

6 (E) those persons or affiliated groups re-  
7 maining included in Subtier 3.

8 (2) PAYMENTS.—Each person or affiliated  
9 group within each subtier shall pay, on an annual  
10 basis, the following:

11 (A) Subtier 1: \$16,500,000.

12 (B) Subtier 2: \$13,750,000.

13 (C) Subtier 3: \$11,000,000.

14 (D) Subtier 4: \$8,250,000.

15 (E) Subtier 5: \$5,500,000.

16 (e) TIER IV SUBTIERS.—

17 (1) IN GENERAL.—Each person or affiliated  
18 group in Tier IV shall be included in 1 of the 4  
19 subtiers of Tier IV, based on the person's or affili-  
20 ated group's revenues. Such subtiers shall each con-  
21 tain as close to an equal number of total persons  
22 and affiliated groups as possible, with those persons  
23 or affiliated groups with the highest revenues in  
24 Subtier 1, those with the lowest revenues in Subtier  
25 4. Those persons or affiliated groups with the high-

1 est revenues among those remaining will be included  
2 in Subtier 2 and the rest in Subtier 3.

3 (2) PAYMENT.—Each person or affiliated group  
4 within each subtier shall pay, on an annual basis,  
5 the following:

6 (A) Subtier 1: \$3,850,000.

7 (B) Subtier 2: \$2,475,000.

8 (C) Subtier 3: \$1,650,000.

9 (D) Subtier 4: \$550,000.

10 (f) TIER V SUBTIERS.—

11 (1) IN GENERAL.—Each person or affiliated  
12 group in Tier V shall be included in 1 of the 3  
13 subtiers of Tier V, based on the person's or affli-  
14 ated group's revenues. Such subtiers shall each con-  
15 tain as close to an equal number of total persons  
16 and affiliated groups as possible, with those persons  
17 or affiliated groups with the highest revenues in  
18 Subtier 1, those with the lowest revenues in Subtier  
19 3, and those remaining in Subtier 2.

20 (2) PAYMENT.—Each person or affiliated group  
21 within each subtier shall pay, on an annual basis,  
22 the following:

23 (A) Subtier 1: \$1,000,000.

24 (B) Subtier 2: \$500,000.

25 (C) Subtier 3: \$200,000.

1 (g) TIER VI SUBTIERS.—

2 (1) IN GENERAL.—Each person or affiliated  
3 group in Tier VI shall be included in 1 of the 3  
4 subtiers of Tier VI, based on the person's or affli-  
5 ated group's revenues. Such subtiers shall each con-  
6 tain as close to an equal number of total persons  
7 and affiliated groups as possible, with those persons  
8 or affiliated groups with the highest revenues in  
9 Subtier 1, those with the lowest revenues in Subtier  
10 3, and those remaining in Subtier 2.

11 (2) PAYMENT.—Each person or affiliated group  
12 within each subtier shall pay, on an annual basis,  
13 the following:

14 (A) Subtier 1: \$500,000.

15 (B) Subtier 2: \$250,000.

16 (C) Subtier 3: \$100,000.

17 (h) TIER VII.—

18 (1) IN GENERAL.—Notwithstanding prior as-  
19 bestos expenditures that might qualify a person or  
20 affiliated group to be included in Tiers II, III, IV,  
21 V, or VI, a person or affiliated group shall also be  
22 included in Tier VII, if the person or affiliated  
23 group—

24 (A) is or has at any time been subject to  
25 asbestos claims brought under the Act of April

1           22, 1908 (45 U.S.C. 51 et seq.), commonly  
2           known as the Employers' Liability Act, as a re-  
3           sult of operations as a common carrier by rail-  
4           road; and

5           (B) has paid (including any payments  
6           made by others on behalf of such person or af-  
7           filiated group) not less than \$5,000,000 in set-  
8           tlement, judgment, defense, or indemnity costs  
9           relating to such claims.

10          (2) ADDITIONAL AMOUNT.—The payment re-  
11          quirement for persons or affiliated groups included  
12          in Tier VII shall be in addition to any payment re-  
13          quirement applicable to such person or affiliated  
14          group under Tiers II through VI.

15          (3) SUBTIER 1.—Each person or affiliated  
16          group in Tier VII with revenues of \$6,000,000,000  
17          or more is included in Subtier 1 and shall make an-  
18          nual payments of \$11,000,000 to the Fund.

19          (4) SUBTIER 2.—Each person or affiliated  
20          group in Tier VII with revenues of less than  
21          \$6,000,000,000, but not less than \$4,000,000,000 is  
22          included in Subtier 2 and shall make annual pay-  
23          ments of \$5,500,000 to the Fund.

24          (5) SUBTIER 3.—Each person or affiliated  
25          group in Tier VII with revenues of less than

1       \$4,000,000,000, but not less than \$500,000,000 is  
2       included in Subtier 3 and shall make annual pay-  
3       ments of \$550,000 to the Fund.

4               (6) JOINT VENTURE REVENUES AND LIABIL-  
5       ITY.—

6               (A) REVENUES.—For purposes of this sub-  
7       section, the revenues of a joint venture shall be  
8       included on a pro rata basis reflecting relative  
9       joint ownership to calculate the revenues of the  
10      parents of that joint venture. The joint venture  
11      shall not be responsible for a contribution  
12      amount under this subsection.

13              (B) LIABILITY.—For purposes of this sub-  
14      section, the liability under the Act of April 22,  
15      1908 (45 U.S.C. 51 et seq.), commonly known  
16      as the Employers' Liability Act, shall be attrib-  
17      uted to the parent owners of the joint venture  
18      on a pro rata basis, reflecting their relative  
19      share of ownership. The joint venture shall not  
20      be responsible for a payment amount under this  
21      provision.

22   **SEC. 204. ASSESSMENT ADMINISTRATION.**

23              (a) IN GENERAL.—Each defendant participant or af-  
24      filiated group shall pay to the Fund in the amounts pro-

1 vided under this subtitle as appropriate for its tier and  
2 subtier each year until the earlier to occur of the following:

3           (1) The participant or affiliated group has sat-  
4 isfied its obligations under this subtitle during the  
5 30 annual payment cycles of the operation of the  
6 Fund.

7           (2) The amount received by the Fund from de-  
8 fendant participants, excluding any amounts rebated  
9 to defendant participants under subsection (d),  
10 equals the maximum aggregate payment obligation  
11 of section 202(a)(2).

12       (b) SMALL BUSINESS EXEMPTION.—Notwith-  
13 standing any other provision of this subtitle, a person or  
14 affiliated group that is a small business concern (as de-  
15 fined under section 3 of the Small Business Act (15  
16 U.S.C. 632)), on December 31, 2002, is exempt from any  
17 payment requirement under this subtitle and shall not be  
18 included in the subtier allocations under section 203.

19       (c) PROCEDURES.—The Administrator shall pre-  
20 scribe procedures on how amounts payable under this sub-  
21 title are to be paid, including, to the extent the Adminis-  
22 trator determines appropriate, procedures relating to pay-  
23 ment in installments.

24       (d) ADJUSTMENTS.—

1           (1) IN GENERAL.—Under expedited procedures  
2 established by the Administrator, a defendant partici-  
3 pant may seek adjustment of the amount of its pay-  
4 ment obligation based on severe financial hardship  
5 or demonstrated inequity. The Administrator may  
6 determine whether to grant an adjustment and the  
7 size of any such adjustment, in accordance with this  
8 subsection. A defendant participant has a right to  
9 obtain a rehearing of the Administrator’s determina-  
10 tion under this subsection under the procedures pre-  
11 scribed in subsection (i)(10). The Administrator may  
12 adjust a defendant participant’s payment obligations  
13 under this subsection, either by forgiving the rel-  
14 evant portion of the otherwise applicable payment  
15 obligation or by providing relevant rebates from the  
16 defendant hardship and inequity adjustment account  
17 created under subsection (j) after payment of the  
18 otherwise applicable payment obligation, at the dis-  
19 cretion of the Administrator.

20           (2) FINANCIAL HARDSHIP ADJUSTMENTS.—

21           (A) IN GENERAL.—A defendant partici-  
22 pant may apply for an adjustment based on fi-  
23 nancial hardship at any time during the period  
24 in which a payment obligation to the Fund re-  
25 mains outstanding and may qualify for such ad-



1           justment by demonstrating that the amount of  
2           its payment obligation under the statutory allo-  
3           cation would constitute a severe financial hard-  
4           ship.

5           (B) TERM.—Subject to the annual avail-  
6           ability of funds in the defendant hardship and  
7           inequity adjustment account established under  
8           subsection (j), a financial hardship adjustment  
9           under this subsection shall have a term of 3  
10          years.

11          (C) RENEWAL.—After an initial hardship  
12          adjustment is granted under this paragraph, a  
13          defendant participant may renew its hardship  
14          adjustment by demonstrating that it remains  
15          justified.

16          (D) REINSTATEMENT.—Following the ex-  
17          piration of the hardship adjustment period pro-  
18          vided for under this section and during the  
19          funding period prescribed under subsection (a),  
20          the Administrator shall annually determine  
21          whether there has been a material change in  
22          the financial condition of the defendant partici-  
23          pant such that the Administrator may, con-  
24          sistent with the policies and legislative intent  
25          underlying this Act, reinstate under terms and

1 conditions established by the Administrator any  
2 part or all of the defendant participant's pay-  
3 ment obligation under the statutory allocation  
4 that was not paid during the hardship adjust-  
5 ment term.

6 (3) INEQUITY ADJUSTMENTS.—

7 (A) IN GENERAL.—A defendant partici-  
8 pant—

9 (i) may qualify for an adjustment  
10 based on inequity by demonstrating that  
11 the amount of its payment obligation  
12 under the statutory allocation is exception-  
13 ally inequitable—

14 (I) when measured against the  
15 amount of the likely cost to the de-  
16 fendant participant net of insurance  
17 of its future liability in the tort sys-  
18 tem in the absence of the Fund;

19 (II) when compared to the me-  
20 dian payment rate for all defendant  
21 participants in the same tier; or

22 (III) when measured against the  
23 percentage of the prior asbestos ex-  
24 penditures of the defendant that were  
25 incurred with respect to claims that

1           neither resulted in an adverse judg-  
2           ment against the defendant, nor were  
3           the subject of a settlement that re-  
4           quired a payment to a plaintiff by or  
5           on behalf of that defendant;

6           (ii) shall qualify for a two-tier main  
7           tier and a two-tier subtier adjustment re-  
8           ducing the defendant participant's pay-  
9           ment obligation based on inequity by dem-  
10          onstrating that not less than 95 percent of  
11          such person's prior asbestos expenditures  
12          arose from claims related to the manufac-  
13          ture and sale of railroad locomotives and  
14          related products, so long as such person's  
15          manufacture and sale of railroad loco-  
16          motives and related products is temporally  
17          and causally remote, and for purposes of  
18          this clause, a person's manufacture and  
19          sale of railroad locomotives and related  
20          products shall be deemed to be temporally  
21          and causally remote if the asbestos claims  
22          historically and generally filed against such  
23          person relate to the manufacture and sale  
24          of railroad locomotives and related prod-  
25          ucts by an entity dissolved more than 25

1 years before the date of enactment of this  
2 Act; and

3 (iii) shall be granted a two-tier adjust-  
4 ment reducing the defendant participant's  
5 payment obligation based on inequity by  
6 demonstrating that not less than 95 per-  
7 cent of such participant's prior asbestos  
8 expenditures arose from asbestos claims  
9 based on successor liability arising from a  
10 merger to which the participant or its  
11 predecessor was a party that occurred at  
12 least 30 years before the date of enactment  
13 of this Act, and that such prior asbestos  
14 expenditures exceed the inflation-adjusted  
15 value of the assets of the company from  
16 which such liability was derived in such  
17 merger, and upon such demonstration the  
18 Administrator shall grant such adjustment  
19 for the life of the Fund and amounts paid  
20 by such defendant participant prior to such  
21 adjustment in excess of its adjusted pay-  
22 ment obligation under this clause shall be  
23 credited against next succeeding required  
24 payment obligations.

1 (B) PAYMENT RATE.—For purposes of  
2 subparagraph (A), the payment rate of a de-  
3 fendant participant is the payment amount of  
4 the defendant participant as a percentage of  
5 such defendant participant’s gross revenues for  
6 the year ending December 31, 2002.

7 (C) TERM.—Subject to the annual avail-  
8 ability of funds in the defendant hardship and  
9 inequity adjustment account established under  
10 subsection (j), an inequity adjustment under  
11 this subsection shall have a term of 3 years.

12 (D) RENEWAL.—A defendant participant  
13 may renew an inequity adjustment every 3  
14 years by demonstrating that the adjustment re-  
15 mains justified.

16 (E) REINSTATEMENT.—

17 (i) IN GENERAL.—Following the ter-  
18 mination of an inequity adjustment under  
19 subparagraph (A), and during the funding  
20 period prescribed under subsection (a), the  
21 Administrator shall annually determine  
22 whether there has been a material change  
23 in conditions which would support a find-  
24 ing that the amount of the defendant par-  
25 ticipant’s payment under the statutory al-

1 location was not inequitable. Based on this  
2 determination, the Administrator may,  
3 consistent with the policies and legislative  
4 intent underlying this Act, reinstate any or  
5 all of the payment obligations of the de-  
6 fendant participant as if the inequity ad-  
7 justment had not been granted for that 3-  
8 year period.

9 (ii) TERMS AND CONDITIONS.—In the  
10 event of a reinstatement under clause (i),  
11 the Administrator may require the defend-  
12 ant participant to pay any part or all of  
13 amounts not paid due to the inequity ad-  
14 justment on such terms and conditions as  
15 established by the Administrator.

16 (4) LIMITATION ON ADJUSTMENTS.—The ag-  
17 gregate total of financial hardship adjustments  
18 under paragraph (2) and inequity adjustments under  
19 paragraph (3) in effect in any given year shall not  
20 exceed \$300,000,000, except to the extent additional  
21 monies are available for such adjustments as a re-  
22 sult of carryover of prior years' funds under sub-  
23 section (j)(3) or as a result of monies being made  
24 available in that year under subsection (k)(1)(A).

25 (5) ADVISORY PANELS.—

1           (A) APPOINTMENT.—The Administrator  
2           shall appoint a Financial Hardship Adjustment  
3           Panel and an Inequity Adjustment Panel to ad-  
4           vise the Administrator in carrying out this sub-  
5           section.

6           (B) MEMBERSHIP.—The membership of  
7           the panels appointed under subparagraph (A)  
8           may overlap.

9           (C) COORDINATION.—The panels ap-  
10          pointed under subparagraph (A) shall coordi-  
11          nate their deliberations and advice.

12         (e) LIMITATION ON LIABILITY.—The liability of each  
13         defendant participant to pay to the Fund shall be limited  
14         to the payment obligations under this Act, and, except as  
15         provided in subsection (f) and section 203(b)(2)(D), no  
16         defendant participant shall have any liability for the pay-  
17         ment obligations of any other defendant participant.

18         (f) CONSOLIDATION OF PAYMENTS.—

19           (1) IN GENERAL.—For purposes of determining  
20           the payment levels of defendant participants, any af-  
21           filiated group including 1 or more defendant partici-  
22           pants may irrevocably elect, as part of the submis-  
23           sions to be made under paragraphs (1) and (3) of  
24           subsection (i), to report on a consolidated basis all  
25           of the information necessary to determine the pay-

1       ment level under this subtitle and pay to the Fund  
2       on a consolidated basis.

3           (2) ELECTION.—If an affiliated group elects  
4       consolidation as provided in this subsection—

5           (A) for purposes of this Act other than  
6       this subsection, the affiliated group shall be  
7       treated as if it were a single participant, includ-  
8       ing with respect to the assessment of a single  
9       annual payment under this subtitle for the en-  
10      tire affiliated group;

11          (B) the ultimate parent of the affiliated  
12      group shall prepare and submit each submission  
13      to be made under subsection (i) on behalf of the  
14      entire affiliated group and shall be solely liable,  
15      as between the Administrator and the affiliated  
16      group only, for the payment of the annual  
17      amount due from the affiliated group under this  
18      subtitle, except that, if the ultimate parent does  
19      not pay when due any payment obligation for  
20      the affiliated group, the Administrator shall  
21      have the right to seek payment of all or any  
22      portion of the entire amount due (as well as  
23      any other amount for which the affiliated group  
24      may be liable under sections 223 and 224) from  
25      any member of the affiliated group;



1 (C) all members of the affiliated group  
2 shall be identified in the submission under sub-  
3 section (i) and shall certify compliance with this  
4 subsection and the Administrator's regulations  
5 implementing this subsection; and

6 (D) the obligations under this subtitle shall  
7 not change even if, after the date of enactment  
8 of this Act, the beneficial ownership interest be-  
9 tween any members of the affiliated group shall  
10 change.

11 (3) CAUSE OF ACTION.—Notwithstanding sec-  
12 tion 221(e), this Act shall not preclude actions  
13 among persons within an affiliated group with re-  
14 spect to the payment obligations under this Act.

15 (g) DETERMINATION OF PRIOR ASBESTOS EXPENDI-  
16 TURES.—

17 (1) IN GENERAL.—For purposes of determining  
18 a defendant participant's prior asbestos expendi-  
19 tures, the Administrator shall prescribe such rules  
20 as may be necessary or appropriate to assure that  
21 payments by indemnitors before December 31, 2002,  
22 shall be counted as part of the indemnitor's prior as-  
23 bestos expenditures, rather than the indemnitee's  
24 prior asbestos expenditures, in accordance with this  
25 subsection.

1           (2) INDEMNIFIABLE COSTS.—If an indemnitor  
2           has paid or reimbursed to an indemnitee any  
3           indemnifiable cost or otherwise made a payment on  
4           behalf of or for the benefit of an indemnitee to a  
5           third party for an indemnifiable cost before Decem-  
6           ber 31, 2002, the amount of such indemnifiable cost  
7           shall be solely for the account of the indemnitor for  
8           purposes under this Act.

9           (3) INSURANCE PAYMENTS.—When computing  
10          the prior asbestos expenditures with respect to an  
11          asbestos claim, any amount paid or reimbursed by  
12          insurance shall be solely for the account of the  
13          indemnitor, even if the indemnitor would have no di-  
14          rect right to the benefit of the insurance, if—

15                 (A) such insurance has been paid or reim-  
16                 bursed to the indemnitor or the indemnitee, or  
17                 paid on behalf of or for the benefit of the  
18                 indemnitee; and

19                 (B) the indemnitor has either, with respect  
20                 to such asbestos claim or any similar asbestos  
21                 claim, paid or reimbursed to its indemnitee any  
22                 indemnifiable cost or paid to any third party on  
23                 behalf of or for the benefit of the indemnitee  
24                 any indemnifiable cost.

1           (4) TREATMENT OF CERTAIN EXPENDI-  
2 TURES.—Notwithstanding any other provision of  
3 this Act, where—

4           (A) an indemnitor entered into a stock  
5 purchase agreement in 1988 that involved the  
6 sale of the stock of businesses that produced  
7 friction and other products; and

8           (B) the stock purchase agreement provided  
9 that the indemnitor indemnified the indemnitee  
10 and its affiliates for losses arising from various  
11 matters, including asbestos claims—

12           (i) asserted before the date of the  
13 agreement; and

14           (ii) filed after the date of the agree-  
15 ment and prior to the 10-year anniversary  
16 of the stock sale,

17 then the prior asbestos expenditures arising from the  
18 asbestos claims described in clauses (i) and (ii) shall  
19 not be for the account of either the indemnitor or  
20 indemnitee.

21 (h) MINIMUM ANNUAL PAYMENTS.—

22           (1) IN GENERAL.—The aggregate annual pay-  
23 ments of defendant participants to the Fund shall be  
24 at least \$3,000,000,000 for each calendar year in  
25 the first 30 years of the Fund, or until such shorter

1 time as the condition set forth in subsection (a)(2)  
2 is attained.

3 (2) GUARANTEED PAYMENT ACCOUNT.—To the  
4 extent payments in accordance with sections 202  
5 and 203 (as modified by subsections (b), (d), (f) and  
6 (g) of this section) fail in any year to raise at least  
7 \$3,000,000,000 net of any adjustments under sub-  
8 section (d), the balance needed to meet this required  
9 minimum aggregate annual payment shall be ob-  
10 tained from the defendant guaranteed payment ac-  
11 count established under subsection (k).

12 (3) GUARANTEED PAYMENT SURCHARGE.—To  
13 the extent the procedure set forth in paragraph (2)  
14 is insufficient to satisfy the required minimum ag-  
15 gregate annual payment net of any adjustments  
16 under subsection (d), the Administrator may assess  
17 a guaranteed payment surcharge under subsection  
18 (l).

19 (i) PROCEDURES FOR MAKING PAYMENTS.—

20 (1) INITIAL YEAR: TIERS II–VI.—

21 (A) IN GENERAL.—Not later than 120  
22 days after enactment of this Act, each defend-  
23 ant participant that is included in Tiers II, III,  
24 IV, V, or VI shall file with the Administrator—

1 (i) a statement of whether the defend-  
2 ant participant irrevocably elects to report  
3 on a consolidated basis under subsection  
4 (f);

5 (ii) a good-faith estimate of its prior  
6 asbestos expenditures;

7 (iii) a statement of its 2002 revenues,  
8 determined in accordance with section  
9 203(a)(2); and

10 (iv) payment in the amount specified  
11 in section 203 for the lowest subtier of the  
12 tier within which the defendant participant  
13 falls, except that if the defendant partici-  
14 pant, or the affiliated group including the  
15 defendant participant, had 2002 revenues  
16 exceeding \$3,000,000,000, it or its affili-  
17 ated group shall pay the amount specified  
18 for Subtier 3 of Tiers II, III, or IV or  
19 Subtier 2 of Tiers V or VI, depending on  
20 the applicable Tier.

21 (B) RELIEF.—

22 (i) IN GENERAL.—The Administrator  
23 shall establish procedures to grant a de-  
24 fendant participant relief from its initial

1 payment obligation if the participant shows  
2 that—

3 (I) the participant is likely to  
4 qualify for a financial hardship ad-  
5 justment; and

6 (II) failure to provide interim re-  
7 lief would cause severe irreparable  
8 harm.

9 (ii) JUDICIAL RELIEF.—The Adminis-  
10 trator’s refusal to grant relief under clause  
11 (i) is subject to immediate judicial review  
12 under section 303.

13 (2) INITIAL YEAR: TIER I.—Not later than 60  
14 days after enactment of this Act, each debtor shall  
15 file with the Administrator—

16 (A) a statement identifying the bankruptcy  
17 case(s) associated with the debtor;

18 (B) a statement whether its prior asbestos  
19 expenditures exceed \$1,000,000;

20 (C) a statement whether it has material  
21 continuing business operations and, if not,  
22 whether it holds cash or other assets that have  
23 been allocated or earmarked for asbestos settle-  
24 ments;

1 (D) in the case of debtors falling within  
2 Subtier 1 of Tier I, a statement of the debtor's  
3 2002 revenues, determined in accordance with  
4 section 203(a)(2), and a payment under section  
5 203(b)(2)(B);

6 (E) in the case of debtors falling within  
7 Subtier 2 of Tier I, an assignment of its assets  
8 under section 203(b)(3)(B); and

9 (F) in the case of debtors falling within  
10 Subtier 3 of Tier I, a payment under section  
11 203(b)(4)(B), and a statement of how such  
12 payment was calculated.

13 (3) INITIAL YEAR: TIER VII.—Not later than 90  
14 days after enactment of this Act, each defendant  
15 participant in Tier VII shall file with the Adminis-  
16 trator—

17 (A) a good-faith estimate of all payments  
18 of the type described in section 203(h)(1) (as  
19 modified by section 203(h)(6));

20 (B) a statement of revenues calculated in  
21 accordance with sections 203(a)(2) and 203(h);  
22 and

23 (C) payment in the amount specified in  
24 section 203(h).

1           (4) NOTICE TO PARTICIPANTS.—Not later than  
2           240 days after enactment of this Act, the Adminis-  
3           trator shall—

4                   (A) directly notify all reasonably identifi-  
5                   able defendant participants of the requirement  
6                   to submit information necessary to calculate the  
7                   amount of any required payment to the Fund;  
8                   and

9                   (B) publish in the Federal Register a no-  
10                  tice—

11                           (i) setting forth the criteria in this  
12                           Act, and as prescribed by the Adminis-  
13                           trator in accordance with this Act, for pay-  
14                           ing under this subtitle as a defendant par-  
15                           ticipant and requiring any person who may  
16                           be a defendant participant to submit such  
17                           information; and

18                           (ii) that includes a list of all defend-  
19                           ant participants notified by the Adminis-  
20                           trator under subparagraph (A), and pro-  
21                           vides for 30 days for the submission by the  
22                           public of comments or information regard-  
23                           ing the completeness and accuracy of the  
24                           list of identified defendant participants.

25           (5) RESPONSE REQUIRED.—



1 (A) IN GENERAL.—Any person who re-  
2 ceives notice under paragraph (4)(A), and any  
3 other person meeting the criteria specified in  
4 the notice published under paragraph (4)(B),  
5 shall provide the Administrator with an address  
6 to send any notice from the Administrator in  
7 accordance with this Act and all the informa-  
8 tion required by the Administrator in accord-  
9 ance with this subsection no later than the ear-  
10 lier of—

11 (i) 30 days after the receipt of direct  
12 notice; or

13 (ii) 30 days after the publication of  
14 notice in the Federal Register.

15 (B) CERTIFICATION.—The response sub-  
16 mitted under subparagraph (A) shall be signed  
17 by a responsible corporate officer, general part-  
18 ner, proprietor, or individual of similar author-  
19 ity, who shall certify under penalty of law the  
20 completeness and accuracy of the information  
21 submitted.

22 (C) CONSENT TO AUDIT AUTHORITY.—The  
23 response submitted under subparagraph (A)  
24 shall include, on behalf of the defendant partici-  
25 pant or affiliated group, a consent to the Ad-

1 administrator's audit authority under section  
2 221(d).

3 (6) NOTICE OF INITIAL DETERMINATION.—

4 (A) IN GENERAL.—

5 (i) NOTICE TO INDIVIDUAL.—Not  
6 later than 60 days after receiving a re-  
7 sponse under paragraph (5), the Adminis-  
8 trator shall send the person a notice of ini-  
9 tial determination identifying the tier and  
10 subtier, if any, into which the person falls  
11 and the annual payment obligation, if any,  
12 to the Fund, which determination shall be  
13 based on the information received from the  
14 person under this subsection and any other  
15 pertinent information available to the Ad-  
16 ministrator and identified to the defendant  
17 participant.

18 (ii) PUBLIC NOTICE.—Not later than  
19 7 days after sending the notification of ini-  
20 tial determination to defendant partici-  
21 pants, the Administrator shall publish in  
22 the Federal Register a notice listing the  
23 defendant participants that have been sent  
24 such notification, and the initial deter-  
25 mination identifying the tier and subtier

1 assignment and annual payment obligation  
2 of each identified participant.

3 (B) NO RESPONSE; INCOMPLETE RE-  
4 SPONSE.—If no response in accordance with  
5 paragraph (5) is received from a defendant par-  
6 ticipant, or if the response is incomplete, the  
7 initial determination shall be based on the best  
8 information available to the Administrator.

9 (C) PAYMENTS.—Within 30 days of receiv-  
10 ing a notice of initial determination requiring  
11 payment, the defendant participant shall pay  
12 the Administrator the amount required by the  
13 notice, after deducting any previous payment  
14 made by the participant under this subsection.  
15 If the amount that the defendant participant is  
16 required to pay is less than any previous pay-  
17 ment made by the participant under this sub-  
18 section, the Administrator shall credit any ex-  
19 cess payment against the future payment obli-  
20 gations of that defendant participant. The  
21 pendency of a petition for rehearing under  
22 paragraph (10) shall not stay the obligation of  
23 the participant to make the payment specified  
24 in the Administrator's notice.

1           (7) EXEMPTIONS FOR INFORMATION RE-  
2           QUIRED.—

3           (A) PRIOR ASBESTOS EXPENDITURES.—In  
4           lieu of submitting information related to prior  
5           asbestos expenditures as may be required for  
6           purposes of this subtitle, a non-debtor defend-  
7           ant participant may consent to be assigned to  
8           Tier II.

9           (B) REVENUES.—In lieu of submitting in-  
10          formation related to revenues as may be re-  
11          quired for purposes of this subtitle, a non-debt-  
12          or defendant participant may consent to be as-  
13          signed to Subtier 1 of the defendant partici-  
14          pant's applicable tier.

15          (8) NEW INFORMATION.—

16          (A) EXISTING PARTICIPANT.—The Admin-  
17          istrator shall adopt procedures for requiring ad-  
18          ditional payment, or refunding amounts already  
19          paid, based on new information received.

20          (B) ADDITIONAL PARTICIPANT.—If the  
21          Administrator, at any time, receives information  
22          that an additional person may qualify as a de-  
23          fendant participant, the Administrator shall re-  
24          quire such person to submit information nec-  
25          essary to determine whether that person is re-

1           required to make payments, and in what amount,  
2           under this subtitle and shall make any deter-  
3           mination or take any other act consistent with  
4           this Act based on such information or any other  
5           information available to the Administrator with  
6           respect to such person.

7           (9) SUBPOENAS.—The Administrator may re-  
8           quest the Attorney General to subpoena persons to  
9           compel testimony, records, and other information  
10          relevant to its responsibilities under this section. The  
11          Attorney General may enforce such subpoena in ap-  
12          propriate proceedings in the United States district  
13          court for the district in which the person to whom  
14          the subpoena was addressed resides, was served, or  
15          transacts business.

16          (10) REHEARING.—A defendant participant has  
17          a right to obtain rehearing of the Administrator’s  
18          determination under this subsection of the applicable  
19          tier or subtier and of the Administrator’s determina-  
20          tion under subsection (d) of a financial hardship or  
21          inequity adjustment, if the request for rehearing is  
22          filed within 30 days after the defendant participant’s  
23          receipt of notice from the Administrator of the de-  
24          termination. A defendant participant may not file an  
25          action under section 303 unless the defendant par-

1 participant requests a rehearing under this paragraph.  
2 The Administrator shall publish a notice in the Fed-  
3 eral Register of any change in a defendant partici-  
4 pant's tier or subtier assignment or payment obliga-  
5 tion as a result of a rehearing.

6 (j) DEFENDANT HARDSHIP AND INEQUITY ADJUST-  
7 MENT ACCOUNT.—

8 (1) IN GENERAL.—To the extent the total pay-  
9 ments by defendant participants in any given year  
10 exceed the minimum aggregate annual payments  
11 under subsection (h), excess monies up to a max-  
12 imum of \$300,000,000 in any such year shall be  
13 placed in a defendant hardship and inequity adjust-  
14 ment account established within the Fund by the  
15 Administrator.

16 (2) USE OF ACCOUNT MONIES.—Monies from  
17 the defendant hardship and inequity adjustment ac-  
18 count shall be preserved and administered like the  
19 remainder of the Fund, but shall be reserved and  
20 may be used only—

21 (A) to make up for any relief granted to a  
22 defendant participant for severe financial hard-  
23 ship or demonstrated inequity under subsection  
24 (d) or to reimburse any defendant participant

1 granted such relief after its payment of the  
2 amount otherwise due; and

3 (B) if the condition set forth in subsection  
4 (a)(2) is met, for any purpose that the Fund  
5 may serve under this Act.

6 (3) CARRYOVER OF UNUSED FUNDS.—To the  
7 extent the Administrator does not, in any given year,  
8 use all of the funds allocated to the account under  
9 paragraph (1) for adjustments granted under sub-  
10 section (d), remaining funds in the account shall be  
11 carried forward for use by the Administrator for ad-  
12 justments in subsequent years.

13 (k) DEFENDANT GUARANTEED PAYMENT AC-  
14 COUNT.—

15 (1) IN GENERAL.—Subject to subsections (h)  
16 and (j), if there are excess monies paid by defendant  
17 participants in any given year, including any bank-  
18 ruptcy trust credits that may be due under section  
19 222(e), such monies—

20 (A) at the discretion of the Administrator,  
21 may be used to provide additional adjustments  
22 under subsection (d), up to a maximum aggre-  
23 gate of \$50,000,000 in such year; and

24 (B) to the extent not used under subpara-  
25 graph (A), shall be placed in a defendant guar-

1           anted payment account established within the  
2           Fund by the Administrator.

3           (2) USE OF ACCOUNT MONIES.—Monies from  
4           the defendant guaranteed payment account shall be  
5           preserved and administered like the remainder of the  
6           Fund, but shall be reserved and may be used only—

7                   (A) to ensure the minimum aggregate an-  
8                   nual payment set forth in subsection (h) net of  
9                   any adjustments under subsection (d) is  
10                  reached each year; and

11                   (B) if the condition set forth in subsection  
12                  (a)(2) is met, for any purpose that the Fund  
13                  may serve under this Act.

14          (l) GUARANTEED PAYMENT SURCHARGE.—

15           (1) IN GENERAL.—To the extent there are in-  
16           sufficient monies in the defendant guaranteed pay-  
17           ment account established in subsection (k) to attain  
18           the minimum aggregate annual payment net of any  
19           adjustments under subsection (d) in any given year,  
20           the Administrator may impose on each defendant  
21           participant a surcharge as necessary to raise the bal-  
22           ance required to attain the minimum aggregate an-  
23           nual payment net of any adjustments under sub-  
24           section (d), as provided in this subsection. Any such  
25           surcharge shall be imposed on a pro rata basis, in



1 accordance with each defendant participant's relative  
2 annual liability under sections 202 and 203 (as  
3 modified by subsections (b), (d), (f), and (g) of this  
4 section).

5 (2) CERTIFICATION.—

6 (A) IN GENERAL.—Before imposing a  
7 guaranteed payment surcharge under this sub-  
8 section, the Administrator shall certify that he  
9 or she has used all reasonable efforts to collect  
10 mandatory payments for all defendant partici-  
11 pants, including by using the authority in sub-  
12 section (i)(9) of this section and section 223.

13 (B) NOTICE AND COMMENT.—Before mak-  
14 ing a final certification under subparagraph  
15 (C), the Administrator shall publish a notice in  
16 the Federal Register of a proposed certification  
17 and provide in such notice for a public comment  
18 period of 30 days.

19 (C) FINAL CERTIFICATION.—

20 (i) IN GENERAL.—The Administrator  
21 shall publish a notice of the final certifi-  
22 cation in the Federal Register after consid-  
23 eration of all comments submitted under  
24 subparagraph (B).

1                   (ii) WRITTEN NOTICE.—Not later  
2                   than 30 days after publishing any final  
3                   certification under clause (i), the Adminis-  
4                   trator shall provide each defendant partici-  
5                   pant with written notice of that defendant  
6                   participant’s payment, including the  
7                   amount of any surcharge.

8 **SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.**

9                   (a) STEPDOWNS.—

10                   (1) IN GENERAL.—Subject to paragraph (2),  
11                   the minimum aggregate annual funding obligation  
12                   under section 204(h) shall be reduced by 10 percent  
13                   of the initial minimum aggregate funding obligation  
14                   at the end of the tenth, fifteenth, twentieth, and  
15                   twenty-fifth years after the date of enactment of this  
16                   Act. The reductions under this paragraph shall be  
17                   applied on an equal pro rata basis to the funding ob-  
18                   ligations of all defendant participants, except with  
19                   respect to defendant participants in Tier 1, Subtiers  
20                   2 and 3, and class action trusts.

21                   (2) LIMITATION.—The Administrator shall sus-  
22                   pend, cancel, reduce, or delay any reduction under  
23                   paragraph (1) if at any time the Administrator  
24                   finds, in accordance with subsection (c), that such  
25                   action is necessary and appropriate to ensure that

1 the assets of the Fund and expected future pay-  
2 ments remain sufficient to satisfy the Fund's antici-  
3 pated obligations.

4 (b) FUNDING HOLIDAYS.—

5 (1) IN GENERAL.—If the Administrator deter-  
6 mines, at any time after 10 years following the date  
7 of enactment of this Act, that the assets of the Fund  
8 at the time of such determination and expected fu-  
9 ture payments, taking into consideration any reduc-  
10 tions under subsection (a), are sufficient to satisfy  
11 the Fund's anticipated obligations without the need  
12 for all, or any portion of, that year's payment other-  
13 wise required under this subtitle, the Administrator  
14 shall reduce or waive all or any part of the payments  
15 required from defendant participants for that year.

16 (2) ANNUAL REVIEW.—The Administrator shall  
17 undertake the review required by this subsection and  
18 make the necessary determination under paragraph  
19 (1) every year.

20 (3) LIMITATIONS ON FUNDING HOLIDAYS.—Any  
21 reduction or waiver of the defendant participants'  
22 funding obligations shall—

23 (A) be made only to the extent the Admin-  
24 istrator determines that the Fund will still be

1           able to satisfy all of its anticipated obligations;  
2           and

3                   (B) be applied on an equal pro rata basis  
4           to the funding obligations of all defendant par-  
5           ticipants, except with respect to defendant par-  
6           ticipants in Subtiers 2 and 3 of Tier I and class  
7           action trusts, for that year.

8           (4) NEW INFORMATION.—If at any time the  
9           Administrator determines that a reduction or waiver  
10          under this section may cause the assets of the Fund  
11          and expected future payments to decrease to a level  
12          at which the Fund may not be able to satisfy all of  
13          its anticipated obligations, the Administrator shall  
14          revoke all or any part of such reduction or waiver  
15          to the extent necessary to ensure that the Fund's  
16          obligations are met. Such revocations shall be ap-  
17          plied on an equal pro rata basis to the funding obli-  
18          gations of all defendant participants, except defend-  
19          ant participants in Subtiers 2 and 3 of Tier I and  
20          class action trusts, for that year.

21          (c) CERTIFICATION.—

22                   (1) IN GENERAL.—Before suspending, can-  
23          celing, reducing, or delaying any reduction under  
24          subsection (a) or granting or revoking a reduction or  
25          waiver under subsection (b), the Administrator shall

1 certify that the requirements of this section are sat-  
2 isfied.

3 (2) NOTICE AND COMMENT.—Before making a  
4 final certification under this subsection, the Admin-  
5 istrator shall publish a notice in the Federal Reg-  
6 ister of a proposed certification and a statement of  
7 the basis therefor and provide in such notice for a  
8 public comment period of 30 days.

9 (3) FINAL CERTIFICATION.—

10 (A) IN GENERAL.—The Administrator  
11 shall publish a notice of the final certification in  
12 the Federal Register after consideration of all  
13 comments submitted under paragraph (2).

14 (B) WRITTEN NOTICE.—Not later than 30  
15 days after publishing any final certification  
16 under subparagraph (A), the Administrator  
17 shall provide each defendant participant with  
18 written notice of that defendant’s funding obli-  
19 gation for that year.

## 20 **Subtitle B—Asbestos Insurers** 21 **Commission**

### 22 **SEC. 210. DEFINITION.**

23 In this subtitle, the term “captive insurance com-  
24 pany” means a company—

1           (1) whose entire beneficial interest is owned on  
2           the date of enactment of this Act, directly or indi-  
3           rectly, by a defendant participant or by the ultimate  
4           parent or the affiliated group of a defendant partici-  
5           pant;

6           (2) whose primary commercial business during  
7           the period from calendar years 1940 through 1986  
8           was to provide insurance to its ultimate parent or  
9           affiliated group, or any portion of the affiliated  
10          group or a combination thereof; and

11          (3) that was incorporated or operating no later  
12          than December 31, 2003.

13 **SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COM-**  
14 **MISSION.**

15          (a) ESTABLISHMENT.—There is established the As-  
16 bestos Insurers Commission (referred to in this subtitle  
17 as the “Commission”) to carry out the duties described  
18 in section 212.

19          (b) MEMBERSHIP.—

20               (1) APPOINTMENT.—The Commission shall be  
21               composed of 5 members who shall be appointed by  
22               the President, by and with the advice and consent  
23               of the Senate.

24               (2) QUALIFICATIONS.—

1 (A) EXPERTISE.—Members of the Com-  
2 mission shall have sufficient expertise to fulfill  
3 their responsibilities under this subtitle.

4 (B) CONFLICT OF INTEREST.—

5 (i) IN GENERAL.—No member of the  
6 Commission appointed under paragraph  
7 (1) may be an employee or immediate fam-  
8 ily member of an employee of an insurer  
9 participant. No member of the Commission  
10 shall be a shareholder of any insurer par-  
11 ticipant. No member of the Commission  
12 shall be a former officer or director, or a  
13 former employee or former shareholder of  
14 any insurer participant who was such an  
15 employee, shareholder, officer, or director  
16 at any time during the 2-year period end-  
17 ing on the date of the appointment, unless  
18 that is fully disclosed before consideration  
19 in the Senate of the nomination for ap-  
20 pointment to the Commission.

21 (ii) DEFINITION.—In clause (i), the  
22 term “shareholder” shall not include a  
23 broadly based mutual fund that includes  
24 the stocks of insurer participants as a por-  
25 tion of its overall holdings.

1           (C) FEDERAL EMPLOYMENT.—A member  
2           of the Commission may not be an officer or em-  
3           ployee of the Federal Government, except by  
4           reason of membership on the Commission.

5           (3) PERIOD OF APPOINTMENT.—Members shall  
6           be appointed for the life of the Commission.

7           (4) VACANCIES.—Any vacancy in the Commis-  
8           sion shall be filled in the same manner as the origi-  
9           nal appointment.

10          (5) CHAIRMAN.—The President shall select a  
11          Chairman from among the members of the Commis-  
12          sion.

13          (c) MEETINGS.—

14           (1) INITIAL MEETING.—Not later than 30 days  
15           after the date on which all members of the Commis-  
16           sion have been appointed, the Commission shall hold  
17           its first meeting.

18           (2) SUBSEQUENT MEETINGS.—The Commission  
19           shall meet at the call of the Chairman, as necessary  
20           to accomplish the duties under section 212.

21           (3) QUORUM.—No business may be conducted  
22           or hearings held without the participation of a ma-  
23           jority of the members of the Commission.



1 **SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.**

2 (a) DETERMINATION OF INSURER PAYMENT OBLIGA-  
3 TIONS.—

4 (1) IN GENERAL.—

5 (A) DEFINITIONS.—For the purposes of  
6 this Act, the terms “insurer” and “insurer par-  
7 ticipant” shall, unless stated otherwise, include  
8 direct insurers and reinsurers, as well as any  
9 run-off entity established, in whole or in part,  
10 to review and pay asbestos claims.

11 (B) PROCEDURES FOR DETERMINING IN-  
12 SURER PAYMENTS.—The Commission shall de-  
13 termine the amount that each insurer partici-  
14 pant shall be required to pay into the Fund  
15 under the procedures described in this section.  
16 The Commission shall make this determination  
17 by first promulgating a rule establishing a  
18 methodology for allocation of payments among  
19 insurer participants and then applying such  
20 methodology to determine the individual pay-  
21 ment for each insurer participant. The method-  
22 ology may include 1 or more allocation formulas  
23 to be applied to all insurer participants or  
24 groups of similarly situated participants. The  
25 Commission’s rule shall include a methodology  
26 for adjusting payments by insurer participants

1 to make up, during any applicable payment  
2 year, any amount by which aggregate insurer  
3 payments fall below the level required in para-  
4 graph (3)(C). The Commission shall conduct a  
5 thorough study (within the time limitations  
6 under this subparagraph) of the accuracy of the  
7 reserve allocation of each insurer participant,  
8 and may request information from the Securi-  
9 ties and Exchange Commission or any State  
10 regulatory agency. Under this procedure, not  
11 later than 120 days after the initial meeting of  
12 the Commission, the Commission shall com-  
13 mence a rulemaking proceeding under section  
14 213(a) to propose and adopt a methodology for  
15 allocating payments among insurer participants.  
16 In proposing an allocation methodology, the  
17 Commission may consult with such actuaries  
18 and other experts as it deems appropriate.  
19 After hearings and public comment on the pro-  
20 posed allocation methodology, the Commission  
21 shall as promptly as possible promulgate a final  
22 rule establishing such methodology. After pro-  
23 mulgation of the final rule, the Commission  
24 shall determine the individual payment of each

1 insurer participant under the procedures set  
2 forth in subsection (b).

3 (C) SCOPE.—Every insurer, reinsurer, and  
4 runoff entity with asbestos-related obligations  
5 in the United States shall be subject to the  
6 Commission’s and Administrator’s authority  
7 under this Act, including allocation determina-  
8 tions, and shall be required to fulfill its pay-  
9 ment obligation without regard as to whether it  
10 is licensed in the United States. Every insurer  
11 participant not licensed or domiciled in the  
12 United States shall, upon the first payment to  
13 the Fund, submit a written consent to the Com-  
14 mission’s and Administrator’s authority under  
15 this Act, and to the jurisdiction of the courts of  
16 the United States for purposes of enforcing this  
17 Act, in a form determined by the Adminis-  
18 trator. Any insurer participant refusing to pro-  
19 vide a written consent shall be subject to fines  
20 and penalties as provided in section 223.

21 (D) ISSUERS OF FINITE RISK POLICIES.—

22 (i) IN GENERAL.—The issuer of any  
23 policy of reinsurance purchased by an in-  
24 surer participant or its affiliate after 1990  
25 that provides for a loss transfer to insure

1 for incurred asbestos losses and other  
2 losses (both known and unknown), includ-  
3 ing those policies commonly referred to as  
4 “finite risk”, “aggregate stop loss”, “ag-  
5 gregate excess of loss”, or “loss portfolio  
6 transfer” policies, shall be obligated to  
7 make payments required under this Act di-  
8 rectly to the Fund on behalf of the insurer  
9 participant who is the beneficiary of such  
10 policy, subject to the underlying retention  
11 and the limits of liability applicable to such  
12 policy.

13 (ii) PAYMENTS.—Payments to the  
14 Fund required under this Act shall be  
15 treated as loss payments for asbestos bod-  
16 ily injury (as if such payments were in-  
17 curred as liabilities imposed in the tort  
18 system) and shall not be subject to exclu-  
19 sion under policies described under clause  
20 (i) as a liability with respect to tax or as-  
21 sessment. Within 90 days after the sched-  
22 uled date to make an annual payment to  
23 the Fund, the insurer participant shall, at  
24 its discretion, direct the reinsurer issuing  
25 such policy to pay all or a portion of the

1           annual payment directly to the Fund up to  
2           the full applicable limits of liability under  
3           the policy. The reinsurer issuing such pol-  
4           icy shall be obligated to make such pay-  
5           ments directly to the Fund and shall be  
6           subject to the enforcement provisions  
7           under section 223. The insurer participant  
8           shall remain obligated to make payment to  
9           the Fund of that portion of the annual  
10          payment not directed to the issuer of such  
11          reinsurance policy.

12           (2) AMOUNT OF PAYMENTS.—

13           (A) AGGREGATE PAYMENT OBLIGATION.—

14           The total payment required of all insurer par-  
15           ticipants over the life of the Fund shall be  
16           equal to \$46,025,000,000.

17           (B) ACCOUNTING STANDARDS.—In deter-

18           mining the payment obligations of participants  
19           that are not licensed or domiciled in the United  
20           States or that are runoff entities, the Commis-  
21           sion shall use accounting standards required for  
22           United States licensed direct insurers.

23           (C) CAPTIVE INSURANCE COMPANIES.—No

24           payment to the Fund shall be required from a  
25           captive insurance company, unless and only to

1 the extent a captive insurance company, on the  
2 date of enactment of this Act, has liability, di-  
3 rectly or indirectly, for any asbestos claim of a  
4 person or persons other than and unaffiliated  
5 with its ultimate parent or affiliated group or  
6 pool in which the ultimate parent participates  
7 or participated, or unaffiliated with a person  
8 that was its ultimate parent or a member of its  
9 affiliated group or pool at the time the relevant  
10 insurance or reinsurance was issued by the cap-  
11 tive insurance company.

12 (D) SEVERAL LIABILITY.—Unless other-  
13 wise provided under this Act, each insurer par-  
14 ticipant’s obligation to make payments to the  
15 Fund is several. Unless otherwise provided  
16 under this Act, there is no joint liability, and  
17 the future insolvency by any insurer participant  
18 shall not affect the payment required of any  
19 other insurer participant.

20 (3) PAYMENT OF CRITERIA.—

21 (A) INCLUSION IN INSURER PARTICIPANT  
22 CATEGORY.—

23 (i) IN GENERAL.—Insurers that have  
24 paid, or been assessed by a legal judgment  
25 or settlement, at least \$1,000,000 in de-

1 fense and indemnity costs before the date  
2 of enactment of this Act in response to  
3 claims for compensation for asbestos inju-  
4 ries arising from a policy of liability insur-  
5 ance or contract of liability reinsurance or  
6 retrocessional reinsurance shall be insurer  
7 participants in the Fund. Other insurers  
8 shall be exempt from mandatory payments.

9 (ii) INAPPLICABILITY OF SECTION  
10 202.—Since insurers may be subject in cer-  
11 tain jurisdictions to direct action suits, and  
12 it is not the intent of this Act to impose  
13 upon an insurer, due to its operation as an  
14 insurer, payment obligations to the Fund  
15 in situations where the insurer is the sub-  
16 ject of a direct action, no insurer subject  
17 to mandatory payments under section 212  
18 shall also be liable for payments to the  
19 Fund as a defendant participant under  
20 section 202.

21 (B) INSURER PARTICIPANT ALLOCATION  
22 METHODOLOGY.—

23 (i) IN GENERAL.—The Commission  
24 shall establish the payment obligations of  
25 individual insurer participants to reflect,

1 on an equitable basis, the relative tort sys-  
2 tem liability of the participating insurers in  
3 the absence of this Act, considering and  
4 weighting, as appropriate (but exclusive of  
5 workers' compensation), such factors as—

6 (I) historic premium for lines of  
7 insurance associated with asbestos ex-  
8 posure over relevant periods of time;

9 (II) recent loss experience for as-  
10 bestos liability;

11 (III) amounts reserved for asbes-  
12 tos liability;

13 (IV) the likely cost to each in-  
14 surer participant of its future liabil-  
15 ities under applicable insurance poli-  
16 cies; and

17 (V) any other factor the Commis-  
18 sion may determine is relevant and  
19 appropriate.

20 (ii) DETERMINATION OF RESERVES.—

21 The Commission may establish procedures  
22 and standards for determination of the as-  
23 bestos reserves of insurer participants. The  
24 reserves of a United States licensed rein-  
25 surer that is wholly owned by, or under



1 common control of, a United States li-  
2 censed direct insurer shall be included as  
3 part of the direct insurer's reserves when  
4 the reinsurer's financial results are in-  
5 cluded as part of the direct insurer's  
6 United States operations, as reflected in  
7 footnote 33 of its filings with the National  
8 Association of Insurance Commissioners or  
9 in published financial statements prepared  
10 in accordance with generally accepted ac-  
11 counting principles.

12 (C) PAYMENT SCHEDULE.—The aggregate  
13 annual amount of payments by insurer partici-  
14 pants over the life of the Fund shall be as fol-  
15 lows:

16 (i) For years 1 and 2, \$2,700,000,000  
17 annually.

18 (ii) For years 3 through 5,  
19 \$5,075,000,000 annually.

20 (iii) For years 6 through 27,  
21 \$1,147,000,000 annually.

22 (iv) For year 28, \$166,000,000.

23 (D) CERTAIN RUNOFF ENTITIES.—

24 (i) IN GENERAL.—Whenever the Com-  
25 mission requires payments by a runoff en-

1           tity that has assumed asbestos-related li-  
2           abilities from a Lloyd's syndicate or names  
3           that are members of such a syndicate, the  
4           Commission shall not require payments  
5           from such syndicates and names to the ex-  
6           tent that the runoff entity makes its re-  
7           quired payments. In addition, such syn-  
8           dicates and names shall be required to  
9           make payments to the Fund in the amount  
10          of any adjustment granted to the runoff  
11          entity for severe financial hardship or ex-  
12          ceptional circumstances.

13           (ii) INCLUDED RUNOFF ENTITIES.—  
14          Subject to clause (i), a runoff entity shall  
15          include any direct insurer or reinsurer  
16          whose asbestos liability reserves have been  
17          transferred, directly or indirectly, to the  
18          runoff entity and on whose behalf the run-  
19          off entity handles or adjusts and, where  
20          appropriate, pays asbestos claims.

21           (E) FINANCIAL HARDSHIP AND EXCEP-  
22          TIONAL CIRCUMSTANCE ADJUSTMENTS.—

23           (i) IN GENERAL.—Under the proce-  
24          dures established in subsection (b), an in-  
25          surer participant may seek adjustment of

1 the amount of its payments based on ex-  
2 ceptional circumstances or severe financial  
3 hardship.

4 (ii) FINANCIAL ADJUSTMENTS.—An  
5 insurer participant may qualify for an ad-  
6 justment based on severe financial hard-  
7 ship by demonstrating that payment of the  
8 amounts required by the Commission’s  
9 methodology would jeopardize the solvency  
10 of such participant.

11 (iii) EXCEPTIONAL CIRCUMSTANCE  
12 ADJUSTMENT.—An insurer participant  
13 may qualify for an adjustment based on  
14 exceptional circumstances by dem-  
15 onstrating—

16 (I) that the amount of its pay-  
17 ments under the Commission’s alloca-  
18 tion methodology is exceptionally in-  
19 equitable when measured against the  
20 amount of the likely cost to the par-  
21 ticipant of its future liability in the  
22 tort system in the absence of the  
23 Fund;

1 (II) an offset credit as described  
2 in subparagraphs (A) and (C) of sub-  
3 section (b)(4); or

4 (III) other exceptional cir-  
5 cumstances.

6 The Commission may determine whether  
7 to grant an adjustment and the size of any  
8 such adjustment, but adjustments shall not  
9 reduce the aggregate payment obligations  
10 of insurer participants specified in para-  
11 graph (2)(A) and subparagraph (C) of this  
12 paragraph.

13 (iv) TIME PERIOD OF ADJUSTMENT.—  
14 Except for adjustments for offset credits,  
15 adjustments granted under this subsection  
16 shall have a term not to exceed 3 years. An  
17 insurer participant may renew its adjust-  
18 ment by demonstrating to the Adminis-  
19 trator that it remains justified.

20 (b) PROCEDURE FOR NOTIFYING INSURER PARTICI-  
21 PANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

22 (1) NOTICE TO PARTICIPANTS.—Not later than  
23 30 days after promulgation of the final rule estab-  
24 lishing an allocation methodology under subsection  
25 (a)(1), the Commission shall—

1 (A) directly notify all reasonably identifi-  
2 able insurer participants of the requirement to  
3 submit information necessary to calculate the  
4 amount of any required payment to the Fund  
5 under the allocation methodology; and

6 (B) publish in the Federal Register a no-  
7 tice—

8 (i) requiring any person who may be  
9 an insurer participant (as determined by  
10 criteria outlined in the notice) to submit  
11 such information; and

12 (ii) that includes a list of all insurer  
13 participants notified by the Commission  
14 under subparagraph (A), and provides for  
15 30 days for the submission of comments or  
16 information regarding the completeness  
17 and accuracy of the list of identified in-  
18 surer participants.

19 (2) RESPONSE REQUIRED BY INDIVIDUAL IN-  
20 SURER PARTICIPANTS.—

21 (A) IN GENERAL.—Any person who re-  
22 ceives notice under paragraph (1)(A), and any  
23 other person meeting the criteria specified in  
24 the notice published under paragraph (1)(B),  
25 shall respond by providing the Commission with

1 all the information requested in the notice  
2 under a schedule or by a date established by  
3 the Commission.

4 (B) CERTIFICATION.—The response sub-  
5 mitted under subparagraph (A) shall be signed  
6 by a responsible corporate officer, general part-  
7 ner, proprietor, or individual of similar author-  
8 ity, who shall certify under penalty of law the  
9 completeness and accuracy of the information  
10 submitted.

11 (3) NOTICE TO INSURER PARTICIPANTS OF INI-  
12 TIAL PAYMENT DETERMINATION.—

13 (A) IN GENERAL.—

14 (i) NOTICE TO INSURERS.—Not later  
15 than 120 days after receipt of the informa-  
16 tion required by paragraph (2), the Com-  
17 mission shall send each insurer participant  
18 a notice of initial determination requiring  
19 payments to the Fund, which shall be  
20 based on the information received from the  
21 participant in response to the Commis-  
22 sion's request for information. An insurer  
23 participant's payments shall be payable  
24 over the schedule established in subsection  
25 (a)(3)(C), in annual amounts proportionate

1 to the aggregate annual amount of pay-  
2 ments for all insurer participants for the  
3 applicable year.

4 (ii) PUBLIC NOTICE.—Not later than  
5 7 days after sending the notification of ini-  
6 tial determination to insurer participants,  
7 the Commission shall publish in the Fed-  
8 eral Register a notice listing the insurer  
9 participants that have been sent such noti-  
10 fication, and the initial determination on  
11 the payment obligation of each identified  
12 participant.

13 (B) NO RESPONSE; INCOMPLETE RE-  
14 SPONSE.—If no response is received from an in-  
15 surer participant, or if the response is incom-  
16 plete, the initial determination requiring a pay-  
17 ment from the insurer participant shall be  
18 based on the best information available to the  
19 Commission.

20 (4) COMMISSION REVIEW, REVISION, AND FI-  
21 NALIZATION OF INITIAL PAYMENT DETERMINA-  
22 TIONS.—

23 (A) COMMENTS FROM INSURER PARTICI-  
24 PANTS.—Not later than 30 days after receiving  
25 a notice of initial determination from the Com-

1 mission, an insurer participant may provide the  
2 Commission with additional information to sup-  
3 port adjustments to the required payments to  
4 reflect severe financial hardship or exceptional  
5 circumstances, including the provision of an off-  
6 set credit for an insurer participant for the  
7 amount of any asbestos-related payments it  
8 made or was legally obligated to make, includ-  
9 ing payments released from an escrow, as the  
10 result of a bankruptcy judicially confirmed after  
11 May 22, 2003, but before the date of enactment  
12 of this Act.

13 (B) ADDITIONAL PARTICIPANTS.—If, be-  
14 fore the final determination of the Commission,  
15 the Commission receives information that an  
16 additional person may qualify as an insurer  
17 participant, the Commission shall require such  
18 person to submit information necessary to de-  
19 termine whether payments from that person  
20 should be required, in accordance with the re-  
21 quirements of this subsection.

22 (C) REVISION PROCEDURES.—The Com-  
23 mission shall adopt procedures for revising ini-  
24 tial payments based on information received  
25 under subparagraphs (A) and (B), including a



1 provision requiring an offset credit for an in-  
2 surer participant for the amount of any asbes-  
3 tos-related payments it made or was legally ob-  
4 ligated to make, including payments released  
5 from an escrow, as the result of a bankruptcy  
6 confirmed after May 22, 2003, but before the  
7 date of enactment of this Act.

8 (5) EXAMINATIONS AND SUBPOENAS.—

9 (A) EXAMINATIONS.—The Commission  
10 may conduct examinations of the books and  
11 records of insurer participants to determine the  
12 completeness and accuracy of information sub-  
13 mitted, or required to be submitted, to the  
14 Commission for purposes of determining partic-  
15 ipant payments.

16 (B) SUBPOENAS.—The Commission may  
17 request the Attorney General to subpoena per-  
18 sons to compel testimony, records, and other in-  
19 formation relevant to its responsibilities under  
20 this section. The Attorney General may enforce  
21 such subpoena in appropriate proceedings in  
22 the United States district court for the district  
23 in which the person to whom the subpoena was  
24 addressed resides, was served, or transacts  
25 business.

1           (6) ESCROW PAYMENTS.—Without regard to an  
2 insurer participant’s payment obligation under this  
3 section, any escrow or similar account established  
4 before the date of enactment of this Act by an in-  
5 surer participant in connection with an asbestos  
6 trust fund that has not been judicially confirmed by  
7 final order by the date of enactment of this Act shall  
8 be the property of the insurer participant and re-  
9 turned to that insurer participant.

10           (7) NOTICE TO INSURER PARTICIPANTS OF  
11 FINAL PAYMENT DETERMINATIONS.—Not later than  
12 60 days after the notice of initial determination is  
13 sent to the insurer participants, the Commission  
14 shall send each insurer participant a notice of final  
15 determination.

16           (c) INSURER PARTICIPANTS VOLUNTARY ALLOCA-  
17 TION AGREEMENT.—

18           (1) IN GENERAL.—Not later than 30 days after  
19 the Commission proposes its rule establishing an al-  
20 location methodology under subsection (a)(1), direct  
21 insurer participants licensed or domiciled in the  
22 United States, other direct insurer participants, re-  
23 insurer participants licensed or domiciled in the  
24 United States, or other reinsurer participants, may  
25 submit an allocation agreement, approved by all of

1 the participants in the applicable group, to the Com-  
2 mission.

3 (2) ALLOCATION AGREEMENT.—To the extent  
4 the participants in any such applicable group volun-  
5 tarily agree upon an allocation arrangement, any  
6 such allocation agreement shall only govern the allo-  
7 cation of payments within that group and shall not  
8 determine the aggregate amount due from that  
9 group.

10 (3) CERTIFICATION.—The Commission shall de-  
11 termine whether an allocation agreement submitted  
12 under subparagraph (A) meets the requirements of  
13 this subtitle and, if so, shall certify the agreement  
14 as establishing the allocation methodology governing  
15 the individual payment obligations of the partici-  
16 pants who are parties to the agreement. The author-  
17 ity of the Commission under this subtitle shall, with  
18 respect to participants who are parties to a certified  
19 allocation agreement, terminate on the day after the  
20 Commission certifies such agreement. Under sub-  
21 section (f), the Administrator shall assume responsi-  
22 bility, if necessary, for calculating the individual  
23 payment obligations of participants who are parties  
24 to the certified agreement.

25 (d) COMMISSION REPORT.—

1           (1) RECIPIENTS.—Until the work of the Com-  
2 mission has been completed and the Commission ter-  
3 minated, the Commission shall submit an annual re-  
4 port, containing the information described under  
5 paragraph (2), to—

6                   (A) the Committee on the Judiciary of the  
7 Senate;

8                   (B) the Committee on the Judiciary of the  
9 House of Representatives; and

10                   (C) the Administrator.

11           (2) CONTENTS.—The report under paragraph  
12 (1) shall state the amount that each insurer partici-  
13 pant is required to pay to the Fund, including the  
14 payment schedule for such payments.

15           (e) INTERIM PAYMENTS.—

16                   (1) AUTHORITY OF ADMINISTRATOR.—During  
17 the period between the date of enactment of this Act  
18 and the date when the Commission issues its final  
19 determinations of payments, the Administrator shall  
20 have the authority to require insurer participants to  
21 make interim payments to the Fund to assure ade-  
22 quate funding by insurer participants during such  
23 period.

24                   (2) AMOUNT OF INTERIM PAYMENTS.—During  
25 any applicable year, the Administrator may require

1 insurer participants to make aggregate interim pay-  
2 ments not to exceed the annual aggregate amount  
3 specified in subsection (a)(3)(C).

4 (3) ALLOCATION OF PAYMENTS.—Interim pay-  
5 ments shall be allocated among individual insurer  
6 participants on an equitable basis as determined by  
7 the Administrator. All payments required under this  
8 subparagraph shall be credited against the partici-  
9 pant’s ultimate payment obligation to the Fund es-  
10 tablished by the Commission. If an interim payment  
11 exceeds the ultimate payment, the Fund shall pay  
12 interest on the amount of the overpayment at a rate  
13 determined by the Administrator. If the ultimate  
14 payment exceeds the interim payment, the partici-  
15 pant shall pay interest on the amount of the under-  
16 payment at the same rate. Any participant may seek  
17 an exemption from or reduction in any payment re-  
18 quired under this subsection under the financial  
19 hardship and exceptional circumstance standards es-  
20 tablished in subsection (a)(3)(D).

21 (4) APPEAL OF INTERIM PAYMENT DECI-  
22 SIONS.—A decision by the Administrator to establish  
23 an interim payment obligation shall be considered  
24 final agency action and reviewable under section

1 303, except that the reviewing court may not stay an  
2 interim payment during the pendency of the appeal.

3 (f) TRANSFER OF AUTHORITY FROM THE COMMIS-  
4 SION TO THE ADMINISTRATOR.—

5 (1) IN GENERAL.—Upon termination of the  
6 Commission under section 215, the Administrator  
7 shall assume all the responsibilities and authority of  
8 the Commission, except that the Administrator shall  
9 not have the power to modify the allocation method-  
10 ology established by the Commission or by certified  
11 agreement or to promulgate a rule establishing any  
12 such methodology.

13 (2) FINANCIAL HARDSHIP AND EXCEPTIONAL  
14 CIRCUMSTANCE ADJUSTMENTS.—Upon termination  
15 of the Commission under section 215, the Adminis-  
16 trator shall have the authority, upon application by  
17 any insurer participant, to make adjustments to an-  
18 nual payments upon the same grounds as provided  
19 in subsection (a)(3)(D). Adjustments granted under  
20 this subsection shall have a term not to exceed 3  
21 years. An insurer participant may renew its adjust-  
22 ment by demonstrating that it remains justified.  
23 Upon the grant of any adjustment, the Adminis-  
24 trator shall increase the payments required of all  
25 other insurer participants so that there is no reduc-

1       tion in the aggregate payment required of all insurer  
 2       participants for the applicable years. The increase in  
 3       an insurer participant's required payment shall be in  
 4       proportion to such participant's share of the aggregate  
 5       payment obligation of all insurer participants.

6           (3) FINANCIAL SECURITY REQUIREMENTS.—

7       Whenever an insurer participant's A.M. Best's  
 8       claims payment rating or Standard and Poor's fi-  
 9       nancial strength rating falls below A-, and until  
 10      such time as either the insurer participant's A.M.  
 11      Best's Rating or Standard and Poor's rating is  
 12      equal to or greater than A-, the Administrator  
 13      shall have the authority to require that the partici-  
 14      pating insurer either—

15           (A) pay the present value of its remaining

16           Fund payments at a discount rate determined  
 17           by the Administrator; or

18           (B) provide an evergreen letter of credit or

19           financial guarantee for future payments issued

20           by an institution with an A.M. Best's claims

21           payment rating or Standard & Poor's financial

22           strength rating of at least A+.

23      (g) JUDICIAL REVIEW.—The Commission's rule es-

24      tablishing an allocation methodology, its final determina-

1 tions of payment obligations and other final action shall  
2 be judicially reviewable as provided in title III.

3 **SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.**

4 (a) RULEMAKING.—The Commission shall promul-  
5 gate such rules and regulations as necessary to implement  
6 its authority under this Act, including regulations gov-  
7 erning an allocation methodology. Such rules and regula-  
8 tions shall be promulgated after providing interested par-  
9 ties with the opportunity for notice and comment.

10 (b) HEARINGS.—The Commission may hold such  
11 hearings, sit and act at such times and places, take such  
12 testimony, and receive such evidence as the Commission  
13 considers advisable to carry out this Act. The Commission  
14 shall also hold a hearing on any proposed regulation estab-  
15 lishing an allocation methodology, before the Commis-  
16 sion's adoption of a final regulation.

17 (c) INFORMATION FROM FEDERAL AND STATE  
18 AGENCIES.—The Commission may secure directly from  
19 any Federal or State department or agency such informa-  
20 tion as the Commission considers necessary to carry out  
21 this Act. Upon request of the Chairman of the Commis-  
22 sion, the head of such department or agency shall furnish  
23 such information to the Commission.

24 (d) POSTAL SERVICES.—The Commission may use  
25 the United States mails in the same manner and under



1 the same conditions as other departments and agencies of  
2 the Federal Government.

3 (e) GIFTS.—The Commission may not accept, use, or  
4 dispose of gifts or donations of services or property.

5 (f) EXPERT ADVICE.—In carrying out its responsibil-  
6 ities, the Commission may enter into such contracts and  
7 agreements as the Commission determines necessary to  
8 obtain expert advice and analysis.

9 **SEC. 214. PERSONNEL MATTERS.**

10 (a) COMPENSATION OF MEMBERS.—Each member of  
11 the Commission shall be compensated at a rate equal to  
12 the daily equivalent of the annual rate of basic pay pre-  
13 scribed for level IV of the Executive Schedule under sec-  
14 tion 5315 of title 5, United States Code, for each day (in-  
15 cluding travel time) during which such member is engaged  
16 in the performance of the duties of the Commission.

17 (b) TRAVEL EXPENSES.—The members of the Com-  
18 mission shall be allowed travel expenses, including per  
19 diem in lieu of subsistence, at rates authorized for employ-  
20 ees of agencies under subchapter I of chapter 57 of title  
21 5, United States Code, while away from their homes or  
22 regular places of business in the performance of services  
23 for the Commission.

24 (c) STAFF.—

1           (1) IN GENERAL.—The Chairman of the Com-  
2 mission may, without regard to the civil service laws  
3 and regulations, appoint and terminate an executive  
4 director and such other additional personnel as may  
5 be necessary to enable the Commission to perform  
6 its duties. The employment of an executive director  
7 shall be subject to confirmation by the Commission.

8           (2) COMPENSATION.—The Chairman of the  
9 Commission may fix the compensation of the execu-  
10 tive director and other personnel without regard to  
11 chapter 51 and subchapter III of chapter 53 of title  
12 5, United States Code, relating to classification of  
13 positions and General Schedule pay rates, except  
14 that the rate of pay for the executive director and  
15 other personnel may not exceed the rate payable for  
16 level V of the Executive Schedule under section 5316  
17 of such title.

18          (d) DETAIL OF GOVERNMENT EMPLOYEES.—Any  
19 Federal Government employee may be detailed to the  
20 Commission without reimbursement, and such detail shall  
21 be without interruption or loss of civil service status or  
22 privilege.

23          (e) PROCUREMENT OF TEMPORARY AND INTERMIT-  
24 TENT SERVICES.—The Chairman of the Commission may  
25 procure temporary and intermittent services under section

1 3109(b) of title 5, United States Code, at rates for individ-  
 2 uals which do not exceed the daily equivalent of the annual  
 3 rate of basic pay prescribed for level V of the Executive  
 4 Schedule under section 5316 of such title.

5 **SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMIS-**  
 6 **SION.**

7 The Commission shall terminate 90 days after the  
 8 last date on which the Commission makes a final deter-  
 9 mination of contribution under section 212(b) or 90 days  
 10 after the last appeal of any final action by the Commission  
 11 is exhausted, whichever occurs later.

12 **SEC. 216. EXPENSES AND COSTS OF COMMISSION.**

13 All expenses of the Commission shall be paid from  
 14 the Fund.

15 **Subtitle C—Asbestos Injury Claims**  
 16 **Resolution Fund**

17 **SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS**  
 18 **RESOLUTION FUND.**

19 (a) ESTABLISHMENT.—There is established in the  
 20 Office of Asbestos Disease Compensation the Asbestos In-  
 21 jury Claims Resolution Fund, which shall be available to  
 22 pay—

23 (1) claims for awards for an eligible disease or  
 24 condition determined under title I;

1           (2) claims for reimbursement for medical moni-  
2           toring determined under title I;

3           (3) principal and interest on borrowings under  
4           subsection (b);

5           (4) the remaining obligations to the asbestos  
6           trust of a debtor and the class action trust under  
7           section 405(f)(8); and

8           (5) administrative expenses to carry out the  
9           provisions of this Act.

10       (b) BORROWING AUTHORITY.—

11           (1) IN GENERAL.—The Administrator is au-  
12           thorized to borrow from time to time amounts as set  
13           forth in this subsection, for purposes of enhancing li-  
14           quidity available to the Fund for carrying out the  
15           obligations of the Fund under this Act. The Admin-  
16           istrator may authorize borrowing in such form, over  
17           such term, with such necessary disclosure to its  
18           lenders as will most efficiently enhance the Fund's  
19           liquidity.

20           (2) FEDERAL FINANCING BANK.—In addition to  
21           the general authority in paragraph (1), the Adminis-  
22           trator may borrow from the Federal Financing Bank  
23           in accordance with section 6 of the Federal Financ-  
24           ing Bank Act of 1973 (12 U.S.C. 2285), as needed

1 for performance of the Administrator's duties under  
2 this Act for the first 5 years.

3 (3) BORROWING CAPACITY.—The maximum  
4 amount that may be borrowed under this subsection  
5 at any given time is the amount that, taking into ac-  
6 count all payment obligations related to all previous  
7 amounts borrowed in accordance with this sub-  
8 section and all committed obligations of the Fund at  
9 the time of borrowing, can be repaid in full (with in-  
10 terest) in a timely fashion from—

11 (A) the available assets of the Fund as of  
12 the time of borrowing; and

13 (B) all amounts expected to be paid by  
14 participants during the subsequent 10 years.

15 (4) REPAYMENT OBLIGATIONS.—Repayment of  
16 monies borrowed by the Administrator under this  
17 subsection is limited solely to amounts available in  
18 the Asbestos Injury Claims Resolution Fund estab-  
19 lished under this section.

20 (c) LOCKBOX FOR SEVERE ASBESTOS-RELATED IN-  
21 JURY CLAIMANTS.—

22 (1) IN GENERAL.—Within the Fund, the Ad-  
23 ministrator shall establish the following accounts:

24 (A) A Mesothelioma Account, which shall  
25 be used solely to make payments to claimants

1 eligible for an award under the criteria of Level  
2 IX.

3 (B) A Lung Cancer Account, which shall  
4 be used solely to make payments to claimants  
5 eligible for an award under the criteria of Level  
6 VIII.

7 (C) A Severe Asbestosis Account, which  
8 shall be used solely to make payments to claim-  
9 ants eligible for an award under the criteria of  
10 Level V.

11 (D) A Moderate Asbestosis Account, which  
12 shall be used solely to make payments to claim-  
13 ants eligible for an award under the criteria of  
14 Level IV.

15 (2) ALLOCATION.—The Administrator shall al-  
16 locate to each of the 4 accounts established under  
17 paragraph (1) a portion of payments made to the  
18 Fund adequate to compensate all anticipated claim-  
19 ants for each account. Within 60 days after the date  
20 of enactment of this Act, and periodically during the  
21 life of the Fund, the Administrator shall determine  
22 an appropriate amount to allocate to each account  
23 after consulting appropriate epidemiological and sta-  
24 tistical studies.

25 (d) AUDIT AUTHORITY.—

1           (1) IN GENERAL.—For the purpose of  
2           ascertaining the correctness of any information pro-  
3           vided or payments made to the Fund, or deter-  
4           mining whether a person who has not made a pay-  
5           ment to the Fund was required to do so, or deter-  
6           mining the liability of any person for a payment to  
7           the Fund, or collecting any such liability, or inquir-  
8           ing into any offense connected with the administra-  
9           tion or enforcement of this title, the Administrator  
10          is authorized—

11                   (A) to examine any books, papers, records,  
12                   or other data which may be relevant or material  
13                   to such inquiry;

14                   (B) to summon the person liable for a pay-  
15                   ment under this title, or officer or employee of  
16                   such person, or any person having possession,  
17                   custody, or care of books of account containing  
18                   entries relating to the business of the person  
19                   liable or any other person the Administrator  
20                   may deem proper, to appear before the Admin-  
21                   istrator at a time and place named in the sum-  
22                   mons and to produce such books, papers,  
23                   records, or other data, and to give such testi-  
24                   mony, under oath, as may be relevant or mate-  
25                   rial to such inquiry; and

1 (C) to take such testimony of the person  
2 concerned, under oath, as may be relevant or  
3 material to such inquiry.

4 (2) FALSE, FRAUDULENT, OR FICTITIOUS  
5 STATEMENTS OR PRACTICES.—If the Administrator  
6 determines that materially false, fraudulent, or ficti-  
7 tious statements or practices have been submitted or  
8 engaged in by persons submitting information to the  
9 Administrator or to the Asbestos Insurers Commis-  
10 sion or any other person who provides evidence in  
11 support of such submissions for purposes of deter-  
12 mining payment obligations under this Act, the Ad-  
13 ministrator may impose a civil penalty not to exceed  
14 \$10,000 on any person found to have submitted or  
15 engaged in a materially false, fraudulent, or ficti-  
16 tious statement or practice under this Act. The Ad-  
17 ministrator shall promulgate appropriate regulations  
18 to implement this paragraph.

19 (e) IDENTITY OF CERTAIN DEFENDANT PARTICI-  
20 PANTS; TRANSPARENCY.—

21 (1) SUBMISSION OF INFORMATION.—Not later  
22 than 60 days after the date of enactment of this  
23 Act, any person who, acting in good faith, has  
24 knowledge that such person or such person's affili-  
25 ated group has prior asbestos expenditures of



1       \$1,000,000 or greater, shall submit to the Adminis-  
2       trator—

3               (A) either the name of such person, or  
4               such person's ultimate parent; and

5               (B) the likely tier to which such person or  
6               affiliated group may be assigned under this Act.

7       (2) PUBLICATION.—Not later than 20 days  
8       after the end of the 60-day period referred to in  
9       paragraph (1), the Administrator or Interim Admin-  
10       istrator, if the Administrator is not yet appointed,  
11       shall publish in the Federal Register a list of sub-  
12       missions required by this subsection, including the  
13       name of such persons or ultimate parents and the  
14       likely tier to which such persons or affiliated groups  
15       may be assigned. After publication of such list, any  
16       person who, acting in good faith, has knowledge that  
17       any other person has prior asbestos expenditures of  
18       \$1,000,000 or greater may submit to the Adminis-  
19       trator or Interim Administrator information on the  
20       identity of that person and the person's prior asbes-  
21       tos expenditures.

22       (f) NO PRIVATE RIGHT OF ACTION.—Except as pro-  
23       vided in sections 203(b)(2)(D)(ii) and 204(f)(3), there  
24       shall be no private right of action under any Federal or  
25       State law against any participant based on a claim of com-

1 pliance or noncompliance with this Act or the involvement  
2 of any participant in the enactment of this Act.

3 **SEC. 222. MANAGEMENT OF THE FUND.**

4 (a) IN GENERAL.—Amounts in the Fund shall be  
5 held for the exclusive purpose of providing benefits to as-  
6 bestos claimants and their beneficiaries, including those  
7 provided in subsection (c), and to otherwise defray the rea-  
8 sonable expenses of administering the Fund.

9 (b) INVESTMENTS.—

10 (1) IN GENERAL.—Amounts in the Fund shall  
11 be administered and invested with the care, skill,  
12 prudence, and diligence, under the circumstances  
13 prevailing at the time of such investment, that a  
14 prudent person acting in a like capacity and manner  
15 would use.

16 (2) STRATEGY.—The Administrator shall invest  
17 amounts in the Fund in a manner that enables the  
18 Fund to make current and future distributions to or  
19 for the benefit of asbestos claimants. In pursuing an  
20 investment strategy under this subparagraph, the  
21 Administrator shall consider, to the extent relevant  
22 to an investment decision or action—

23 (A) the size of the Fund;

24 (B) the nature and estimated duration of  
25 the Fund;

1 (C) the liquidity and distribution require-  
2 ments of the Fund;

3 (D) general economic conditions at the  
4 time of the investment;

5 (E) the possible effect of inflation or defla-  
6 tion on Fund assets;

7 (F) the role that each investment or course  
8 of action plays with respect to the overall assets  
9 of the Fund;

10 (G) the expected amount to be earned (in-  
11 cluding both income and appreciation of cap-  
12 ital) through investment of amounts in the  
13 Fund; and

14 (H) the needs of asbestos claimants for  
15 current and future distributions authorized  
16 under this Act.

17 (c) MESOTHELIOMA RESEARCH AND TREATMENT  
18 CENTERS.—

19 (1) IN GENERAL.—The Administrator shall pro-  
20 vide \$1,000,000 from the Fund for each of fiscal  
21 years 2005 through 2009 for each of up to 10 meso-  
22 thelioma disease research and treatment centers.

23 (2) REQUIREMENTS.—The Centers shall—

24 (A) be chosen by the Director of the Na-  
25 tional Institutes of Health;

1 (B) be chosen through competitive peer re-  
2 view;

3 (C) be geographically distributed through-  
4 out the United States with special consideration  
5 given to areas of high incidence of mesothe-  
6 lioma disease;

7 (D) be closely associated with Department  
8 of Veterans Affairs medical centers to provide  
9 research benefits and care to veterans who have  
10 suffered excessively from mesothelioma;

11 (E) be engaged in research to provide  
12 mechanisms for detection and prevention of  
13 mesothelioma, particularly in the areas of pain  
14 management and cures;

15 (F) be engaged in public education about  
16 mesothelioma and prevention, screening, and  
17 treatment;

18 (G) be participants in the National Meso-  
19 thelioma Registry; and

20 (H) be coordinated in their research and  
21 treatment efforts with other Centers and insti-  
22 tutions involved in exemplary mesothelioma re-  
23 search.

24 (d) BANKRUPTCY TRUST GUARANTEE.—

1           (1) IN GENERAL.—Notwithstanding any other  
2 provision of this Act, the Administrator shall have  
3 the authority to impose a pro rata surcharge on all  
4 participants under this subsection to ensure the li-  
5 quidity of the Fund, if—

6           (A) the declared assets from 1 or more  
7 bankruptcy trusts established under a plan of  
8 reorganization confirmed and substantially con-  
9 summated on or before July 31, 2004, are not  
10 available to the Fund because a final judgment  
11 that has been entered by a court and is no  
12 longer subject to any appeal or review has en-  
13 joined the transfer of assets required under sec-  
14 tion 524(j)(2) of title 11, United States Code  
15 (as amended by section 402(f) of this Act); and

16           (B) borrowing is insufficient to assure the  
17 Fund’s ability to meet its obligations under this  
18 Act such that the required borrowed amount is  
19 likely to increase the risk of termination of this  
20 Act under section 405 based on reasonable  
21 claims projections.

22           (2) ALLOCATION.—Any surcharge imposed  
23 under this subsection shall be imposed over a period  
24 of 5 years on a pro rata basis upon all participants,  
25 in accordance with each participant’s relative annual

1 liability under this subtitle and subtitle B for those  
2 5 years.

3 (3) CERTIFICATION.—

4 (A) IN GENERAL.—Before imposing a sur-  
5 charge under this subsection, the Administrator  
6 shall publish a notice in the Federal Register  
7 and provide in such notice for a public comment  
8 period of 30 days.

9 (B) CONTENTS OF NOTICE.—The notice  
10 required under subparagraph (A) shall in-  
11 clude—

12 (i) information explaining the cir-  
13 cumstances that make a surcharge nec-  
14 essary and a certification that the require-  
15 ments under paragraph (1) are met;

16 (ii) the amount of the declared assets  
17 from any trust established under a plan of  
18 reorganization confirmed and substantially  
19 consummated on or before July 31, 2004,  
20 that was not made, or is no longer, avail-  
21 able to the Fund;

22 (iii) the total aggregate amount of the  
23 necessary surcharge; and

1 (iv) the surcharge amount for each  
2 tier and subtier of defendant participants  
3 and for each insurer participant.

4 (C) FINAL NOTICE.—The Administrator  
5 shall publish a final notice in the Federal Reg-  
6 ister and provide each participant with written  
7 notice of that participant’s schedule of pay-  
8 ments under this subsection. In no event shall  
9 any required surcharge under this subsection be  
10 due before 60 days after the Administrator  
11 publishes the final notice in the Federal Reg-  
12 ister and provides each participant with written  
13 notice of its schedule of payments.

14 (4) MAXIMUM AMOUNT.—In no event shall the  
15 total aggregate surcharge imposed by the Adminis-  
16 trator exceed the lesser of—

17 (A) the total aggregate amount of the de-  
18 clared assets of the trusts established under a  
19 plan of reorganization confirmed and substan-  
20 tially consummated prior to July 31, 2004, that  
21 are no longer available to the Fund; or

22 (B) \$4,000,000,000.

23 (5) DECLARED ASSETS.—

24 (A) IN GENERAL.—In this subsection, the  
25 term “declared assets” means—

1 (i) the amount of assets transferred  
2 by any trust established under a plan of  
3 reorganization confirmed and substantially  
4 consummated on or before July 31, 2004,  
5 to the Fund that is required to be returned  
6 to that trust under the final judgment de-  
7 scribed in paragraph (1)(A); or

8 (ii) if no assets were transferred by  
9 the trust to the Fund, the amount of as-  
10 sets the Administrator determines would  
11 have been available for transfer to the  
12 Fund from that trust under section 402(f).

13 (B) DETERMINATION.—In making a deter-  
14 mination under subparagraph (A)(ii), the Ad-  
15 ministrator may rely on any information rea-  
16 sonably available, and may request, and use  
17 subpoena authority of the Administrator if nec-  
18 essary to obtain, relevant information from any  
19 such trust or its trustees.

20 (e) BANKRUPTCY TRUST CREDITS.—

21 (1) IN GENERAL.—Notwithstanding any other  
22 provision of this Act, but subject to paragraph (2)  
23 of this subsection, the Administrator shall provide a  
24 credit toward the aggregate payment obligations  
25 under sections 202(a)(2) and 212(a)(2)(A) for as-



1 sets received by the Fund from any bankruptcy trust  
2 established under a plan of reorganization confirmed  
3 and substantially consummated after July 31, 2004.

4 (2) ALLOCATION OF CREDITS.—The Adminis-  
5 trator shall allocate, for each such bankruptcy trust,  
6 the credits for such assets between the defendant  
7 and insurer aggregate payment obligations as fol-  
8 lows:

9 (A) DEFENDANT PARTICIPANTS.—The ag-  
10 gregate amount that all persons other than in-  
11 surers contributing to the bankruptcy trust  
12 would have been required to pay as Tier I de-  
13 fendants under section 203(b) if the plan of re-  
14 organization under which the bankruptcy trust  
15 was established had not been confirmed and  
16 substantially consummated and the proceeding  
17 under chapter 11 of title 11, United States  
18 Code, that resulted in the establishment of the  
19 bankruptcy trust had remained pending as of  
20 the date of enactment of this Act.

21 (B) INSURER PARTICIPANTS.—The aggre-  
22 gate amount of all credits to which insurers are  
23 entitled to under section 202(c)(4)(A) of the  
24 Act.

1 **SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.**

2 (a) **DEFAULT.**—If any participant fails to make any  
3 payment in the amount of and according to the schedule  
4 under this Act or as prescribed by the Administrator, after  
5 demand and a 30-day opportunity to cure the default,  
6 there shall be a lien in favor of the United States for the  
7 amount of the delinquent payment (including interest)  
8 upon all property and rights to property, whether real or  
9 personal, belonging to such participant.

10 (b) **BANKRUPTCY.**—In the case of a bankruptcy or  
11 insolvency proceeding, the lien imposed under subsection  
12 (a) shall be treated in the same manner as a lien for taxes  
13 due and owing to the United States for purposes of the  
14 provisions of title 11, United States Code, or section  
15 3713(a) of title 31, United States Code. The United  
16 States Bankruptcy Court shall have jurisdiction over any  
17 issue or controversy regarding lien priority and lien perfec-  
18 tion arising in a bankruptcy case due to a lien imposed  
19 under subsection (a).

20 (c) **CIVIL ACTION.**—

21 (1) **IN GENERAL.**—In any case in which there  
22 has been a refusal or failure to pay any liability im-  
23 posed under this Act, the Administrator may bring  
24 a civil action in the United States District Court for  
25 the District of Columbia, or any other appropriate  
26 lawsuit or proceeding outside of the United States—

1 (A) to enforce the liability and any lien of  
2 the United States imposed under this section;

3 (B) to subject any property of the partici-  
4 pant, including any property in which the par-  
5 ticipant has any right, title, or interest to the  
6 payment of such liability; or

7 (C) for temporary, preliminary, or perma-  
8 nent relief.

9 (2) ADDITIONAL PENALTIES.—In any action  
10 under paragraph (1) in which the refusal or failure  
11 to pay was willful, the Administrator may seek re-  
12 covery—

13 (A) of punitive damages;

14 (B) of the costs of any civil action under  
15 this subsection, including reasonable fees in-  
16 curred for collection, expert witnesses, and at-  
17 torney's fees; and

18 (C) in addition to any other penalty, of a  
19 fine equal to the total amount of the liability  
20 that has not been collected.

21 (d) ENFORCEMENT AUTHORITY AS TO INSURER PAR-  
22 TICIPANTS.—

23 (1) IN GENERAL.—In addition to or in lieu of  
24 the enforcement remedies described in subsection  
25 (c), the Administrator may seek to recover amounts

1 in satisfaction of a payment not timely paid by an  
2 insurer participant under the procedures under this  
3 subsection.

4 (2) SUBROGATION.—To the extent required to  
5 establish personal jurisdiction over nonpaying in-  
6 surer participants, the Administrator shall be  
7 deemed to be subrogated to the contractual rights of  
8 participants to seek recovery from nonpaying insur-  
9 ing participants that are domiciled outside the  
10 United States under the policies of liability insur-  
11 ance or contracts of liability reinsurance or  
12 retrocessional reinsurance applicable to asbestos  
13 claims, and the Administrator may bring an action  
14 or an arbitration against the nonpaying insurer par-  
15 ticipants under the provisions of such policies and  
16 contracts, provided that—

17 (A) any amounts collected under this sub-  
18 section shall not increase the amount of deemed  
19 erosion allocated to any policy or contract under  
20 section 404, or otherwise reduce coverage avail-  
21 able to a participant; and

22 (B) subrogation under this subsection shall  
23 have no effect on the validity of the insurance  
24 policies or reinsurance, and any contrary State  
25 law is expressly preempted.

1           (3) RECOVERABILITY OF CONTRIBUTION.—For  
2 purposes of this subsection—

3           (A) all contributions to the Fund required  
4 of a participant shall be deemed to be sums le-  
5 gally required to be paid for bodily injury re-  
6 sulting from exposure to asbestos;

7           (B) all contributions to the Fund required  
8 of any participant shall be deemed to be a sin-  
9 gular loss arising from a single occurrence under  
10 each contract to which the Administrator is  
11 subrogated; and

12           (C) with respect to reinsurance contracts,  
13 all contributions to the Fund required of a par-  
14 ticipant shall be deemed to be payments to a  
15 single claimant for a single loss.

16           (4) NO CREDIT OR OFFSET.—In any action  
17 brought under this subsection, the nonpaying insurer  
18 or reinsurer shall be entitled to no credit or offset  
19 for amounts collectible or potentially collectible from  
20 any participant nor shall such defaulting participant  
21 have any right to collect any sums payable under  
22 this section from any participant.

23           (5) COOPERATION.—Insureds and cedents shall  
24 cooperate with the Administrator's reasonable re-  
25 quests for assistance in any such proceeding. The

1 positions taken or statements made by the Adminis-  
2 trator in any such proceeding shall not be binding  
3 on or attributed to the insureds or cedents in any  
4 other proceeding. The outcome of such a proceeding  
5 shall not have a preclusive effect on the insureds or  
6 cedents in any other proceeding and shall not be ad-  
7 missible against any subrogee under this section.  
8 The Administrator shall have the authority to settle  
9 or compromise any claims against a nonpaying in-  
10 surer participant under this subsection.

11 (e) BAR ON UNITED STATES BUSINESS.—If any di-  
12 rect insurer or reinsurer refuses to furnish any informa-  
13 tion requested by or to pay any contribution required by  
14 this Act, then, in addition to any other penalties imposed  
15 by this Act, the Administrator may issue an order barring  
16 such entity and its affiliates from insuring risks located  
17 within the United States or otherwise doing business with-  
18 in the United States. Insurer participants or their affili-  
19 ates seeking to obtain a license from any State to write  
20 any type of insurance shall be barred from obtaining any  
21 such license until payment of all contributions required as  
22 of the date of license application.

23 (f) CREDIT FOR REINSURANCE.—If the Adminis-  
24 trator determines that an insurer participant that is a re-  
25 insurer is in default in paying any required contribution

1 or otherwise not in compliance with this Act, the Adminis-  
2 trator may issue an order barring any direct insurer par-  
3 ticipant from receiving credit for reinsurance purchased  
4 from the defaulting reinsurer. Any State law governing  
5 credit for reinsurance to the contrary is preempted.

6 (g) DEFENSE LIMITATION.—In any proceeding under  
7 this section, the participant shall be barred from bringing  
8 any challenge to any determination of the Administrator  
9 or the Asbestos Insurers Commission regarding its liability  
10 under this Act, or to the constitutionality of this Act or  
11 any provision thereof, if such challenge could have been  
12 made during the review provided under section 204(i)(10),  
13 or in a judicial review proceeding under section 303.

14 (h) DEPOSIT OF FUNDS.—

15 (1) IN GENERAL.—Any funds collected under  
16 subsection (c)(2) (A) or (C) shall be—

17 (A) deposited in the Fund; and

18 (B) used only to pay—

19 (i) claims for awards for an eligible  
20 disease or condition determined under title  
21 I; or

22 (ii) claims for reimbursement for med-  
23 ical monitoring determined under title I.

1           (2) NO EFFECT ON OTHER LIABILITIES.—The  
2           imposition of a fine under subsection (c)(2)(C) shall  
3           have no effect on—

4                   (A) the assessment of contributions under  
5                   subtitles A and B; or

6                   (B) any other provision of this Act.

7           (i) PROPERTY OF THE ESTATE.—Section 541(b) of  
8           title 11, United States Code, is amended—

9                   (1) in paragraph (4)(B)(ii), by striking “or” at  
10           the end;

11                   (2) in paragraph (5), by striking “prohibition.”  
12           and inserting “prohibition; or”; and

13                   (3) by inserting after paragraph (5) and before  
14           the last undesignated sentence the following:

15                   “(6) the value of any pending claim against or  
16           the amount of an award granted from the Asbestos  
17           Injury Claims Resolution Fund established under  
18           the Fairness in Asbestos Injury Resolution Act of  
19           2005.”.

20 **SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.**

21           If any amount of payment obligation under this title  
22           is not paid on or before the last date prescribed for pay-  
23           ment, the liable party shall pay interest on such amount  
24           at the Federal short-term rate determined under section  
25           6621(b) of the Internal Revenue Code of 1986, plus 5 per-



1 centage points, for the period from such last date to the  
2 date paid.

3 **SEC. 225. EDUCATION, CONSULTATION, SCREENING, AND**  
4 **MONITORING.**

5 (a) IN GENERAL.—The Administrator shall establish  
6 a program for the education, consultation, medical screen-  
7 ing, and medical monitoring of persons with exposure to  
8 asbestos. The program shall be funded by the Fund.

9 (b) OUTREACH AND EDUCATION.—

10 (1) IN GENERAL.—Not later than 1 year after  
11 the date of enactment of this Act, the Administrator  
12 shall establish an outreach and education program,  
13 including a website designed to provide information  
14 about asbestos-related medical conditions to mem-  
15 bers of populations at risk of developing such condi-  
16 tions.

17 (2) INFORMATION.—The information provided  
18 under paragraph (1) shall include information  
19 about—

20 (A) the signs and symptoms of asbestos-re-  
21 lated medical conditions;

22 (B) the value of appropriate medical  
23 screening programs; and

1           (C) actions that the individuals can take to  
2           reduce their future health risks related to as-  
3           bestos exposure.

4           (3) CONTRACTS.—Preference in any contract  
5           under this subsection shall be given to providers that  
6           are existing nonprofit organizations with a history  
7           and experience of providing occupational health out-  
8           reach and educational programs for individuals ex-  
9           posed to asbestos.

10          (c) MEDICAL SCREENING PROGRAM.—

11           (1) ESTABLISHMENT OF PROGRAM.—Not soon-  
12           er than 18 months or later than 24 months after the  
13           Administrator certifies that the Fund is fully oper-  
14           ational and processing claims at a reasonable rate,  
15           the Administrator shall adopt guidelines establishing  
16           a medical screening program for individuals at high  
17           risk of asbestos-related disease resulting from an as-  
18           bestos-related disease. In promulgating such guide-  
19           lines, the Administrator shall consider the views of  
20           the Advisory Committee on Asbestos Disease Com-  
21           pensation, the Medical Advisory Committee, and the  
22           public.

23           (2) ELIGIBILITY CRITERIA.—

24           (A) IN GENERAL.—The guidelines promul-  
25           gated under this subsection shall establish cri-

1           teria for participation in the medical screening  
2           program.

3           (B) CONSIDERATIONS.—In promulgating  
4           eligibility criteria the Administrator shall take  
5           into consideration all factors relevant to the in-  
6           dividual’s effective cumulative exposure to as-  
7           bestos, including—

8                   (i) any industry in which the indi-  
9                   vidual worked;

10                   (ii) the individual’s occupation and  
11                   work setting;

12                   (iii) the historical period in which ex-  
13                   posure took place;

14                   (iv) the duration of the exposure;

15                   (v) the intensity and duration of non-  
16                   occupational exposures; and

17                   (vi) any other factors that the Admin-  
18                   istrator determines relevant.

19           (3) PROTOCOLS.—The guidelines developed  
20           under this subsection shall establish protocols for  
21           medical screening, which shall include—

22                   (A) administration of a health evaluation  
23                   and work history questionnaire;

24                   (B) an evaluation of smoking history;

1 (C) a physical examination by a qualified  
2 physician with a doctor-patient relationship  
3 with the individual;

4 (D) a chest x-ray read by a certified B-  
5 reader as defined under section 121(a)(4); and

6 (E) pulmonary function testing as defined  
7 under section 121(a)(13).

8 (4) FREQUENCY.—The Administrator shall es-  
9 tablish the frequency with which medical screening  
10 shall be provided or be made available to eligible in-  
11 dividuals, which shall be not less than every 5 years.

12 (5) PROVISION OF SERVICES.—The Adminis-  
13 trator shall provide medical screening to eligible in-  
14 dividuals directly or by contract with another agency  
15 of the Federal Government, with State or local gov-  
16 ernments, or with private providers of medical serv-  
17 ices. The Administrator shall establish strict quali-  
18 fications for the providers of such services, and shall  
19 periodically audit the providers of services under this  
20 subsection, to ensure their integrity, high degree of  
21 competence, and compliance with all applicable tech-  
22 nical and professional standards. No provider of  
23 medical screening services may have earned more  
24 than 15 percent of their income from the provision  
25 of services of any kind in connection with asbestos

1 litigation in any of the 3 years preceding the date  
2 of enactment of this Act. All contracts with pro-  
3 viders of medical screening services under this sub-  
4 section shall contain provisions allowing the Admin-  
5 istrator to terminate such contracts for cause if the  
6 Administrator determines that the service provider  
7 fails to meet the qualifications established under this  
8 subsection.

9 (6) LIMITATION OF COMPENSATION FOR SERV-  
10 ICES.—The compensation required to be paid to a  
11 provider of medical screening services for such serv-  
12 ices furnished to an eligible individual shall be lim-  
13 ited to the amount that would be reimbursed at the  
14 time of the furnishing of such services under title  
15 XVIII of the Social Security Act (42 U.S.C. 1395 et  
16 seq.) for similar services if—

17 (A) the individual were entitled to benefits  
18 under part A of such title and enrolled under  
19 part B of such title; and

20 (B) such services are covered under title  
21 XVIII of the Social Security Act (42 U.S.C.  
22 1395 et seq.).

23 (7) FUNDING; PERIODIC REVIEW.—

24 (A) FUNDING.—The Administrator shall  
25 make such funds available from the Fund to

1 implement this section, but not more than  
2 \$30,000,000 each year in each of the 5 years  
3 following the effective date of the medical  
4 screening program. Notwithstanding the pre-  
5 ceding sentence, the Administrator shall sus-  
6 pend the operation of the program or reduce its  
7 funding level if necessary to preserve the sol-  
8 vency of the Fund and to prevent the sunset of  
9 the overall program under section 405(f).

10 (B) REVIEW.—The Administrator’s first  
11 annual report under section 405 following the  
12 close of the 4th year of operation of the medical  
13 screening program shall include an analysis of  
14 the usage of the program, its cost and effective-  
15 ness, its medical value, and the need to con-  
16 tinue that program for an additional 5-year pe-  
17 riod. The Administrator shall also recommend  
18 to Congress any improvements that may be re-  
19 quired to make the program more effective, effi-  
20 cient, and economical, and shall recommend a  
21 funding level for the program for the 5 years  
22 following the period of initial funding referred  
23 to under subparagraph (A).

24 (d) LIMITATION.—In no event shall the total amount  
25 allocated to the medical screening program established

1 under this subsection over the lifetime of the Fund exceed  
2 \$600,000,000.

3 (e) MEDICAL MONITORING PROGRAM AND PROTO-  
4 COLS.—

5 (1) IN GENERAL.—The Administrator shall es-  
6 tablish procedures for a medical monitoring program  
7 for persons exposed to asbestos who have been ap-  
8 proved for level I compensation under section 131.

9 (2) PROCEDURES.—The procedures for medical  
10 monitoring shall include—

11 (A) specific medical tests to be provided to  
12 eligible individuals and the periodicity of those  
13 tests, which shall initially be provided every 3  
14 years and include—

15 (i) administration of a health evalua-  
16 tion and work history questionnaire;

17 (ii) physical examinations, including  
18 blood pressure measurement, chest exam-  
19 ination, and examination for clubbing;

20 (iii) AP and lateral chest x-ray; and

21 (iv) spirometry performed according  
22 to ATS standards;

23 (B) qualifications of medical providers who  
24 are to provide the tests required under subpara-  
25 graph (A); and

1           (C) administrative provisions for reim-  
2           bursement from the Fund of the costs of moni-  
3           toring eligible claimants, including the costs as-  
4           sociated with the visits of the claimants to phy-  
5           sicians in connection with medical monitoring,  
6           and with the costs of performing and analyzing  
7           the tests.

8           (3) PREFERENCES.—

9           (A) IN GENERAL.—In administering the  
10          monitoring program under this subsection, pref-  
11          erence shall be given to medical and program  
12          providers with—

13                 (i) a demonstrated capacity for identi-  
14                 fying, contacting, and evaluating popu-  
15                 lations of workers or others previously ex-  
16                 posed to asbestos; and

17                 (ii) experience in establishing net-  
18                 works of medical providers to conduct med-  
19                 ical screening and medical monitoring ex-  
20                 aminations.

21          (B) PROVISION OF LISTS.—Claimants that  
22          are eligible to participate in the medical moni-  
23          toring program shall be provided with a list of  
24          approved providers in their geographic area at



1           the time such claimants become eligible to re-  
2           ceive medical monitoring.

3           (f) CONTRACTS.—The Administrator may enter into  
4 contracts with qualified program providers that would per-  
5 mit the program providers to undertake large-scale med-  
6 ical screening and medical monitoring programs by means  
7 of subcontracts with a network of medical providers, or  
8 other health providers.

9           (g) REVIEW.—Not later than 5 years after the date  
10 of enactment of this Act, and every 5 years thereafter,  
11 the Administrator shall review, and if necessary update,  
12 the protocols and procedures established under this sec-  
13 tion.

### 14           **TITLE III—JUDICIAL REVIEW**

#### 15           **SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.**

16           (a) EXCLUSIVE JURISDICTION.—The United States  
17 Court of Appeals for the District of Columbia Circuit shall  
18 have exclusive jurisdiction over any action to review rules  
19 or regulations promulgated by the Administrator or the  
20 Asbestos Insurers Commission under this Act.

21           (b) PERIOD FOR FILING PETITION.—A petition for  
22 review under this section shall be filed not later than 60  
23 days after the date notice of such promulgation appears  
24 in the Federal Register.

1 (c) EXPEDITED PROCEDURES.—The United States  
2 Court of Appeals for the District of Columbia shall provide  
3 for expedited procedures for reviews under this section.

4 **SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.**

5 (a) IN GENERAL.—Any claimant adversely affected  
6 or aggrieved by a final decision of the Administrator  
7 awarding or denying compensation under title I may peti-  
8 tion for judicial review of such decision. Any petition for  
9 review under this section shall be filed within 90 days of  
10 the issuance of a final decision of the Administrator.

11 (b) EXCLUSIVE JURISDICTION.—A petition for review  
12 may only be filed in the United States Court of Appeals  
13 for the circuit in which the claimant resides at the time  
14 of the issuance of the final order.

15 (c) STANDARD OF REVIEW.—The court shall uphold  
16 the decision of the Administrator unless the court deter-  
17 mines, upon review of the record as a whole, that the deci-  
18 sion is not supported by substantial evidence, is contrary  
19 to law, or is not in accordance with procedure required  
20 by law.

21 (d) EXPEDITED PROCEDURES.—The United States  
22 Court of Appeals shall provide for expedited procedures  
23 for reviews under this section.

1 **SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESS-**  
2 **MENTS.**

3 (a) **EXCLUSIVE JURISDICTION.**—The United States  
4 Court of Appeals for the District of Columbia Circuit shall  
5 have exclusive jurisdiction over any action to review a final  
6 determination by the Administrator or the Asbestos Insur-  
7 ers Commission regarding the liability of any person to  
8 make a payment to the Fund, including a notice of appli-  
9 cable subtier assignment under section 204(i), a notice of  
10 financial hardship or inequity determination under section  
11 204(d), and a notice of insurer participant obligation  
12 under section 212(b).

13 (b) **PERIOD FOR FILING ACTION.**—A petition for re-  
14 view under subsection (a) shall be filed not later than 60  
15 days after a final determination by the Administrator or  
16 the Commission giving rise to the action. Any defendant  
17 participant who receives a notice of its applicable subtier  
18 under section 204(i) or a notice of financial hardship or  
19 inequity determination under section 204(d) shall com-  
20 mence any action within 30 days after a decision on re-  
21 hearing under section 204(i)(10), and any insurer partici-  
22 pant who receives a notice of a payment obligation under  
23 section 212(b) shall commence any action within 30 days  
24 after receiving such notice. The court shall give such ac-  
25 tion expedited consideration.

1 **SEC. 304. OTHER JUDICIAL CHALLENGES.**

2 (a) **EXCLUSIVE JURISDICTION.**—The United States  
3 District Court for the District of Columbia shall have ex-  
4 clusive jurisdiction over any action for declaratory or in-  
5 junctive relief challenging any provision of this Act. An  
6 action under this section shall be filed not later than 60  
7 days after the date of enactment of this Act or 60 days  
8 after the final action by the Administrator or the Commis-  
9 sion giving rise to the action, whichever is later.

10 (b) **DIRECT APPEAL.**—A final decision in the action  
11 shall be reviewable on appeal directly to the Supreme  
12 Court of the United States. Such appeal shall be taken  
13 by the filing of a notice of appeal within 30 days, and  
14 the filing of a jurisdictional statement within 60 days, of  
15 the entry of the final decision.

16 (c) **EXPEDITED PROCEDURES.**—It shall be the duty  
17 of the United States District Court for the District of Co-  
18 lumbia and the Supreme Court of the United States to  
19 advance on the docket and to expedite to the greatest pos-  
20 sible extent the disposition of the action and appeal.

21 **SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL RE-**  
22 **VIEW.**

23 (a) **NO STAYS.**—No court may issue a stay of pay-  
24 ment by any party into the Fund pending its final judg-  
25 ment.

1 (b) EXCLUSIVITY OF REVIEW.—An action of the Ad-  
2 ministrator or the Asbestos Insurers Commission for  
3 which review could have been obtained under section 301,  
4 302, or 303 shall not be subject to judicial review in any  
5 other proceeding.

6 (c) CONSTITUTIONAL REVIEW.—

7 (1) IN GENERAL.—Notwithstanding any other  
8 provision of law, any interlocutory or final judgment,  
9 decree, or order of a Federal court holding this Act,  
10 or any provision or application thereof, unconstitu-  
11 tional shall be reviewable as a matter of right by di-  
12 rect appeal to the Supreme Court.

13 (2) PERIOD FOR FILING APPEAL.—Any such  
14 appeal shall be filed not more than 30 days after  
15 entry of such judgment, decree, or order.

16 (3) REPAYMENT TO ASBESTOS TRUST AND  
17 CLASS ACTION TRUST.—If the transfer of the assets  
18 of any asbestos trust of a debtor or any class action  
19 trust (or this Act as a whole) is held to be unconsti-  
20 tutional or otherwise unlawful, the Fund shall trans-  
21 fer the remaining balance of such assets (determined  
22 under section 405(f)(1)(A)(iii)) back to the appro-  
23 priate asbestos trust or class action trust within 90  
24 days after final judicial action on the legal challenge,  
25 including the exhaustion of all appeals.

1           **TITLE IV—MISCELLANEOUS**  
2                           **PROVISIONS**

3 **SEC. 401. FALSE INFORMATION.**

4           (a) IN GENERAL.—Chapter 63 of title 18, United  
5 States Code, is amended by adding at the end the fol-  
6 lowing:

7 **“§ 1348. Fraud and false statements in connection**  
8                           **with participation in Asbestos Injury**  
9                           **Claims Resolution Fund**

10           “(a) FRAUD RELATING TO ASBESTOS INJURY  
11 CLAIMS RESOLUTION FUND.—Whoever knowingly and  
12 willfully executes, or attempts to execute, a scheme or arti-  
13 fice to defraud the Office of Asbestos Disease Compensa-  
14 tion or the Asbestos Insurers Commission under title II  
15 of the Fairness in Asbestos Injury Resolution Act of 2005  
16 shall be fined under this title or imprisoned not more than  
17 20 years, or both.

18           “(b) FALSE STATEMENT RELATING TO ASBESTOS  
19 INJURY CLAIMS RESOLUTION FUND.—Whoever, in any  
20 matter involving the Office of Asbestos Disease Compensa-  
21 tion or the Asbestos Insurers Commission, knowingly and  
22 willfully—

23                       “(1) falsifies, conceals, or covers up by any  
24                       trick, scheme, or device a material fact;

1           “(2) makes any materially false, fictitious, or  
2           fraudulent statements or representations; or

3           “(3) makes or uses any false writing or docu-  
4           ment knowing the same to contain any materially  
5           false, fictitious, or fraudulent statement or entry, in  
6           connection with the award of a claim or the deter-  
7           mination of a participant’s payment obligation under  
8           title I or II of the Fairness in Asbestos Injury Reso-  
9           lution Act of 2005 shall be fined under this title or  
10          imprisoned not more than 10 years, or both.”.

11          (b) TECHNICAL AND CONFORMING AMENDMENT.—  
12          The table of sections for chapter 63 of title 18, United  
13          States Code, is amended by adding at the end the fol-  
14          lowing:

“1348. Fraud and false statements in connection with participation in As-  
bestos Injury Claims Resolution Fund.”.

15          **SEC. 402. EFFECT ON BANKRUPTCY LAWS.**

16          (a) NO AUTOMATIC STAY.—Section 362(b) of title  
17          11, United States Code, is amended—

18                 (1) in paragraph (17), by striking “or” at the  
19                 end;

20                 (2) in paragraph (18), by striking the period at  
21                 the end and inserting “; or”; and

22                 (3) by inserting after paragraph (18) the fol-  
23                 lowing:

1           “(19) under subsection (a) of this section of the  
2           enforcement of any payment obligations under sec-  
3           tion 204 of the Fairness in Asbestos Injury Resolu-  
4           tion Act of 2005, against a debtor, or the property  
5           of the estate of a debtor, that is a participant (as  
6           that term is defined in section 3 of that Act).”.

7           (b) ASSUMPTION OF EXECUTORY CONTRACT.—Sec-  
8           tion 365 of title 11, United States Code, is amended by  
9           adding at the end the following:

10           “(p) If a debtor is a participant (as that term is de-  
11           fined in section 3 of the Fairness in Asbestos Injury Reso-  
12           lution Act of 2005), the trustee shall be deemed to have  
13           assumed all executory contracts entered into by the partic-  
14           ipant under section 204 of that Act. The trustee may not  
15           reject any such executory contract.”.

16           (c) ALLOWED ADMINISTRATIVE EXPENSES.—Section  
17           503 of title 11, United States Code, is amended by adding  
18           at the end the following:

19           “(c)(1) Claims or expenses of the United States, the  
20           Attorney General, or the Administrator (as that term is  
21           defined in section 3 of the Fairness in Asbestos Injury  
22           Resolution Act of 2005) based upon the asbestos payment  
23           obligations of a debtor that is a Participant (as that term  
24           is defined in section 3 of that Act), shall be paid as an  
25           allowed administrative expense. The debtor shall not be



1 entitled to either notice or a hearing with respect to such  
2 claims.

3 “(2) For purposes of paragraph (1), the term ‘asbes-  
4 tos payment obligation’ means any payment obligation  
5 under title II of the Fairness in Asbestos Injury Resolu-  
6 tion Act of 2005.”.

7 (d) NO DISCHARGE.—Section 523 of title 11, United  
8 States Code, is amended by adding at the end the fol-  
9 lowing:

10 “(f) A discharge under section 727, 1141, 1228, or  
11 1328 of this title does not discharge any debtor that is  
12 a participant (as that term is defined in section 3 of the  
13 Fairness in Asbestos Injury Resolution Act of 2005) of  
14 the debtor’s payment obligations assessed against the par-  
15 ticipant under title II of that Act.”.

16 (e) PAYMENT.—Section 524 of title 11, United States  
17 Code, is amended by adding at the end the following:

18 “(i) PARTICIPANT DEBTORS.—

19 “(1) IN GENERAL.—Paragraphs (2) and (3)  
20 shall apply to a debtor who—

21 “(A) is a participant that has made prior  
22 asbestos expenditures (as such terms are de-  
23 fined in the Fairness in Asbestos Injury Resolu-  
24 tion Act of 2005); and

1           “(B) is subject to a case under this title  
2           that is pending—

3                   “(i) on the date of enactment of the  
4                   Fairness in Asbestos Injury Resolution Act  
5                   of 2005; or

6                   “(ii) at any time during the 1-year pe-  
7                   riod preceding the date of enactment of  
8                   that Act.

9           “(2) TIER I DEBTORS.—A debtor that has been  
10           assigned to Tier I under section 202 of the Fairness  
11           in Asbestos Injury Resolution Act of 2005, shall  
12           make payments in accordance with sections 202 and  
13           203 of that Act.

14           “(3) TREATMENT OF PAYMENT OBLIGA-  
15           TIONS.—All payment obligations of a debtor under  
16           sections 202 and 203 of the Fairness in Asbestos In-  
17           jury Resolution Act of 2005 shall—

18                   “(A) constitute costs and expenses of ad-  
19                   ministration of a case under section 503 of this  
20                   title;

21                   “(B) notwithstanding any case pending  
22                   under this title, be payable in accordance with  
23                   section 202 of that Act;

24                   “(C) not be stayed;

1           “(D) not be affected as to enforcement or  
2           collection by any stay or injunction of any  
3           court; and

4           “(E) not be impaired or discharged in any  
5           current or future case under this title.”.

6           (f) TREATMENT OF TRUSTS.—Section 524 of title  
7 11, United States Code, as amended by this Act, is  
8 amended by adding at the end the following:

9           “(j) ASBESTOS TRUSTS.—

10           “(1) IN GENERAL.—A trust shall assign a por-  
11           tion of the corpus of the trust to the Asbestos Injury  
12           Claims Resolution Fund (referred to in this sub-  
13           section as the ‘Fund’) as established under the Fair-  
14           ness in Asbestos Injury Resolution Act of 2005 if  
15           the trust qualifies as a ‘trust’ under section 201 of  
16           that Act.

17           “(2) TRANSFER OF TRUST ASSETS.—

18           “(A) IN GENERAL.—

19           “(i) Except as provided under sub-  
20           paragraphs (B), (C), and (E), the assets in  
21           any trust established to provide compensa-  
22           tion for asbestos claims (as defined in sec-  
23           tion 3 of the Fairness in Asbestos Injury  
24           Resolution Act of 2005) shall be trans-  
25           ferred to the Fund not later than 6

1 months after the date of enactment of the  
2 Fairness in Asbestos Injury Resolution Act  
3 of 2005 or 30 days following funding of a  
4 trust established under a reorganization  
5 plan subject to section 202(c) of that Act.  
6 Except as provided under subparagraph  
7 (B), the Administrator of the Fund shall  
8 accept such assets and utilize them for any  
9 purposes of the Fund under section 221 of  
10 such Act, including the payment of claims  
11 for awards under such Act to beneficiaries  
12 of the trust from which the assets were  
13 transferred.

14 “(ii) Notwithstanding any other provi-  
15 sion of Federal or State law, no liability of  
16 any kind may be imposed on a trustee of  
17 a trust for transferring assets to the Fund  
18 in accordance with clause (i).

19 “(B) AUTHORITY TO REFUSE ASSETS.—  
20 The Administrator of the Fund may refuse to  
21 accept any asset that the Administrator deter-  
22 mines may create liability for the Fund in ex-  
23 cess of the value of the asset.

24 “(C) ALLOCATION OF TRUST ASSETS.—If  
25 a trust under subparagraph (A) has bene-

1           ficiaries with claims that are not asbestos  
2           claims, the assets transferred to the Fund  
3           under subparagraph (A) shall not include assets  
4           allocable to such beneficiaries. The trustees of  
5           any such trust shall determine the amount of  
6           such trust assets to be reserved for the con-  
7           tinuing operation of the trust in processing and  
8           paying claims that are not asbestos claims. The  
9           trustees shall demonstrate to the satisfaction of  
10          the Administrator, or by clear and convincing  
11          evidence in a proceeding brought before the  
12          United States District Court for the District of  
13          Columbia in accordance with paragraph (4),  
14          that the amount reserved is properly allocable  
15          to claims other than asbestos claims.

16                 “(D) SALE OF FUND ASSETS.—The invest-  
17                 ment requirements under section 222 of the  
18                 Fairness in Asbestos Injury Resolution Act of  
19                 2005 shall not be construed to require the Ad-  
20                 ministrator of the Fund to sell assets trans-  
21                 ferred to the Fund under subparagraph (A).

22                 “(E) LIQUIDATED CLAIMS.—Except as  
23                 specifically provided in this subparagraph, all  
24                 asbestos claims against a trust are superseded  
25                 and preempted as of the date of enactment of

1 the Fairness in Asbestos Injury Resolution Act  
2 of 2005, and a trust shall not make any pay-  
3 ment relating to asbestos claims after that date.  
4 If, in the ordinary course and the normal and  
5 usual administration of the trust consistent  
6 with past practices, a trust had before the date  
7 of enactment of the Fairness in Asbestos Injury  
8 Resolution Act of 2005, made all determina-  
9 tions necessary to entitle an individual claimant  
10 to a noncontingent cash payment from the  
11 trust, the trust shall (i) make any lump-sum  
12 cash payment due to that claimant, and (ii)  
13 make or provide for all remaining noncontin-  
14 gent payments on any award being paid or  
15 scheduled to be paid on an installment basis, in  
16 each case only to the same extent that the trust  
17 would have made such cash payments in the or-  
18 dinary course and consistent with past practices  
19 before enactment of that Act. A trust shall not  
20 make any payment in respect of any alleged  
21 contingent right to recover any greater amount  
22 than the trust had already paid, or had com-  
23 pleted all determinations necessary to pay, to a  
24 claimant in cash in accordance with its ordinary

1 distribution procedures in effect as of June 1,  
2 2003.

3 “(3) INJUNCTION.—

4 “(A) IN GENERAL.—Any injunction issued  
5 as part of the formation of a trust described in  
6 paragraph (1) shall remain in full force and ef-  
7 fect. No court, Federal or State, may enjoin the  
8 transfer of assets by a trust to the Fund in ac-  
9 cordance with this subsection pending resolu-  
10 tion of any litigation challenging such transfer  
11 or the validity of this subsection or of any pro-  
12 vision of the Fairness in Asbestos Injury Reso-  
13 lution Act of 2005, and an interlocutory order  
14 denying such relief shall not be subject to im-  
15 mediate appeal under section 1291(a) of title  
16 28.

17 “(B) AVAILABILITY OF FUND ASSETS.—  
18 Notwithstanding any other provision of law,  
19 once such a transfer has been made, the assets  
20 of the Fund shall be available to satisfy any  
21 final judgment entered in such an action and  
22 such transfer shall no longer be subject to any  
23 appeal or review—

24 “(i) declaring that the transfer ef-  
25 fected a taking of a right or property for

1           which an individual is constitutionally enti-  
2           tled to just compensation; or

3                   “(ii) requiring the transfer back to a  
4           trust of any or all assets transferred by  
5           that trust to the Fund.

6           “(4) JURISDICTION.—Solely for purposes of im-  
7           plementing this subsection, personal jurisdiction over  
8           every covered trust, the trustees thereof, and any  
9           other necessary party, and exclusive subject matter  
10          jurisdiction over every question arising out of or re-  
11          lated to this subsection, shall be vested in the United  
12          States District Court for the District of Columbia.  
13          Notwithstanding any other provision of law, includ-  
14          ing section 1127 of this title, that court may make  
15          any order necessary and appropriate to facilitate  
16          prompt compliance with this subsection, including  
17          assuming jurisdiction over and modifying, to the ex-  
18          tent necessary, any applicable confirmation order or  
19          other order with continuing and prospective applica-  
20          tion to a covered trust. The court may also resolve  
21          any related challenge to the constitutionality of this  
22          subsection or of its application to any trust, trustee,  
23          or individual claimant. The Administrator of the  
24          Fund may bring an action seeking such an order or  
25          modification, under the standards of rule 60(b) of



1 the Federal Rules of Civil Procedure or otherwise,  
2 and shall be entitled to intervene as of right in any  
3 action brought by any other party seeking interpre-  
4 tation, application, or invalidation of this subsection.  
5 Any order denying relief that would facilitate prompt  
6 compliance with the transfer provisions of this sub-  
7 section shall be subject to immediate appeal under  
8 section 304 of the Fairness in Asbestos Injury Reso-  
9 lution Act of 2005. Notwithstanding any other provi-  
10 sion of this paragraph, for purposes of implementing  
11 the sunset provisions of section 402(f) of such Act  
12 which apply to asbestos trusts and the class action  
13 trust, the bankruptcy court or United States district  
14 court having jurisdiction over any such trust as of  
15 the date of enactment of such Act shall retain such  
16 jurisdiction.”.

17 (g) NO AVOIDANCE OF TRANSFER.—Section 546 of  
18 title 11, United States Code, is amended by adding at the  
19 end the following:

20 “(h) Notwithstanding the rights and powers of a  
21 trustee under sections 544, 545, 547, 548, 549, and 550  
22 of this title, if a debtor is a participant (as that term is  
23 defined in section 3 of the Fairness in Asbestos Injury  
24 Resolution Act of 2005), the trustee may not avoid a

1 transfer made by the debtor under its payment obligations  
2 under section 202 or 203 of that Act.”.

3 (h) CONFIRMATION OF PLAN.—Section 1129(a) of  
4 title 11, United States Code, is amended by adding at the  
5 end the following:

6 “(14) If the debtor is a participant (as that  
7 term is defined in section 3 of the Fairness in As-  
8 bestos Injury Resolution Act of 2005), the plan pro-  
9 vides for the continuation after its effective date of  
10 payment of all payment obligations under title II of  
11 that Act.”.

12 (i) EFFECT ON INSURANCE RECEIVERSHIP PRO-  
13 CEEDINGS.—

14 (1) LIEN.—In an insurance receivership pro-  
15 ceeding involving a direct insurer, reinsurer or run-  
16 off participant, there shall be a lien in favor of the  
17 Fund for the amount of any assessment and any  
18 such lien shall be given priority over all other claims  
19 against the participant in receivership, except for the  
20 expenses of administration of the receivership and  
21 the perfected claims of the secured creditors. Any  
22 State law that provides for priorities inconsistent  
23 with this provision is preempted by this Act.

24 (2) PAYMENT OF ASSESSMENT.—Payment of  
25 any assessment required by this Act shall not be

1 subject to any automatic or judicially entered stay in  
2 any insurance receivership proceeding. This Act shall  
3 preempt any State law requiring that payments by  
4 a direct insurer, reinsurer or runoff participant in  
5 an insurance receivership proceeding be approved by  
6 a court, receiver or other person. Payments of as-  
7 sessments by any direct insurer or reinsurer partici-  
8 pant under this Act shall not be subject to the avoid-  
9 ance powers of a receiver or a court in or relating  
10 to an insurance receivership proceeding.

11 (j) **STANDING IN BANKRUPTCY PROCEEDINGS.**—The  
12 Administrator shall have standing in any bankruptcy case  
13 involving a debtor participant. No bankruptcy court may  
14 require the Administrator to return property seized to sat-  
15 isfy obligations to the Fund.

16 **SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.**

17 (a) **EFFECT ON FEDERAL AND STATE LAW.**—The  
18 provisions of this Act shall supersede any Federal or State  
19 law insofar as such law may relate to any asbestos claim,  
20 including any claim described under subsection (e)(2).

21 (b) **EFFECT ON SILICA CLAIMS.**—

22 (1) **IN GENERAL.**—

23 (A) **RULE OF CONSTRUCTION.**—Nothing in  
24 this Act shall be construed to preempt, bar, or  
25 otherwise preclude any personal injury claim at-

1           tributable to exposure to silica as to which the  
2           plaintiff—

3                   (i) pleads with particularity and es-  
4                   tablishes by a preponderance of evidence  
5                   either that—

6                           (I) no claim has been asserted or  
7                           filed by or with respect to the exposed  
8                           person in any forum for any asbestos-  
9                           related condition and the exposed per-  
10                           son (or another claiming on behalf of  
11                           or through the exposed person) is not  
12                           eligible for any monetary award under  
13                           this Act; or

14                           (II)(aa) the exposed person suf-  
15                           fers or has suffered a functional im-  
16                           pairment that was caused by exposure  
17                           to silica; and

18                           (bb) asbestos exposure was not a  
19                           substantial contributing factor to such  
20                           functional impairment; and

21                   (ii) satisfies the requirements of para-  
22                   graph (2) .

23                   (B) PREEMPTION.—Claims attributable to  
24                   exposure to silica that fail to meet the require-

1           ments of subparagraph (A) shall be preempted  
2           by this Act.

3           (2) REQUIRED EVIDENCE.—

4           (A) IN GENERAL.—In any claim to which  
5           paragraph (1) applies, the initial pleading (or,  
6           for claims pending on the date of enactment of  
7           this Act, an amended pleading to be filed within  
8           60 days after such date, but not later than 60  
9           days before trial, shall plead with particularity  
10          the elements of subparagraph (A)(i)(I) or (II)  
11          and shall be accompanied by the information  
12          described under subparagraph (B)(i) through  
13          (iv).

14          (B) PLEADINGS.—If the claim pleads the  
15          elements of paragraph (1)(A)(i)(II) and by the  
16          information described under clauses (i) through  
17          (iv) of this subparagraph if the claim pleads the  
18          elements of paragraph (1)(A)(i)(I)—

19               (i) admissible evidence, including at a  
20               minimum, a B-reader's report, the under-  
21               lying x-ray film and such other evidence  
22               showing that the claim may be maintained  
23               and is not preempted under paragraph (1);

24               (ii) notice of any previous lawsuit or  
25               claim for benefits in which the exposed

1 person, or another claiming on behalf of or  
2 through the injured person, asserted an in-  
3 jury or disability based wholly or in part  
4 on exposure to asbestos;

5 (iii) if known by the plaintiff after  
6 reasonable inquiry by the plaintiff or his  
7 representative, the history of the exposed  
8 person's exposure, if any, to asbestos; and

9 (iv) copies of all medical and labora-  
10 tory reports pertaining to the exposed per-  
11 son that refer to asbestos or asbestos expo-  
12 sure.

13 (c) SUPERSEDING PROVISIONS.—

14 (1) IN GENERAL.—Except as provided under  
15 paragraph (3), any agreement, understanding, or  
16 undertaking by any person or affiliated group with  
17 respect to the treatment of any asbestos claim that  
18 requires future performance by any party, insurer of  
19 such party, settlement administrator, or escrow  
20 agent shall be superseded in its entirety by this Act.

21 (2) NO FORCE OR EFFECT.—Except as pro-  
22 vided under paragraph (3), any such agreement, un-  
23 derstanding, or undertaking by any such person or  
24 affiliated group shall be of no force or effect, and no  
25 person shall have any rights or claims with respect

1 to any such agreement, understanding, or under-  
2 taking.

3 (3) EXCEPTION.—

4 (A) IN GENERAL.—Except as provided in  
5 section 202(f), nothing in this Act shall abro-  
6 gate a binding and legally enforceable written  
7 settlement agreement between any defendant  
8 participant or its insurer and a specific named  
9 plaintiff with respect to the settlement of an as-  
10 bestos claim of the plaintiff if—

11 (i) before the date of enactment of  
12 this Act, the settlement agreement was ex-  
13 ecuted directly by the settling defendant or  
14 the settling insurer and the individual  
15 plaintiff, or on behalf of the plaintiff where  
16 the plaintiff is incapacitated and the settle-  
17 ment agreement is signed by an authorized  
18 legal representative;

19 (ii) the settlement agreement contains  
20 an express obligation by the settling de-  
21 fendant or settling insurer to make a fu-  
22 ture direct monetary payment or payments  
23 in a fixed amount or amounts to the indi-  
24 vidual plaintiff; and

1 (iii) within 30 days after the date of  
2 enactment of this Act, or such shorter time  
3 period specified in the settlement agree-  
4 ment, all conditions to payment under the  
5 settlement agreement have been fulfilled,  
6 so that the only remaining performance  
7 due under the settlement agreement is the  
8 payment or payments by the settling de-  
9 fendant or the settling insurer.

10 (B) BANKRUPTCY-RELATED AGREE-  
11 MENTS.—The exception set forth in this para-  
12 graph shall not apply to any bankruptcy-related  
13 agreement.

14 (C) COLLATERAL SOURCE.—Any settle-  
15 ment payment under this section is a collateral  
16 source if the plaintiff seeks recovery from the  
17 Fund.

18 (D) ABROGATION.—Nothing in subpara-  
19 graph (A) shall abrogate a settlement agree-  
20 ment otherwise satisfying the requirements of  
21 that subparagraph if such settlement agreement  
22 expressly anticipates the enactment of this Act  
23 and provides for the effects of this Act.

24 (E) HEALTH CARE INSURANCE OR EX-  
25 PENSES SETTLEMENTS.—Nothing in this Act



1 shall abrogate or terminate an otherwise fully  
2 enforceable settlement agreement which was ex-  
3 ecuted before the date of enactment of this Act  
4 directly by the settling defendant or the settling  
5 insurer and a specific named plaintiff to pay  
6 the health care insurance or health care ex-  
7 penses of the plaintiff.

8 (d) EXCLUSIVE REMEDY.—

9 (1) IN GENERAL.—Except as provided under  
10 paragraph (2), the remedies provided under this Act  
11 shall be the exclusive remedy for any asbestos claim,  
12 including any claim described in subsection (e)(2),  
13 under any Federal or State law.

14 (2) CIVIL ACTIONS AT TRIAL.—

15 (A) IN GENERAL.—This Act shall not  
16 apply to any asbestos claim that—

17 (i) is a civil action filed in a Federal  
18 or State court (not including a filing in a  
19 bankruptcy court);

20 (ii) is not part of a consolidation of  
21 actions or a class action; and

22 (iii) on the date of enactment of this  
23 Act—

24 (I) in the case of a civil action  
25 which includes a jury trial, is before

1 the jury after its impanelling and  
2 commencement of presentation of evi-  
3 dence, but before its deliberations;

4 (II) in the case of a civil action  
5 which includes a trial in which a judge  
6 is the trier of fact, is at the presen-  
7 tation of evidence at trial; or

8 (III) a verdict, final order, or  
9 final judgment has been entered by a  
10 trial court.

11 (B) NONAPPLICABILITY.—This Act shall  
12 not apply to a civil action described under sub-  
13 paragraph (A) throughout the final disposition  
14 of the action.

15 (e) BAR ON ASBESTOS CLAIMS.—

16 (1) IN GENERAL.—No asbestos claim (including  
17 any claim described in paragraph (2)) may be pur-  
18 sued, and no pending asbestos claim may be main-  
19 tained, in any Federal or State court, except as pro-  
20 vided under subsection (d)(2).

21 (2) CERTAIN SPECIFIED CLAIMS.—

22 (A) IN GENERAL.—Subject to section 404  
23 (d) and (e)(3) of this Act, no claim may be  
24 brought or pursued in any Federal or State  
25 court or insurance receivership proceeding—

1 (i) relating to any default, confessed  
2 or stipulated judgment on an asbestos  
3 claim if the judgment debtor expressly  
4 agreed, in writing or otherwise, not to con-  
5 test the entry of judgment against it and  
6 the plaintiff expressly agreed, in writing or  
7 otherwise, to seek satisfaction of the judg-  
8 ment only against insurers or in bank-  
9 ruptcy;

10 (ii) relating to the defense, investiga-  
11 tion, handling, litigation, settlement, or  
12 payment of any asbestos claim by any par-  
13 ticipant, including claims for bad faith or  
14 unfair or deceptive claims handling or  
15 breach of any duties of good faith; or

16 (iii) arising out of or relating to the  
17 asbestos-related injury of any individual  
18 and—

19 (I) asserting any conspiracy, con-  
20 cert of action, aiding or abetting, act,  
21 conduct, statement, misstatement, un-  
22 dertaking, publication, omission, or  
23 failure to detect, speak, disclose, pub-  
24 lish, or warn relating to the presence  
25 or health effects of asbestos or the

1 use, sale, distribution, manufacture,  
2 production, development, inspection,  
3 advertising, marketing, or installation  
4 of asbestos; or

5 (II) asserting any conspiracy,  
6 act, conduct, statement, omission, or  
7 failure to detect, disclose, or warn re-  
8 lating to the presence or health effects  
9 of asbestos or the use, sale, distribu-  
10 tion, manufacture, production, devel-  
11 opment, inspection, advertising, mar-  
12 keting, or installation of asbestos, as-  
13 serted as or in a direct action against  
14 an insurer or reinsurer based upon  
15 any theory, statutory, contract, tort,  
16 or otherwise; or

17 (iv) by any third party, and premised  
18 on any theory, allegation, or cause of ac-  
19 tion, for reimbursement of healthcare costs  
20 allegedly associated with the use of or ex-  
21 posure to asbestos, whether such claim is  
22 asserted directly, indirectly or derivatively.

23 (B) EXCEPTIONS.—Subparagraph (A) (ii)  
24 and (iii) shall not apply to claims against par-  
25 ticipants by persons—

1 (i) with whom the participant is in  
2 privity of contract;

3 (ii) who have received an assignment  
4 of insurance rights not otherwise voided by  
5 this Act; or

6 (iii) who are beneficiaries covered by  
7 the express terms of a contract with that  
8 participant.

9 (3) PREEMPTION.—Any action asserting an as-  
10 bestos claim (including a claim described in para-  
11 graph (2)) in any Federal or State court is pre-  
12 empted by this Act, except as provided under sub-  
13 section (d)(2).

14 (4) DISMISSAL.—Except as provided under sub-  
15 section (d)(2), no judgment other than a judgment  
16 of dismissal may be entered in any such action, in-  
17 cluding an action pending on appeal, or on petition  
18 or motion for discretionary review, on or after the  
19 date of enactment of this Act. A court may dismiss  
20 any such action on its motion. If the court denies  
21 the motion to dismiss, it shall stay further pro-  
22 ceedings until final disposition of any appeal taken  
23 under this Act.

24 (5) REMOVAL.—

1           (A) IN GENERAL.—If an action in any  
2 State court under paragraph (3) is preempted,  
3 barred, or otherwise precluded under this Act,  
4 and not dismissed, or if an order entered after  
5 the date of enactment of this Act purporting to  
6 enter judgment or deny review is not rescinded  
7 and replaced with an order of dismissal within  
8 30 days after the filing of a motion by any  
9 party to the action advising the court of the  
10 provisions of this Act, any party may remove  
11 the case to the district court of the United  
12 States for the district in which such action is  
13 pending.

14           (B) TIME LIMITS.—For actions originally  
15 filed after the date of enactment of this Act, the  
16 notice of removal shall be filed within the time  
17 limits specified in section 1441(b) of title 28,  
18 United States Code.

19           (C) PROCEDURES.—The procedures for re-  
20 moval and proceedings after removal shall be in  
21 accordance with sections 1446 through 1450 of  
22 title 28, United States Code, except as may be  
23 necessary to accommodate removal of any ac-  
24 tions pending (including on appeal) on the date  
25 of enactment of this Act.

1 (D) REVIEW OF REMAND ORDERS.—

2 (i) IN GENERAL.—Section 1447 of  
3 title 28, United States Code, shall apply to  
4 any removal of a case under this section,  
5 except that notwithstanding subsection (d)  
6 of that section, a court of appeals may ac-  
7 cept an appeal from an order of a district  
8 court granting or denying a motion to re-  
9 mand an action to the State court from  
10 which it was removed if application is  
11 made to the court of appeals not less than  
12 7 days after entry of the order.

13 (ii) TIME PERIOD FOR JUDGMENT.—If  
14 the court of appeals accepts an appeal  
15 under clause (i), the court shall complete  
16 all action on such appeal, including ren-  
17 dering judgment, not later than 60 days  
18 after the date on which such appeal was  
19 filed, unless an extension is granted under  
20 clause (iii).

21 (iii) EXTENSION OF TIME PERIOD.—  
22 The court of appeals may grant an exten-  
23 sion of the 60-day period described in  
24 clause (ii) if—

1 (I) all parties to the proceeding  
2 agree to such extension, for any pe-  
3 riod of time; or

4 (II) such extension is for good  
5 cause shown and in the interests of  
6 justice, for a period not to exceed 10  
7 days.

8 (iv) DENIAL OF APPEAL.—If a final  
9 judgment on the appeal under clause (i) is  
10 not issued before the end of the period de-  
11 scribed in clause (ii), including any exten-  
12 sion under clause (iii), the appeal shall be  
13 denied.

14 (E) JURISDICTION.—The jurisdiction of  
15 the district court shall be limited to—

16 (i) determining whether removal was  
17 proper; and

18 (ii) determining, based on the evi-  
19 dentiary record, whether the claim pre-  
20 sented is preempted, barred, or otherwise  
21 precluded under this Act.

22 (6) CREDITS.—

23 (A) IN GENERAL.—If, notwithstanding the  
24 express intent of Congress stated in this sec-  
25 tion, any court finally determines for any rea-



1 son that an asbestos claim is not barred under  
2 this subsection and is not subject to the exclu-  
3 sive remedy or preemption provisions of this  
4 section, then any participant required to satisfy  
5 a final judgment executed with respect to any  
6 such claim may elect to receive a credit against  
7 any assessment owed to the Fund equal to the  
8 amount of the payment made with respect to  
9 such executed judgment.

10 (B) REQUIREMENTS.—The Administrator  
11 shall require participants seeking credit under  
12 this paragraph to demonstrate that the partici-  
13 pant—

14 (i) timely pursued all available rem-  
15 edies, including remedies available under  
16 this paragraph to obtain dismissal of the  
17 claim; and

18 (ii) notified the Administrator at least  
19 20 days before the expiration of any period  
20 within which to appeal the denial of a mo-  
21 tion to dismiss based on this section.

22 (C) INFORMATION.—The Administrator  
23 may require a participant seeking credit under  
24 this paragraph to furnish such further informa-

1           tion as is necessary and appropriate to establish  
2           eligibility for, and the amount of, the credit.

3           (D) INTERVENTION.—The Administrator  
4           may intervene in any action in which a credit  
5           may be due under this paragraph.

6 **SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CON-**  
7           **TRACTS.**

8           (a) EROSION OF INSURANCE COVERAGE LIMITS.—

9           (1) DEFINITIONS.—In this section, the fol-  
10          lowing definitions shall apply:

11          (A) DEEMED EROSION AMOUNT.—The  
12          term “deemed erosion amount” means the  
13          amount of erosion deemed to occur at enact-  
14          ment under paragraph (2).

15          (B) EARLY SUNSET.—The term “early  
16          sunset” means an event causing termination of  
17          the program under section 405(f) which relieves  
18          the insurer participants of paying some portion  
19          of the aggregate payment level of  
20          \$46,025,000,000 required under section  
21          212(a)(2)(A).

22          (C) EARNED EROSION AMOUNT.—The  
23          term “earned erosion amount” means, in the  
24          event of any early sunset under section 405(f),  
25          the percentage, as set forth in the following

1 schedule, depending on the year in which the  
 2 defendant participants’ funding obligations end,  
 3 of those amounts which, at the time of the early  
 4 sunset, a defendant participant has paid to the  
 5 fund and remains obligated to pay into the  
 6 fund.

<b>Year After Enactment In Which Defendant Participant’s Funding Obligation Ends:</b>	<b>Applicable Percentage:</b>
2 .....	67.06
3 .....	86.72
4 .....	96.55
5 .....	102.45
6 .....	90.12
7 .....	81.32
8 .....	74.71
9 .....	69.58
10 .....	65.47
11 .....	62.11
12 .....	59.31
13 .....	56.94
14 .....	54.90
15 .....	53.14
16 .....	51.60
17 .....	50.24
18 .....	49.03
19 .....	47.95
20 .....	46.98
21 .....	46.10
22 .....	45.30
23 .....	44.57
24 .....	43.90
25 .....	43.28
26 .....	42.71
27 .....	42.18
28 .....	40.82
29 .....	39.42

7 (D) REMAINING AGGREGATE PRODUCTS  
 8 LIMITS.—The term “remaining aggregate prod-  
 9 ucts limits” means aggregate limits that apply  
 10 to insurance coverage granted under the “prod-  
 11 ucts hazard”, “completed operations hazard”,

1 or “Products—Completed Operations Liability”  
 2 in any comprehensive general liability policy  
 3 issued between calendar years 1940 and 1986  
 4 to cover injury which occurs in any State, as re-  
 5 duced by—

6 (i) any existing impairment of such  
 7 aggregate limits as of the date of enact-  
 8 ment of this Act; and

9 (ii) the resolution of claims for reim-  
 10 bursement or coverage of liability or paid  
 11 or incurred loss for which notice was pro-  
 12 vided to the insurer before the date of en-  
 13 actment of this Act.

14 (E) SCHEDULED PAYMENT AMOUNTS.—

15 The term “scheduled payment amounts” means  
 16 the future payment obligation to the Fund  
 17 under this Act from a defendant participant in  
 18 the amount established under sections 203 and  
 19 204.

20 (F) UNEARNED EROSION AMOUNT.—The

21 term “unearned erosion amount” means, in the  
 22 event of any early sunset under section 405(f),  
 23 the difference between the deemed erosion  
 24 amount and the earned erosion amount.

25 (2) QUANTUM AND TIMING OF EROSION.—

1           (A) EROSION UPON ENACTMENT.—The  
2 collective payment obligations to the Fund of  
3 the insurer and reinsurer participants as as-  
4 sessed by the Administrator shall be deemed as  
5 of the date of enactment of this Act to erode re-  
6 maining aggregate products limits available to a  
7 defendant participant only in an amount of  
8 38.1 percent of each defendant participant’s  
9 scheduled payment amount.

10           (B) NO ASSERTION OF CLAIM.—No insurer  
11 or reinsurer may assert any claim against a de-  
12 fendant participant or captive insurer for insur-  
13 ance, reinsurance, payment of a deductible, or  
14 retrospective premium adjustment arising out  
15 of that insurer’s or reinsurer’s payments to the  
16 Fund or the erosion deemed to occur under this  
17 section.

18           (C) POLICIES WITHOUT CERTAIN LIMITS  
19 OR WITH EXCLUSION.—Except as provided  
20 under subparagraph (E), nothing in this section  
21 shall require or permit the erosion of any insur-  
22 ance policy or limit that does not contain an ag-  
23 gregate products limit, or that contains an as-  
24 bestos exclusion.

1           (D) TREATMENT OF CONSOLIDATION  
2 ELECTION.—If an affiliated group elects con-  
3 solidation as provided in section 204(f), the  
4 total erosion of limits for the affiliated group  
5 under paragraph (2)(A) shall not exceed 59.64  
6 percent of the scheduled payment amount of  
7 the single payment obligation for the entire af-  
8 filiated group. The total erosion of limits for  
9 any individual defendant participant in the af-  
10 filiated group shall not exceed its individual  
11 share of 59.64 percent of the affiliated group’s  
12 scheduled payment amount, as measured by the  
13 individual defendant participant’s percentage  
14 share of the affiliated group’s prior asbestos ex-  
15 penditures.

16           (E) RULE OF CONSTRUCTION.—Notwith-  
17 standing any other provision of this section,  
18 nothing in this Act shall be deemed to erode re-  
19 maining aggregate products limits of a defend-  
20 ant participant that can demonstrate by a  
21 reponderance of the evidence that 75 percent of  
22 its prior asbestos expenditures were made in de-  
23 fense or satisfaction of asbestos claims alleging  
24 bodily injury arising exclusively from the expo-  
25 sure to asbestos at premises owned, rented, or

1 controlled by the defendant participant (a  
2 “premises defendant”). In calculating such per-  
3 centage, where expenditures were made in de-  
4 fense or satisfaction of asbestos claims alleging  
5 bodily injury due to exposure to the defendant  
6 participant’s products and to asbestos at prem-  
7 ises owned, rented, or controlled by the defend-  
8 ant participant, half of such expenditures shall  
9 be deemed to be for such premises exposures. If  
10 a defendant participant establishes itself as a  
11 premises defendant, 75 percent of the payments  
12 by such defendant participant shall erode cov-  
13 erage limits, if any, applicable to premises li-  
14 abilities under applicable law.

15 (3) METHOD OF EROSION.—

16 (A) ALLOCATION.—The amount of erosion  
17 allocated to each defendant participant shall be  
18 allocated among periods in which policies with  
19 remaining aggregate product limits are avail-  
20 able to that defendant participant pro rata by  
21 policy period, in ascending order by attachment  
22 point.

23 (B) OTHER EROSION METHODS.—

24 (i) IN GENERAL.—Notwithstanding  
25 subparagraph (A), the method of erosion

1 of any remaining aggregate products limits  
2 which are subject to—

3 (I) a coverage-in-place or settle-  
4 ment agreement between a defendant  
5 participant and 1 or more insurance  
6 participants as of the date of enact-  
7 ment; or

8 (II) a final and nonappealable  
9 judgment as of the date of enactment  
10 or resulting from a claim for coverage  
11 or reimbursement pending as of such  
12 date, shall be as specified in such  
13 agreement or judgment with regard to  
14 erosion applicable to such insurance  
15 participants' policies.

16 (ii) REMAINING LIMITS.—To the ex-  
17 tent that a final nonappealable judgment  
18 or settlement agreement to which an in-  
19 surer participant and a defendant partici-  
20 pant are parties in effect as of the date of  
21 enactment of this Act extinguished a de-  
22 fendant participant's right to seek coverage  
23 for asbestos claims under an insurer par-  
24 ticipant's policies, any remaining limits in  
25 such policies shall not be considered to be



1 remaining aggregate products limits under  
2 subsection (a)(1)(A).

3 (4) RESTORATION OF AGGREGATE PRODUCTS  
4 LIMITS UPON EARLY SUNSET.—

5 (A) RESTORATION.—In the event of an  
6 early sunset, any unearned erosion amount will  
7 be deemed restored as aggregate products limits  
8 available to a defendant participant as of the  
9 date of enactment.

10 (B) METHOD OF RESTORATION.—The un-  
11 earned erosion amount will be deemed restored  
12 to each defendant participant's policies in such  
13 a manner that the last limits that were deemed  
14 eroded at enactment under this subsection are  
15 deemed to be the first limits restored upon  
16 early sunset.

17 (C) TOLLING OF COVERAGE CLAIMS.—In  
18 the event of an early sunset, the applicable stat-  
19 ute of limitations and contractual provisions for  
20 the filing of claims under any insurance policy  
21 with restored aggregate products limits shall be  
22 deemed tolled after the date of enactment  
23 through the date 6 months after the date of  
24 early sunset.

1           (5) PAYMENTS BY DEFENDANT PARTICIPANT.—

2           Payments made by a defendant participant shall be  
3           deemed to erode, exhaust, or otherwise satisfy appli-  
4           cable self-insured retentions, deductibles, retrospec-  
5           tively rated premiums, and limits issued by non-  
6           participating insolvent or captive insurance compa-  
7           nies. Reduction of remaining aggregate limits under  
8           this subsection shall not limit the right of a defend-  
9           ant participant to collect from any insurer not a par-  
10          ticipant.

11          (6) EFFECT ON OTHER INSURANCE CLAIMS.—

12          Other than as specified in this subsection, this Act  
13          does not alter, change, modify, or affect insurance  
14          for claims other than asbestos claims.

15          (b) DISPUTE RESOLUTION PROCEDURE.—

16           (1) ARBITRATION.—The parties to a dispute re-  
17           garding the erosion of insurance coverage limits  
18           under this section may agree in writing to settle  
19           such dispute by arbitration. Any such provision or  
20           agreement shall be valid, irrevocable, and enforce-  
21           able, except for any grounds that exist at law or in  
22           equity for revocation of a contract.

23           (2) TITLE 9, UNITED STATES CODE.—Arbitra-  
24           tion of such disputes, awards by arbitrators, and  
25           confirmation of awards shall be governed by title 9,

1 United States Code, to the extent such title is not  
2 inconsistent with this section. In any such arbitra-  
3 tion proceeding, the erosion principles provided for  
4 under this section shall be binding on the arbitrator,  
5 unless the parties agree to the contrary.

6 (3) FINAL AND BINDING AWARD.—An award by  
7 an arbitrator shall be final and binding between the  
8 parties to the arbitration, but shall have no force or  
9 effect on any other person. The parties to an arbi-  
10 tration may agree that in the event a policy which  
11 is the subject matter of an award is subsequently de-  
12 termined to be eroded in a manner different from  
13 the manner determined by the arbitration in a judg-  
14 ment rendered by a court of competent jurisdiction  
15 from which no appeal can or has been taken, such  
16 arbitration award may be modified by any court of  
17 competent jurisdiction upon application by any party  
18 to the arbitration. Any such modification shall gov-  
19 ern the rights and obligations between such parties  
20 after the date of such modification.

21 (c) EFFECT ON NONPARTICIPANTS.—

22 (1) IN GENERAL.—No insurance company or  
23 reinsurance company that is not a participant, other  
24 than a captive insurer, shall be entitled to claim that  
25 payments to the Fund erode, exhaust, or otherwise

1 limit the nonparticipant's insurance or reinsurance  
2 obligations.

3 (2) OTHER CLAIMS.—Nothing in this Act shall  
4 preclude a participant from pursuing any claim for  
5 insurance or reinsurance from any person that is not  
6 a participant other than a captive insurer.

7 (d) FINITE RISK POLICIES NOT AFFECTED.—

8 (1) IN GENERAL.—Notwithstanding any other  
9 provision of this Act, except subject to section  
10 212(a)(1)(D), this Act shall not alter, affect or im-  
11 pair any rights or obligations of—

12 (A) any party to an insurance contract  
13 that expressly provides coverage for govern-  
14 mental charges or assessments imposed to re-  
15 place insurance or reinsurance liabilities in ef-  
16 fect on the date of enactment of this Act; or

17 (B) subject to paragraph (2), any person  
18 with respect to any insurance or reinsurance  
19 purchased by a participant after December 31,  
20 1990, that expressly (but not necessarily exclu-  
21 sively) provides coverage for asbestos liabilities,  
22 including those policies commonly referred to as  
23 “finite risk” policies.

24 (2) LIMITATION.—No person may assert that  
25 any amounts paid to the Fund in accordance with

1 this Act are covered by any policy described under  
2 paragraph (1)(B) purchased by a defendant partici-  
3 pant, unless such policy specifically provides cov-  
4 erage for required payments to a Federal trust fund  
5 established by a Federal statute to resolve asbestos  
6 injury claims.

7 (e) EFFECT ON CERTAIN INSURANCE AND REINSUR-  
8 ANCE CLAIMS.—

9 (1) NO COVERAGE FOR FUND ASSESSMENTS.—

10 No participant or captive insurer may pursue an in-  
11 surance or reinsurance claim against another partici-  
12 pant or captive insurer for payments to the Fund re-  
13 quired under this Act, except under a contract spe-  
14 cifically providing insurance or reinsurance for re-  
15 quired payments to a Federal trust fund established  
16 by a Federal statute to resolve asbestos injury  
17 claims or, where applicable, under finite risk policies  
18 under subsection (d).

19 (2) CERTAIN INSURANCE ASSIGNMENTS VOID-  
20 ED.—Any assignment of any rights to insurance cov-  
21 erage for asbestos claims to any person who has as-  
22 serted an asbestos claim before the date of enact-  
23 ment of this Act, or to any trust, person, or other  
24 entity not part of an affiliated group as defined in  
25 section 201(1) of this Act established or appointed

1 for the purpose of paying asbestos claims which were  
2 asserted before such date of enactment, or by any  
3 Tier I defendant participant, before any sunset of  
4 this Act, shall be null and void. This subsection shall  
5 not void or affect in any way any assignments of  
6 rights to insurance coverage other than to asbestos  
7 claimants or to trusts, persons, or other entities not  
8 part of an affiliated group as defined in section  
9 201(1) of this Act established or appointed for the  
10 purpose of paying asbestos claims, or by Tier I de-  
11 fendant participants.

12 (3) INSURANCE CLAIMS PRESERVED.—Notwith-  
13 standing any other provision of this Act, this Act  
14 shall not alter, affect, or impair any rights or obliga-  
15 tions of any person with respect to any insurance or  
16 reinsurance for amounts that any person pays, has  
17 paid, or becomes legally obligated to pay in respect  
18 of asbestos or other claims, except to the extent  
19 that—

20 (A) such person pays or becomes legally  
21 obligated to pay claims that are superseded by  
22 section 403;

23 (B) any such rights or obligations of such  
24 person with respect to insurance or reinsurance

1 are prohibited by paragraph (1) or (2) of sub-  
2 section (e); or

3 (C) the limits of insurance otherwise avail-  
4 able to such participant in respect of asbestos  
5 claims are deemed to be eroded under sub-  
6 section (a).

7 **SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR AND**  
8 **SUNSET OF THE ACT.**

9 (a) IN GENERAL.—The Administrator shall submit  
10 an annual report to the Committee on the Judiciary of  
11 the Senate and the Committee on the Judiciary of the  
12 House of Representatives on the operation of the Asbestos  
13 Injury Claims Resolution Fund within 6 months after the  
14 close of each fiscal year.

15 (b) CONTENTS OF REPORT.—The annual report sub-  
16 mitted under this subsection shall include an analysis of—

17 (1) the claims experience of the program during  
18 the most recent fiscal year, including—

19 (A) the number of claims made to the Of-  
20 fice and a description of the types of medical  
21 diagnoses and asbestos exposures underlying  
22 those claims;

23 (B) the number of claims denied by the  
24 Office and a description of the types of medical  
25 diagnoses and asbestos exposures underlying

1 those claims, and a general description of the  
2 reasons for their denial;

3 (C) a summary of the eligibility determina-  
4 tions made by the Office under section 114;

5 (D) a summary of the awards made from  
6 the Fund, including the amount of the awards;  
7 and

8 (E) for each eligible condition, a statement  
9 of the percentage of asbestos claimants who  
10 filed claims during the prior calendar year and  
11 were determined to be eligible to receive com-  
12 pensation under this Act, who have received the  
13 compensation to which such claimants are enti-  
14 tled according to section 131;

15 (2) the administrative performance of the pro-  
16 gram, including—

17 (A) the performance of the program in  
18 meeting the time limits prescribed by law and  
19 an analysis of the reasons for any systemic  
20 delays;

21 (B) any backlogs of claims that may exist  
22 and an explanation of the reasons for such  
23 backlogs;

24 (C) the costs to the Fund of administering  
25 the program; and



1 (D) any other significant factors bearing  
2 on the efficiency of the program;

3 (3) the financial condition of the Fund, includ-  
4 ing—

5 (A) statements of the Fund's revenues, ex-  
6 penses, assets, and liabilities;

7 (B) the identity of all participants, the  
8 funding allocations of each participant, and the  
9 total amounts of all payments to the Fund;

10 (C) a list of all financial hardship or in-  
11 equity adjustments applied for during the fiscal  
12 year, and the adjustments that were made dur-  
13 ing the fiscal year;

14 (D) a statement of the investments of the  
15 Fund; and

16 (E) a statement of the borrowings of the  
17 Fund;

18 (4) the financial prospects of the Fund, includ-  
19 ing—

20 (A) an estimate of the number and types  
21 of claims, the amount of awards, and the par-  
22 ticipant payment obligations for the next fiscal  
23 year;

24 (B) an analysis of the financial condition  
25 of the Fund, including an estimation of the

1 Fund's ability to pay claims for the subsequent  
2 5 years in full as and when required, an evalua-  
3 tion of the Fund's ability to retire its existing  
4 debt and assume additional debt, and an eval-  
5 uation of the Fund's ability to satisfy other ob-  
6 ligations under the program; and

7 (C) a report on any changes in projections  
8 made in earlier annual reports or sunset anal-  
9 yses regarding the Fund's ability to meet its fi-  
10 nancial obligations;

11 (5) any recommendations from the Advisory  
12 Committee on Asbestos Disease Compensation and  
13 the Medical Advisory Committee of the Fund to im-  
14 prove the diagnostic, exposure, and medical criteria  
15 so as to pay only those claimants whose injuries are  
16 caused by exposure to asbestos;

17 (6) a summary of the results of audits con-  
18 ducted under section 115; and

19 (7) a summary of prosecutions under section  
20 1348 of title 18, United States Code (as added by  
21 this Act).

22 (c) CLAIMS ANALYSIS.—If the Administrator con-  
23 cludes, on the basis of the annual report submitted under  
24 this section, that the Fund is compensating claims for in-  
25 juries that are not caused by exposure to asbestos and

1 compensating such claims may, currently or in the future,  
2 undermine the Fund's ability to compensate persons with  
3 injuries that are caused by exposure to asbestos, the Ad-  
4 ministrator shall include in the report an analysis of the  
5 reasons for the situation, a description of the range of rea-  
6 sonable alternatives for responding to the situation, and  
7 a recommendation as to which alternative best serves the  
8 interest of claimants and the public. The report shall in-  
9 clude a description of changes in the diagnostic, exposure,  
10 or medical criteria of section 121 that the Administrator  
11 believes may be necessary to protect the Fund from com-  
12 pensating claims not caused by exposure to asbestos.

13 (d) SHORTFALL ANALYSIS.—

14 (1) IN GENERAL.—

15 (A) ANALYSIS.—If the Administrator con-  
16 cludes, on the basis of the information con-  
17 tained in the annual report submitted under  
18 this section, that the Fund may not be able to  
19 pay claims as such claims become due at any  
20 time within the next 5 years, the Administrator  
21 shall include in the report an analysis of the  
22 reasons for the situation, an estimation of when  
23 the Fund will no longer be able to pay claims  
24 as such claims become due, a description of the  
25 range of reasonable alternatives for responding

1 to the situation, and a recommendation as to  
2 which alternative best serves the interest of  
3 claimants and the public. The report may in-  
4 clude a description of changes in the diagnostic,  
5 exposure, or medical criteria of section 121 that  
6 the Administrator believes may be necessary to  
7 protect the Fund.

8 (B) RANGE OF ALTERNATIVES.—The  
9 range of alternatives under subparagraph (A)  
10 may include—

11 (i) triggering the termination of this  
12 Act under subsection (f) at any time after  
13 the date of enactment of this Act; and

14 (ii) reform of the program set forth in  
15 titles I and II of this Act (including  
16 changes in the diagnostic, exposure, or  
17 medical criteria, changes in the enforce-  
18 ment or application of those criteria,  
19 changes in the timing of payments,  
20 changes in contributions by defendant par-  
21 ticipants, insurer participants (or both  
22 such participants), or changes in award  
23 values).

24 (2) CONSIDERATIONS.—In formulating rec-  
25 ommendations, the Administrator shall take into ac-

1 count the reasons for any shortfall, actual or pro-  
2 jected, which may include—

3 (A) financial factors, including return on  
4 investments, borrowing capacity, interest rates,  
5 ability to collect contributions, and other rel-  
6 evant factors;

7 (B) the operation of the Fund generally,  
8 including administration of the claims proc-  
9 essing, the ability of the Administrator to col-  
10 lect contributions from participants, potential  
11 problems of fraud, the adequacy of the criteria  
12 to rule out idiopathic mesothelioma, and inad-  
13 equate flexibility to extend the timing of pay-  
14 ments;

15 (C) the appropriateness of the diagnostic,  
16 exposure, and medical criteria, including the  
17 adequacy of the criteria to rule out idiopathic  
18 mesothelioma;

19 (D) the actual incidence of asbestos-related  
20 diseases, including mesothelioma, based on epi-  
21 demiological studies and other relevant data;

22 (E) compensation of diseases with alter-  
23 native causes; and

24 (F) other factors that the Administrator  
25 considers relevant.

1           (3) RECOMMENDATION OF TERMINATION.—Any  
2           recommendation of termination should include a  
3           plan for winding up the affairs of the Fund (and the  
4           program generally) within a defined period, includ-  
5           ing paying in full all claims resolved at the time the  
6           report is prepared. Any plan under this paragraph  
7           shall provide for priority in payment to the claim-  
8           ants with the most serious illnesses.

9           (4) RESOLVED CLAIMS.—For purposes of this  
10          section, a claim shall be deemed resolved when the  
11          Administrator has determined the amount of the  
12          award due the claimant, and either the claimant has  
13          waived judicial review or the time for judicial review  
14          has expired.

15          (e) RECOMMENDATIONS OF ADMINISTRATOR AND  
16          COMMISSION.—

17               (1) IN GENERAL.—If the Administrator rec-  
18               ommends changes to this Act under subsection (c),  
19               the recommendations and accompanying analysis  
20               shall be referred to a special commission consisting  
21               of the Attorney General, the Secretary of Labor, the  
22               Secretary of Health and Human Services, the Sec-  
23               retary of the Treasury, and the Secretary of Com-  
24               merce, or their designees. The Commission shall  
25               hold expedited public hearings on the Administra-

1 tor's alternatives and recommendations and then  
2 make its own recommendations for reform of the  
3 program set forth in titles I and II of this Act.  
4 Within 180 days after receiving the Administrator's  
5 recommendations, the Commission shall transmit its  
6 own recommendations to the Congress in the same  
7 manner as set forth in subsection (a).

8 (2) REFERRAL.—If the Administrator rec-  
9 ommends changes to, or termination of, this Act  
10 under subsection (d), the recommendations and ac-  
11 companying analysis shall be referred to the Com-  
12 mission. The Commission shall hold expedited public  
13 hearings on the Administrator's alternatives and rec-  
14 ommendations and then make its own recommenda-  
15 tions for reform of the program set forth in titles I  
16 and II of this Act. Within 180 days after receiving  
17 the Administrator's recommendations, the Commis-  
18 sion shall transmit its own recommendations to Con-  
19 gress in the same manner as set forth in subsection  
20 (a).

21 (f) SUNSET OF ACT.—

22 (1) IN GENERAL.—

23 (A) TERMINATION.—Subject to paragraph  
24 (4), titles I (except subtitle A) and II and sec-  
25 tions 403 and 404(e)(2) shall terminate as pro-

1           vided under paragraph (2), if the Adminis-  
2           trator—

3                   (i) has begun the processing of claims;

4                   and

5                   (ii) as part of the review conducted to  
6                   prepare an annual report under this sec-  
7                   tion, determines that if any additional  
8                   claims are resolved, the Fund will not have  
9                   sufficient resources when needed to pay  
10                  100 percent of all resolved claims while  
11                  also meeting all other obligations of the  
12                  Fund under this Act, including the pay-  
13                  ment of—

14                   (I) debt repayment obligations;

15                   and

16                   (II) remaining obligations to the  
17                   asbestos trust of a debtor and the  
18                   class action trust.

19                  (B) REMAINING OBLIGATIONS.—For pur-  
20                  poses of subparagraph (A)(ii), the remaining  
21                  obligations to the asbestos trust of the debtor  
22                  and the class action trust shall be determined  
23                  by the Administrator by assuming that, instead  
24                  of a lump-sum payment, such trust had trans-  
25                  ferred its assets to the Fund on an annual



1           basis, taking into consideration relevant factors,  
2           including the most recent projections made by  
3           the trust's actuary before the date of enactment  
4           of this Act of the amount and timing of future  
5           claim payments and administrative and oper-  
6           ating expenses.

7           (2) EFFECTIVE DATE OF TERMINATION.—A  
8           termination under paragraph (1) shall take effect  
9           180 days after the date of a determination of the  
10          Administrator under paragraph (1) and shall apply  
11          to all asbestos claims that have not been resolved by  
12          the Fund as of the date of the determination.

13          (3) RESOLVED CLAIMS.—If a termination takes  
14          effect under this subsection, all resolved claims shall  
15          be paid in full by the Fund.

16          (4) EXTINGUISHED CLAIMS.—A claim that is  
17          extinguished under the statute of limitations provi-  
18          sions in section 113(b) is not revived at the time of  
19          sunset under this subsection.

20          (5) CONTINUED FUNDING.—If a termination  
21          takes effect under this subsection, participants will  
22          still be required to make payments as provided  
23          under subtitles A and B of title II. If the full  
24          amount of payments required by title II is not nec-  
25          essary for the Fund to pay claims that have been re-

1       solved as of the date of termination, pay the Fund’s  
2       debt and obligations to the asbestos trusts and class  
3       action trust, and support the Fund’s continued oper-  
4       ation as needed to pay such claims, debt, and obliga-  
5       tions, the Administrator may reduce such payments.  
6       Any such reductions shall be allocated among partic-  
7       ipants in approximately the same proportion as  
8       the liability under subtitles A and B of title II.

9               (6) SUNSET CLAIMS.—

10               (A) DEFINITIONS.—In this paragraph—

11                       (i) the term “sunset claims” means  
12                       claims filed with the Fund, but not yet re-  
13                       solved, when this Act has terminated; and

14                       (ii) the term “sunset claimants”  
15                       means persons asserting sunset claims.

16               (B) IN GENERAL.—If a termination takes  
17       effect under this subsection, the applicable stat-  
18       ute of limitations for the filing of sunset claims  
19       under subsection (g) shall be tolled for any past  
20       or pending sunset claimants while such claim-  
21       ants were pursuing claims filed under this Act.  
22       For those claimants who decide to pursue a  
23       sunset claim in accordance with subsection (g),  
24       the applicable statute of limitations shall apply,  
25       except that claimants who filed a claim against

1           the Fund under this Act before the date of ter-  
2           mination shall have 2 years after the date of  
3           termination to file a sunset claim in accordance  
4           with subsection (g).

5           (7) ASBESTOS TRUSTS AND CLASS ACTION  
6           TRUST.—On and after the date of termination under  
7           this subsection, the trust distribution program of  
8           any asbestos trust and the class action trust shall be  
9           replaced with the medical criteria requirements of  
10          section 121.

11          (8) PAYMENT TO ASBESTOS TRUSTS AND CLASS  
12          ACTION TRUST.—The amounts determined under  
13          paragraph (1)(B) for payment to the asbestos trusts  
14          and the class action trust shall be transferred to the  
15          respective asbestos trusts of the debtor and the class  
16          action trust within 90 days.

17          (g) NATURE OF CLAIM AFTER SUNSET.—

18                 (1) IN GENERAL.—

19                         (A) RELIEF.—On and after the date of  
20                         termination under subsection (f), any individual  
21                         with an asbestos claim who has not previously  
22                         had a claim resolved by the Fund, may in a  
23                         civil action obtain relief in damages subject to  
24                         the terms and conditions under this subsection  
25                         and paragraph (6) of subsection (f).

1           (B) RESOLVED CLAIMS.—An individual  
2 who has had a claim resolved by the Fund may  
3 not pursue a court action, except that an indi-  
4 vidual who received an award for a nonmalign-  
5 ant disease (Levels I through V) from the  
6 Fund may assert a claim for a subsequent or  
7 progressive disease under this subsection, unless  
8 the disease was diagnosed or the claimant had  
9 discovered facts that would have led a reason-  
10 able person to obtain such a diagnosis before  
11 the date on which the previous claim against  
12 the Fund was disposed.

13           (C) MESOTHELIOMA CLAIM.—An indi-  
14 vidual who received an award for a nonmalign-  
15 ant or malignant disease (except mesothe-  
16 lioma) (Levels I through VIII) from the Fund  
17 may assert a claim for mesothelioma under this  
18 subsection, unless the mesothelioma was diag-  
19 nosed or the claimant had discovered facts that  
20 would have led a reasonable person to obtain  
21 such a diagnosis before the date on which the  
22 nonmalignant or other malignant claim was dis-  
23 posed.

24           (2) EXCLUSIVE REMEDY.—As of the effective  
25 date of a termination of this Act under subsection

1 (f), an action under paragraph (1) shall be the ex-  
2 clusive remedy for any asbestos claim that might  
3 otherwise exist under Federal, State, or other law,  
4 regardless of whether such claim arose before or  
5 after the date of enactment of this Act or of the ter-  
6 mination of this Act, except that claims against the  
7 Fund that have been resolved before the date of the  
8 termination determination under subsection (f) may  
9 be paid by the Fund.

10 (3) VENUE.—

11 (A) IN GENERAL.—Actions under para-  
12 graph (1) may be brought in—

13 (i) any Federal district court;

14 (ii) any State court in the State where  
15 the claimant resides; or

16 (iii) any State court in a State where  
17 the asbestos exposure occurred.

18 (B) DEFENDANTS NOT FOUND.—If any  
19 defendant cannot be found in the State de-  
20 scribed in clause (ii) or (iii) of subparagraph  
21 (A), the claim may be pursued only against that  
22 defendant in the Federal district court or the  
23 State court located within any State in which  
24 the defendant may be found.

1           (C) DETERMINATION OF MOST APPRO-  
2           PRIATE FORUM.—If a person alleges that the  
3           asbestos exposure occurred in more than one  
4           county (or Federal district), the trial court shall  
5           determine which State and county (or Federal  
6           district) is the most appropriate forum for the  
7           claim. If the court determines that another  
8           forum would be the most appropriate forum for  
9           a claim, the court shall dismiss the claim. Any  
10          otherwise applicable statute of limitations shall  
11          be tolled beginning on the date the claim was  
12          filed and ending on the date the claim is dis-  
13          missed under this subparagraph.

14          (D) STATE VENUE REQUIREMENTS.—  
15          Nothing in this paragraph shall preempt or su-  
16          persede any State’s law relating to venue re-  
17          quirements within that State which are more  
18          restrictive.

19          (4) CLASS ACTION TRUSTS.—Notwithstanding  
20          any other provision of this section—

21                (A) after the assets of any class action  
22                trust have been transferred to the Fund in ac-  
23                cordance with section 203(b)(5), no asbestos  
24                claim may be maintained with respect to asbes-  
25                tos liabilities arising from the operations of a

1 person with respect to whose liabilities for as-  
2 bestos claims a class action trust has been es-  
3 tablished, whether such claim names the person  
4 or its successors or affiliates as defendants; and

5 (B) if a termination takes effect under  
6 subsection (f), the exclusive remedy for all as-  
7 bestos claims (including sunset claims and  
8 claims first arising or first presented after ter-  
9 mination of the Fund) arising from such oper-  
10 ations will be a claim against the class action  
11 trust to which the Administrator has trans-  
12 ferred funds under subsection (f)(8) to pay as-  
13 bestos claims, if necessary in proportionally re-  
14 duced amounts.

15 **SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABIL-**  
16 **ITY OF THE UNITED STATES GOVERNMENT.**

17 (a) CAUSES OF ACTIONS.—Except as otherwise spe-  
18 cifically provided in this Act, nothing in this Act shall be  
19 construed as creating a cause of action against the United  
20 States Government, any entity established under this Act,  
21 or any officer or employee of the United States Govern-  
22 ment or such entity.

23 (b) FUNDING LIABILITY.—Nothing in this Act shall  
24 be construed to—

1           (1) create any obligation of funding from the  
2           United States Government, other than the funding  
3           for personnel and support as provided under this  
4           Act; or

5           (2) obligate the United States Government to  
6           pay any award or part of an award, if amounts in  
7           the Fund are inadequate.

8   **SEC. 407. RULES OF CONSTRUCTION.**

9           (a) LIBBY, MONTANA CLAIMANTS.—Nothing in this  
10          Act shall preclude the formation of a fund for the payment  
11          of eligible medical expenses related to treating asbestos-  
12          related disease for current and former residents of Libby,  
13          Montana. The payment of any such medical expenses shall  
14          not be collateral source compensation as defined under  
15          section 134(a).

16          (b) HEALTHCARE FROM PROVIDER OF CHOICE.—  
17          Nothing in this Act shall be construed to preclude any eli-  
18          gible claimant from receiving healthcare from the provider  
19          of their choice.

20   **SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND**  
21                                   **SAFETY REQUIREMENTS.**

22          (a) ASBESTOS IN COMMERCE.—If the Administrator  
23          receives information concerning conduct occurring after  
24          the date of enactment of this Act that may have been a  
25          violation of standards issued by the Environmental Protec-



1 tion Agency under the Toxic Substances Control Act (15  
2 U.S.C. 2601 et seq.), relating to the manufacture, impor-  
3 tation, processing, disposal, and distribution in commerce  
4 of asbestos-containing products, the Administrator shall  
5 refer the matter in writing within 30 days after receiving  
6 that information to the Administrator of the Environ-  
7 mental Protection Agency and the United States attorney  
8 for possible civil or criminal penalties, including those  
9 under section 17 of the Toxic Substances Control Act (15  
10 U.S.C. 2616), and to the appropriate State authority with  
11 jurisdiction to investigate asbestos matters.

12 (b) ASBESTOS AS AIR POLLUTANT.—If the Adminis-  
13 trator receives information concerning conduct occurring  
14 after the date of enactment of this Act that may have been  
15 a violation of standards issued by the Environmental Pro-  
16 tection Agency under the Clean Air Act (42 U.S.C. 7401  
17 et seq.), relating to asbestos as a hazardous air pollutant,  
18 the Administrator shall refer the matter in writing within  
19 30 days after receiving that information to the Adminis-  
20 trator of the Environmental Protection Agency and the  
21 United States attorney for possible criminal and civil pen-  
22 alties, including those under section 113 of the Clean Air  
23 Act (42 U.S.C. 7413), and to the appropriate State au-  
24 thority with jurisdiction to investigate asbestos matters.

1           (c) OCCUPATIONAL EXPOSURE.—If the Adminis-  
2 trator receives information concerning conduct occurring  
3 after the date of enactment of this Act that may have been  
4 a violation of standards issued by the Occupational Safety  
5 and Health Administration under the Occupational Safety  
6 and Health Act of 1970 (29 U.S.C. 651 et seq.), relating  
7 to occupational exposure to asbestos, the Administrator  
8 shall refer the matter in writing within 30 days after re-  
9 ceiving that information and refer the matter to the Sec-  
10 retary of Labor or the appropriate State agency with au-  
11 thority to enforce occupational safety and health stand-  
12 ards, for investigation for possible civil or criminal pen-  
13 alties under section 17 of the Occupational Safety and  
14 Health Act of 1970 (29 U.S.C. 666).

15           (d) ENHANCED CRIMINAL PENALTIES FOR WILLFUL  
16 VIOLATIONS OF OCCUPATIONAL STANDARDS FOR ASBES-  
17 TOS.—Section 17(e) of the Occupational Safety and  
18 Health Act of 1970 (29 U.S.C. 656(e)) is amended—

19                   (1) by striking “Any” and inserting “(1) Ex-  
20 cept as provided in paragraph (2), any”; and

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

22           “(2) Any employer who willfully violates any standard  
23 issued under section 6 with respect to the control of occu-  
24 pational exposure to asbestos, shall upon conviction be  
25 punished by a fine in accordance with section 3571 of title

1 18, United States Code, or by imprisonment for not more  
2 than 5 years, or both, except that if the conviction is for  
3 a violation committed after a first conviction of such per-  
4 son, punishment shall be by a fine in accordance with sec-  
5 tion 3571 of title 18, United States Code, or by imprison-  
6 ment for not more than 10 years, or both.”.

7 (e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND  
8 BY EPA AND OSHA ASBESTOS VIOLATORS.—

9 (1) IN GENERAL.—The Administrator shall as-  
10 sess employers or other individuals determined to  
11 have violated asbestos statutes, standards, or regula-  
12 tions administered by the Department of Labor, the  
13 Environmental Protection Agency, and their State  
14 counterparts, for contributions to the Asbestos In-  
15 jury Claims Resolution Fund (in this section re-  
16 ferred to as the “Fund”).

17 (2) IDENTIFICATION OF VIOLATORS.—Each  
18 year, the Administrator shall—

19 (A) in consultation with the Assistant Sec-  
20 retary of Labor for Occupational Safety and  
21 Health, identify all employers that, during the  
22 previous year, were subject to final orders find-  
23 ing that they violated standards issued by the  
24 Occupational Safety and Health Administration  
25 for control of occupational exposure to asbestos

1 (29 C.F.R. 1910.1001, 1915.1001, and  
2 1926.1101) or the equivalent asbestos stand-  
3 ards issued by any State under section 18 of  
4 the Occupational Safety and Health Act (29  
5 U.S.C. 668); and

6 (B) in consultation with the Administrator  
7 of the Environmental Protection Agency, iden-  
8 tify all employers or other individuals who, dur-  
9 ing the previous year, were subject to final or-  
10 ders finding that they violated asbestos regula-  
11 tions administered by the Environmental Pro-  
12 tection Agency (including the National Emis-  
13 sions Standard for Asbestos established under  
14 the Clean Air Act (42 U.S.C. 7401 et seq.), the  
15 asbestos worker protection standards estab-  
16 lished under part 763 of title 40, Code of Fed-  
17 eral Regulations, and the regulations banning  
18 asbestos promulgated under section 501 of this  
19 Act), or equivalent State asbestos regulations.

20 (3) ASSESSMENT FOR CONTRIBUTION.—The  
21 Administrator shall assess each such identified em-  
22 ployer or other individual for a contribution to the  
23 Fund for that year in an amount equal to—

24 (A) 2 times the amount of total penalties  
25 assessed for the first violation of occupational

1 health and environmental statutes, standards,  
2 or regulations;

3 (B) 4 times the amount of total penalties  
4 for a second violation of such statutes, stand-  
5 ards, or regulations; and

6 (C) 6 times the amount of total penalties  
7 for any violations thereafter.

8 (4) LIABILITY.—Any assessment under this  
9 subsection shall be considered a liability under this  
10 Act.

11 (5) PAYMENTS.—Each such employer or other  
12 individual assessed for a contribution to the Fund  
13 under this subsection shall make the required con-  
14 tribution to the Fund within 90 days of the date of  
15 receipt of notice from the Administrator requiring  
16 payment.

17 (6) ENFORCEMENT.—The Administrator is au-  
18 thorized to bring a civil action under section 223(c)  
19 against any employer or other individual who fails to  
20 make timely payment of contributions assessed  
21 under this section.

22 (f) REVIEW OF FEDERAL SENTENCING GUIDELINES  
23 FOR ENVIRONMENTAL CRIMES RELATED TO ASBES-  
24 TOS.—Under section 994 of title 28, United States Code,  
25 and in accordance with this section, the United States

1 Sentencing Commission shall review and amend, as appro-  
2 priate, the United States Sentencing Guidelines and re-  
3 lated policy statements to ensure that—

4           (1) appropriate changes are made within the  
5 guidelines to reflect any statutory amendments that  
6 have occurred since the time that the current guide-  
7 line was promulgated;

8           (2) the base offense level, adjustments, and spe-  
9 cific offense characteristics contained in section  
10 2Q1.2 of the United States Sentencing Guidelines  
11 (relating to mishandling of hazardous or toxic sub-  
12 stances or pesticides; recordkeeping, tampering, and  
13 falsification; and unlawfully transporting hazardous  
14 materials in commerce) are increased as appropriate  
15 to ensure that future asbestos-related offenses re-  
16 flect the seriousness of the offense, the harm to the  
17 community, the need for ongoing reform, and the  
18 highly regulated nature of asbestos;

19           (3) the base offense level, adjustments, and spe-  
20 cific offense characteristics are sufficient to deter  
21 and punish future activity and are adequate in cases  
22 in which the relevant offense conduct—

23                   (A) involves asbestos as a hazardous or  
24 toxic substance; and

1 (B) occurs after the date of enactment of  
2 this Act;

3 (4) the adjustments and specific offense charac-  
4 teristics contained in section 2B1.1 of the United  
5 States Sentencing Guidelines related to fraud, de-  
6 ceit, and false statements, adequately take into ac-  
7 count that asbestos was involved in the offense, and  
8 the possibility of death or serious bodily harm as a  
9 result;

10 (5) the guidelines that apply to organizations in  
11 chapter 8 of the United States Sentencing Guide-  
12 lines are sufficient to deter and punish organiza-  
13 tional criminal misconduct that involves the use,  
14 handling, purchase, sale, disposal, or storage of as-  
15 bestos; and

16 (6) the guidelines that apply to organizations in  
17 chapter 8 of the United States Sentencing Guide-  
18 lines are sufficient to deter and punish organiza-  
19 tional criminal misconduct that involves fraud, de-  
20 ceit, or false statements against the Office of Asbes-  
21 tos Disease Compensation.

22 **SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.**

23 (a) DENIAL, TERMINATION, OR ALTERATION OF  
24 HEALTH COVERAGE.—No health insurer offering a health  
25 plan may deny or terminate coverage, or in any way alter

1 the terms of coverage, of any claimant or the beneficiary  
2 of a claimant, on account of the participation of the claim-  
3 ant or beneficiary in a medical monitoring program under  
4 this Act, or as a result of any information discovered as  
5 a result of such medical monitoring.

6 (b) DEFINITIONS.—In this section:

7 (1) HEALTH INSURER.—The term “health in-  
8 surer” means—

9 (A) an insurance company, healthcare  
10 service contractor, fraternal benefit organiza-  
11 tion, insurance agent, third-party administrator,  
12 insurance support organization, or other person  
13 subject to regulation under the laws related to  
14 health insurance of any State;

15 (B) a managed care organization; or

16 (C) an employee welfare benefit plan regu-  
17 lated under the Employee Retirement Income  
18 Security Act of 1974 (29 U.S.C. 1001 et seq.).

19 (2) HEALTH PLAN.—The term “health plan”  
20 means—

21 (A) a group health plan (as such term is  
22 defined in section 607 of the Employee Retirement  
23 Income Security Act of 1974 (29 U.S.C.  
24 1167)), and a multiple employer welfare ar-



1           rangement (as defined in section 3(4) of such  
2           Act) that provides health insurance coverage; or

3           (B) any contractual arrangement for the  
4           provision of a payment for healthcare, including  
5           any health insurance arrangement or any ar-  
6           rangement consisting of a hospital or medical  
7           expense incurred policy or certificate, hospital  
8           or medical service plan contract, or health  
9           maintenance organizing subscriber contract.

10       (c) CONFORMING AMENDMENTS.—

11           (1) ERISA.—Section 702(a)(1) of the Em-  
12           ployee Retirement Income Security Act of 1974 (29  
13           U.S.C. 1182(a)(1)), is amended by adding at the  
14           end the following:

15                   “(I) Participation in a medical monitoring  
16                   program under the Fairness in Asbestos Injury  
17                   Resolution Act of 2005.”.

18           (2) PUBLIC SERVICE HEALTH ACT.—Section  
19           2702(a)(1) of the Public Health Service Act (42  
20           U.S.C. 300gg–1(a)(1)) is amended by adding at the  
21           end the following:

22                   “(I) Participation in a medical monitoring  
23                   program under the Fairness in Asbestos Injury  
24                   Resolution Act of 2005.”.

1           (3) INTERNAL REVENUE CODE OF 1986.—Sec-  
2           tion 9802(a)(1) of the Internal Revenue Code of  
3           1986 is amended by adding at the end the following:

4                   “(I) Participation in a medical monitoring  
5                   program under the Fairness in Asbestos Injury  
6                   Resolution Act of 2005.”.

## 7                   **TITLE V—ASBESTOS BAN**

### 8           **SEC. 501. PROHIBITION ON ASBESTOS CONTAINING PROD-** 9                   **UCTS.**

10           (a) IN GENERAL.—Title II of the Toxic Substances  
11           Control Act (15 U.S.C. 2641 et seq.) is amended—

12                   (1) by inserting before section 201 (15 U.S.C.  
13                   2641) the following:

#### 14                   **“Subtitle A—General Provisions”;**

15                   and

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

#### 17                   **“Subtitle B—Ban of Asbestos** 18                   **Containing Products**

#### 19           **“SEC. 221. BAN OF ASBESTOS CONTAINING PRODUCTS.**

20                   “(a) DEFINITIONS.—In this chapter:

21                           “(1) ADMINISTRATOR.—The term ‘Adminis-  
22                           trator’ means the Administrator of the Environ-  
23                           mental Protection Agency.

24                           “(2) ASBESTOS.—The term ‘asbestos’ in-  
25                           cludes—

1 “(A) chrysotile;

2 “(B) amosite;

3 “(C) crocidolite;

4 “(D) tremolite asbestos;

5 “(E) winchite asbestos;

6 “(F) richterite asbestos;

7 “(G) anthophyllite asbestos;

8 “(H) actinolite asbestos;

9 “(I) amphibole asbestos; and

10 “(J) any of the minerals listed under sub-  
11 paragraphs (A) through (I) that has been  
12 chemically treated or altered, and any  
13 asbestiform variety, type, or component thereof.

14 “(3) ASBESTOS CONTAINING PRODUCT.—The  
15 term ‘asbestos containing product’ means any prod-  
16 uct (including any part) to which asbestos is delib-  
17 erately or knowingly added or used because the spe-  
18 cific properties of asbestos are necessary for product  
19 use or function. Under no circumstances shall the  
20 term ‘asbestos containing product’ be construed to  
21 include products that contain de minimus levels of  
22 naturally occurring asbestos as defined by the Ad-  
23 ministrator not later than 1 year after the date of  
24 enactment of this chapter.

1           “(4) DISTRIBUTE IN COMMERCE.—The term  
2           ‘distribute in commerce’—

3                   “(A) has the meaning given the term in  
4                   section 3 of the Toxic Substances Control Act  
5                   (15 U.S.C. 2602); and

6                   “(B) shall not include—

7                           “(i) an action taken with respect to  
8                           an asbestos containing product in connec-  
9                           tion with the end use of the asbestos con-  
10                          taining product by a person that is an end  
11                          user, or an action taken by a person who  
12                          purchases or receives a product, directly or  
13                          indirectly, from an end user; or

14                           “(ii) distribution of an asbestos con-  
15                          taining product by a person solely for the  
16                          purpose of disposal of the asbestos con-  
17                          taining product in compliance with applica-  
18                          ble Federal, State, and local requirements.

19           “(b) IN GENERAL.—Subject to subsection (c), the  
20 Administrator shall promulgate—

21                   “(1) not later than 1 year after the date of en-  
22                   actment of this chapter, proposed regulations that—

23                           “(A) prohibit persons from manufacturing,  
24                          processing, or distributing in commerce asbes-  
25                          tos containing products; and

1           “(B) provide for implementation of sub-  
2           sections (c) and (d); and

3           “(2) not later than 2 years after the date of en-  
4           actment of this chapter, final regulations that, effec-  
5           tive 60 days after the date of promulgation, prohibit  
6           persons from manufacturing, processing, or distrib-  
7           uting in commerce asbestos containing products.

8           “(c) EXEMPTIONS.—

9           “(1) IN GENERAL.—Any person may petition  
10          the Administrator for, and the Administrator may  
11          grant, an exemption from the requirements of sub-  
12          section (b), if the Administrator determines that—

13               “(A) the exemption would not result in an  
14               unreasonable risk of injury to public health or  
15               the environment; and

16               “(B) the person has made good faith ef-  
17               forts to develop, but has been unable to develop,  
18               a substance, or identify a mineral that does not  
19               present an unreasonable risk of injury to public  
20               health or the environment and may be sub-  
21               stituted for an asbestos containing product.

22           “(2) TERMS AND CONDITIONS.—An exemption  
23          granted under this subsection shall be in effect for  
24          such period (not to exceed 5 years) and subject to

1 such terms and conditions as the Administrator may  
2 prescribe.

3 “(3) GOVERNMENTAL USE.—

4 “(A) IN GENERAL.—The Administrator of  
5 the Environmental Protection Agency shall pro-  
6 vide an exemption from the requirements of  
7 subsection (b), without review or limit on dura-  
8 tion, if such exemption for an asbestos con-  
9 taining product is—

10 “(i) sought by the Secretary of De-  
11 fense and the Secretary certifies, and pro-  
12 vides a copy of that certification to Con-  
13 gress, that—

14 “(I) use of the asbestos con-  
15 taining product is necessary to the  
16 critical functions of the Department;

17 “(II) no reasonable alternatives  
18 to the asbestos containing product  
19 exist for the intended purpose; and

20 “(III) use of the asbestos con-  
21 taining product will not result in an  
22 unreasonable risk to health or the en-  
23 vironment; or

24 “(ii) sought by the Administrator of  
25 the National Aeronautics and Space Ad-

1           ministration and the Administrator of the  
2           National Aeronautics and Space Adminis-  
3           tration certifies, and provides a copy of  
4           that certification to Congress, that—

5                   “(I) the asbestos containing  
6                   product is necessary to the critical  
7                   functions of the National Aeronautics  
8                   and Space Administration;

9                   “(II) no reasonable alternatives  
10                  to the asbestos containing product  
11                  exist for the intended purpose; and

12                  “(III) the use of the asbestos  
13                  containing product will not result in  
14                  an unreasonable risk to health or the  
15                  environment.

16                  “(B) ADMINISTRATIVE PROCEDURE ACT.—

17                  Any certification required under subparagraph  
18                  (A) shall not be subject to chapter 5 of title 5,  
19                  United States Code (commonly referred to as  
20                  the ‘Administrative Procedure Act’).

21                  “(4) SPECIFIC EXEMPTIONS.—The following  
22                  are exempted:

23                   “(A) Asbestos diaphragms for use in the  
24                   manufacture of chlor-alkali and the products  
25                   and derivative therefrom.

1           “(B) Roofing cements, coatings, and  
2           mastics utilizing asbestos that is totally encap-  
3           sulated with asphalt, subject to a determination  
4           by the Administrator of the Environmental Pro-  
5           tection Agency under paragraph (5).

6           “(5) ENVIRONMENTAL PROTECTION AGENCY  
7           REVIEW.—

8           “(A) REVIEW IN 18 MONTHS.—Not later  
9           than 18 months after the date of enactment of  
10          this chapter, the Administrator of the Environ-  
11          mental Protection Agency shall complete a re-  
12          view of the exemption for roofing cements, coat-  
13          ings, and mastics utilizing asbestos that are to-  
14          tally encapsulated with asphalt to determine  
15          whether—

16               “(i) the exemption would result in an  
17               unreasonable risk of injury to public health  
18               or the environment; and

19               “(ii) there are reasonable, commercial  
20               alternatives to the roofing cements, coat-  
21               ings, and mastics utilizing asbestos that is  
22               totally encapsulated with asphalt.

23           “(B) REVOCATION OF EXEMPTION.—Upon  
24           completion of the review, the Administrator of  
25           the Environmental Protection Agency shall have



1 the authority to revoke the exemption for the  
2 products exempted under paragraph (4)(B), if  
3 warranted.

4 “(d) DISPOSAL.—

5 “(1) IN GENERAL.—Except as provided in para-  
6 graph (2), not later than 3 years after the date of  
7 enactment of this chapter, each person that pos-  
8 sesses an asbestos containing product that is subject  
9 to the prohibition established under this section shall  
10 dispose of the asbestos containing product, by a  
11 means that is in compliance with applicable Federal,  
12 State, and local requirements.

13 “(2) EXEMPTION.—Nothing in paragraph (1)—

14 “(A) applies to an asbestos containing  
15 product that—

16 “(i) is no longer in the stream of com-  
17 merce; or

18 “(ii) is in the possession of an end  
19 user or a person who purchases or receives  
20 an asbestos containing product directly or  
21 indirectly from an end user; or

22 “(B) requires that an asbestos containing  
23 product described in subparagraph (A) be re-  
24 moved or replaced.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

2 The table of contents in section 1 of the Toxic Substances

3 Control Act (15 U.S.C. prec. 2601) is amended—

4 (1) by inserting before the item relating to sec-  
5 tion 201 the following:

“Subtitle A—General Provisions”;

6 and

7 (2) by adding at the end of the items relating  
8 to title II the following:

“Subtitle B—Ban of Asbestos Containing Products

“Sec. 221. Ban of asbestos containing products.”.

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