year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 409

At the request of Mr. JEFFORDS, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of amendment No. 409 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 418

At the request of Mr. ROBERTS, his name was added as a cosponsor of amendment No. 418 proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 427

At the request of Mr. DURBIN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of amendment No. 427 proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 441

At the request of Mr. SPECTER, his name was added as a cosponsor of amendment No. 441 proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 502

At the request of Mr. DODD, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of amendment No. 502 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 504

At the request of Mrs. CLINTON, the names of the Senator from Washington (Mrs. MURRAY), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from New Jersey (Mr. CORZINE) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of amendment No. 504 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

MONDAY, APRIL 18, 2005

By Mr. INHOFE:

S. 830. A bill to amend the Federal Water Pollution Control Act to insert a new definition relating to oil and gas exploration and production; to the Committee on Environment and Public Works.

Mr. INHOFE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 830

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

SECTION 1. DEFINITION RELATING TO OIL AND GAS EXPLORATION AND PRODUCTION.

Section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362) is amended by adding at the end the following:

''(24) OIL AND GAS EXPLORATION, PRODUCTION, PROCESSING, TREATMENT OPERATION, OR TRANSMISSION.—

''(A) IN GENERAL.—The term 'oil and gas exploration, production, processing, treatment operation, or transmission' means all field activities or operations associated with oil or gas exploration, production, or processing, or oil or gas treatment operations or transmission facilities.

''(B) INCLUSIONS.—The term 'oil and gas exploration, production, processing, treatment operation, or transmission' includes activities necessary to prepare a site for oil or gas drilling and for the movement and placement of drilling equipment, whether or not the field activities or operations may be considered to be construction activities.''.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FEINGOLD:

S. 838. A bill to allow modified bloc voting by cooperative associations of milk producers in connection with a referendum on Federal Milk Marketing Order reform; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. FEINGOLD. Mr. President, today I am re-introducing a measure that will begin to restore democracy for dairy farmers throughout the Nation.

When dairy farmers across the country voted on a referendum six years ago, perhaps the most significant change in dairy policy in sixty years, they didn't actually get to vote. Instead, their dairy marketing cooperatives cast their votes for them.

This procedure is called ''bloc voting'' and it is used all the time. Basically, a Cooperative's Board of Directors decides that, in the interest of time, bloc voting will be implemented for that particular vote. It may serve the interest of time, but it doesn't always serve the interests of their producer owner-members.

While I think that bloc voting can be a useful tool in some circumstances, I have serious concerns about its use in every circumstance. Farmers in Wisconsin and in other States tell me that they do not agree with their cooperative's view on every vote. Yet, they have no way to preserve their right to make their single vote count.

I have learned from farmers and officials at the U.S. Department of Agriculture (USDA) that if a cooperative bloc votes, individual members have no opportunity to voice opinions separately. That seems unfair when you consider what significant issues may be at stake. Co-ops and their individual members do not always have identical interests. Considering our nation's longstanding commitment to freedom of expression, our Federal rules should allow farmers to express a differing opinion from their co-ops, if they choose to.

The Democracy for Dairy Producers Act of 2005 is simple and fair. It provides that a cooperative cannot deny any of its members a ballot to opt to vote separately from the co-op.

This will in no way slow down the process at USDA; implementation of any rule or regulation would proceed on schedule. Also, I do not expect that this would often change the final outcome of any given vote. Co-ops could still cast votes for their members who do not exercise their right to vote individually. And to the extent that co-ops

represent farmers' interests, in the majority of cases farmers are likely to vote the same as their co-ops. But whether they join the co-ops or not in voting for or against a measure, farmers deserve the right to vote according to their own views.

I urge my colleagues to return the democratic process to America's farmers, by supporting the Democracy for Dairy Producers Act.

I ask unanimous consent that the text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 838

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

SECTION 1. SHORT TITLE.

The Act may be cited as the ''Democracy for Dairy Producers Act of 2005''.

SEC. 2. MODIFIED BLOC VOTING.

(a) IN GENERAL.—Notwithstanding paragraph (12) of section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, in the case of the referendum conducted as part of the consolidation of Federal milk marketing orders and related reforms under section 143 of the Agricultural Market Transition Act (7 U.S.C. 7253), if a cooperative association of milk producers elects to hold a vote on behalf of its members as authorized by that paragraph, the cooperative association shall provide to each producer, on behalf of which the cooperative association is expressing approval or disapproval, written notice containing—

(1) a description of the questions presented in the referendum;

(2) a statement of the manner in which the cooperative association intends to cast its vote on behalf of the membership; and

(3) information regarding the procedures by which a producer may cast an individual ballot.

(b) TABULATION OF BALLOTS.—At the time at which ballots from a vote under subsection (a) are tabulated by the Secretary of Agriculture, the Secretary shall adjust the vote of a cooperative association to reflect individual votes submitted by producers that are members of, stockholders in, or under contract with, the cooperative association.

By Mr. HARKIN (for himself, Mrs. MURRAY, Mr. KENNEDY, Ms. MIKULSKI, Mr. DURBIN, Mr. LEAHY, Mr. AKAKA, Mr. FEINGOLD, Mrs. LINCOLN, Mr. CORZINE, and Mr. KERRY):

S. 840. A bill to amend the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on account of sex, race, or national origin, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. HARKIN. Mr. President, on behalf of myself and Senators MURRAY, KENNEDY, MIKULSKI, DURBIN, LEAHY, AKAKA, FEINGOLD, LINCOLN, CORZINE and KERRY, I am introducing the Fair Pay Act.

April 19th is Equal Pay Day. Even though the Equal Pay Act was passed more than 40 years ago, women working full time, year-round, still make only 76 cents for every dollar that a man makes. On April 19th, four days after tax returns for 2004 are due, U.S. women will finally reach the earnings mark that their male counterparts achieved by December 31st of last year. April 19th reminds us that the 60 million working women in this country are suffering economically because equal pay is still not a reality.

We've got millions of families struggling to make ends meet. The White House and the Republican House leadership believes a $750 billion tax cut for the rich is the solution, a permanent one.

I disagree. One way we can put more money in the pockets of working families is to pay women what they're worth. Nearly 40 years after the Equal Pay Act became law, women are still paid only 76 cents for every dollar a man earns.

Working women at all income and education levels are affected by the wage gap. In 2003, the GAO found that the pay gap continues to affect women in management and that, for these women, the pay gap has actually widened since 1995.

Regardless of education, the impact is the same. These women work as hard as men, but have less money to pay the bills, to put food on the table, or to save for their retirement or their child's education. That is simply wrong and it must end. We must close the wage gap once and for all.

First, we need to do a better job by enforcing and strengthening the penalties for the law that demands equal pay for equal work. That's why I support the Paycheck Fairness Act, sponsored by Senator CLINTON and Congresswoman DELAURO.

However, an even more important part of discrimination against women in the work place is the historic pattern of undervaluing and underpaying so-called ''women's jobs.''

Millions of women today working in female-dominated jobs—as social workers, teachers, child care workers and nurses—are ''equivalent'' in skills, effort, responsibility and working conditions to similar jobs dominated by men, but these women aren't paid the same as men.

That's what the Fair Pay Act—that Congresswoman NORTON and I are reintroducing today—would address. Unfairly low pay in jobs dominated by women is un-American, it is discriminatory and our bill would make it illegal.

Twenty States have ''fair pay'' laws and policies in place for their employees, including my State of Iowa. And Iowa had a Republican legislature and Governor when this bill passed into law, so ending wage discrimination against women is a nonpartisan issue.

Some say we don't need any more laws; market forces will take care of the wage gap. If we had relied on market forces we would have never passed the Equal Pay Act, the Civil Rights Act, the Family Medical Leave Act or the Americans with Disabilities Act.

I first introduced the Fair Pay Act in 1996 after the Iowa Business and Professional Women alerted me to this problem. And as long as I'm in the U.S. Senate, I will continue to fight to pass this important legislation so we can end wage discrimination against women once and for all.

By Mrs. CLINTON (for herself, Mr. REID, Mr. KENNEDY, Mr. HARKIN, Mr. DURBIN, Ms. LANDRIEU, Mr. CORZINE, Mr. LEAHY, Mr. SCHUMER, and Ms. STABENOW):

S. 841. A bill to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President, I rise today to discuss the Paycheck Fairness Act, which I am introducing along with my colleagues Senators REID, KENNEDY, HARKIN, DURBIN, LANDRIEU, CORZINE, LEAHY, SCHUMER, and STABENOW. I also want to acknowledge Senator Daschle for his longstanding support of this critical issue and Congresswoman DELAURO for being a champion in the House of Representatives.

This morning I met Brenda Wholey, a plaintiff in the Wal-Mart class action sex discrimination lawsuit. Brenda came all the way to Washington from Philadelphia to share her story with us. She worked hard, put in her time, and watched as time in and time out, men were promoted above her and compensated with higher salaries.

Too often when we talk about equal pay we talk about numbers—the 76 cents on the dollar that women earn, the 54 cents that Hispanic women earn. We talk about GAO reports and violations and litigation. But what this is really about is women like Brenda. Women who get up every day and go to work so they can provide for their families. Women who work hard and play by the rules and want to build a better life for their children. Women like Brenda who just want to be treated fairly.

The Equal Pay Act was an important step forward for women. It gave women a real chance to be full, equal participants in the workforce and to earn equal pay for equal work.

In the 42 years since the Equal Pay Act was enacted, women have shattered so many barriers. And for young women entering the workforce today, the sky is the limit. But we still have work to do to truly level the playing field.

That means making sure that employers treat men and women equally in the workplace. It also means giving women the tools they need to acquire the pay and recognition they deserve.

That is why I am pleased to be introducing the Paycheck Fairness Act—a bill that will build on the promise of the Equal Pay Act and help close the pay gap.

The Paycheck Fairness Act has three main components.

First, it prevents pay discrimination before it starts. By helping women strengthen their negotiation skills and providing outreach and technical assistance to employers to ensure they fairly evaluate and pay their employees, the Paycheck Fairness Act gives employers the tools they need to level the playing field between men and women.

Second, the Paycheck Fairness Act creates strong penalties to punish those who do violate the act. By strengthening the penalties for employers who violate the Equal Pay Act, this bill sends a strong message—Equal Pay is a matter to be taken seriously.

And finally, the Paycheck Fairness Act ensures that the Federal Government, which should be a model employer when it comes to enforcing Federal employment laws, uses every tool in its toolbox to ensure that women are paid the same amount as men for doing the same jobs.

From ending the Clinton administration's Equal Pay Matters Initiative, to halting the collection of data on women workers, to removing important information about the wage gap from the Department of Labor's website, to tying its own hands in enforcing the Equal Pay Act among Federal contractors, the Bush administration has taken this country backwards in the fight for equal pay. You might say the Bush administration has taken one giant step backwards for womenkind.

The Paycheck Fairness Act would stop the Bush administration's rollbacks and make sure, once again, that our Federal Government sets a standard of excellence for making sure women are paid the same as men.

There is no question that we've come a long way since the Equal Pay Act became law 42 years ago. And women have earned every step they have gained in the journey toward equality.

But what has made this country great is that we have never accepted that ''less discrimination'' is ''good enough.'' The history of our country is one of constant striving to live up to the ideal of our founding. And the most basic element of our American character is the belief that all of us deserve to be treated as equals.

Our country in its history has faced lots of difficult questions, questions on which reasonable people could disagree. Equal pay is not one of those hard questions. It is common sense, it is basic fairness. It is simply right.

And frankly, when it comes to equal pay, we still have a lot of work to do. Women's compensation still lags behind men's in nearly every occupation and every field. As the American Association of University Women study being unveiled today shows us, this fact is not lost on most Americans. Young, old, Democrat, Republican, male, female—there is universal recognition that a wage gap exists. Well, the Paycheck Fairness Act will do something about it.

This issue is about our mothers, our sisters, our daughters. It's about women being able to earn an equal wage for equal work. It is in all of our interests to allow women to support their families and to live with the dignity and respect accorded to fully engaged members of the workforce.

Equality works for all of us. Now is the time to make sure that we all work towards equality.

By Mr. KENNEDY (for himself, Mr. SPECTER, Mr. REID, Mr. DURBIN, Mr. SCHUMER, Mr. DODD, Mr. BINGAMAN, Mr. HARKIN, Ms. MIKULSKI, Mrs. MURRAY, Mrs. CLINTON, Mr. BYRD, Mr. INOUYE, Mr. BIDEN, Mr. LEAHY, Mr. SARBANES, Mr. LEVIN, Mr. KERRY, Mr. ROCKEFELLER, Mr. LIEBERMAN, Mr. AKAKA, Mr. DORGAN, Mrs. BOXER, Mr. FEINGOLD, Mr. WYDEN, Ms. LANDRIEU, Mr. BAYH, Mr. CARPER, Ms. STABENOW, Ms. CANTWELL, Mr. CORZINE, Mr. DAYTON, Mr. LAUTENBERG, Mr. OBAMA, Mr. SALAZAR, and Mr. REED):

S. 842. A bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, in recognition of our country's longstanding commitment to basic fairness for the Nation's hard-working men and women, I am introducing the Employee Free Choice Act. I want to thank my distinguished colleague, Senator ARLEN SPECTER, for also supporting this important legislation to protect workers' right to free association.

The essence of the American dream is the ability to provide a better life for yourself and your family. At the very heart of that dream are a good job, a good workplace, good health care, and a good retirement. Unfortunately, too many families today find that dream increasingly beyond their reach in today's global economy. Vast numbers of citizens suddenly find themselves in a race to the bottom against workers in other countries. Whoever is willing to work for the lowest pay gets the work.

That is why the labor movement is more important today than ever. It's not the profits of business that are being shipped overseas. They're higher than ever. It is the jobs of American workers that are being outsourced, and they're being outsourced in droves. Hardworking Americans are paying a high price for this intense new era of worldwide competition. Our economy is growing, but workers are not benefiting. Business profits are up 70 percent since 2001, but wages have been stagnant.

Labor unions have always led the fight for working families—for the 8-hour day and the 40-hour week—for overtime protections—for a fair minimum wage—for a safe and healthy workplace—for decent health insurance and a decent pension. Every working American deserves these protections. But when they try to organize, employers typically respond with threats and intimidation. They hire union-busting firms and force employees to listen to anti-union speeches. Companies close down departments—or even entire operations—to avoid negotiating a union contract.

These are not isolated abuses. Every year, over 20,000 workers are illegally fired or discriminated against for exercising their labor rights. In at least one quarter of all organizing efforts, an employer illegally fires a worker for supporting the union. For these anti-union employers, union-busting is just another cost of doing business. America's workers deserve better, and our democracy deserves better.

That is why I am introducing the Employee Free Choice Act, to protect the right of workers to choose a union. This bill seeks to level the playing field for employees attempting to organize a union or negotiate their first contract. It requires employers to come to the table to talk. And it puts real teeth in existing protections by strengthening the penalties for discriminating against workers who support a union.

These protections are long overdue. For too long, Congress has failed to act against the anti-labor, anti-worker, anti-union tactics now far too prevalent in the workplace. This bill is an important step towards ensuring that millions of American workers and their families can do better in today's economy. I urge my colleagues to join me in this fight to support the Employee Free Choice Act.

By Mr. REID:

S. 845. A bill to amend title 10, United States Code, to permit retired servicemembers who have a service-connected disability to receive disability compensation and either retired pay or Combat-Related Special Compensation and to eliminate the phase-in period with respect to such concurrent receipt; read the first time.

Mr. REID. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 845

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

SECTION 1. FINDINGS.

Congress finds the following:

(1) For more than 100 years before 1999, all disabled military retirees were required to fund their own veterans' disability compensation by forfeiting $1 of earned retired pay for each $1 received in veterans' disability compensation.

(2) Since 1999, Congress has enacted legislation every year to progressively expand eligibility criteria for relief of the retired pay disability offset and further reduce the burden of financial sacrifice on disabled military retirees.

(3) Absent adequate funding to eliminate the sacrifice for all disabled retirees, Congress has given initial priority to easing financial inequities for the most severely disabled and for combat-disabled retirees.

(4) In the interest of maximizing eligibility within cost constraints, Congress effectively has authorized full concurrent receipt for all qualifying retirees with 100 percent disability ratings and all with combat-related disability ratings, while phasing out the disability offset to retired pay over 10 years for retired members with noncombat-related, service-connected disability ratings of 50 percent to 90 percent.

(5) In pursuing these good-faith efforts, Congress acknowledges the regrettable necessity of creating new thresholds of eligibility that understandably are disappointing to disabled retirees who fall short of meeting those new thresholds.

(6) Congress is not content with the status quo.

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that military retired pay earned by service and sacrifice in defending the Nation should not be reduced because a military retiree is also eligible for veterans' disability compensation awarded for service-connected disability.

SEC. 3. ELIGIBILITY FOR PAYMENT OF BOTH RETIRED PAY AND VETERANS' DISABILITY COMPENSATION FOR CERTAIN ADDITIONAL MILITARY RETIREES WITH COMPENSABLE SERVICE-CONNECTED DISABILITIES.

(a) EXTENSION OF CONCURRENT RECEIPT AUTHORITY TO RETIREES WITH SERVICE-CONNECTED DISABILITIES RATED LESS THAN 50 PERCENT.—Section 1414(a) of title 10, United States Code, is amended to read as follows:

''(a) PAYMENT OF BOTH RETIRED PAY AND COMPENSATION.—

''(1) IN GENERAL.—Subject to subsection (b), an individual who is a qualified retiree for any month is entitled to be paid both retired pay and veterans' disability compensation for that month without regard to sections 5304 and 5305 of title 38.

''(2) QUALIFIED RETIREES.—For purposes of this section, a qualified retiree, with respect to any month, is a member or former member of the uniformed services who—

''(A) is entitled to retired pay, other than in the case of a member retired under chapter 61 of this title with less than 20 years of service creditable under section 1405 of this title and less than 20 years of service computed under section 12732 of this title; and

''(B) is entitled for that month to veterans' disability compensation.''.

(b) REPEAL OF PHASE-IN OF CONCURRENT RECEIPT OF RETIRED PAY AND VETERANS' DISABILITY COMPENSATION.—Section 1414 of title 10, United States Code, is further amended—

(1) by striking subsection (c);

(2) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively; and

(3) in subsection (d), as redesignated, by striking subparagraph (4).

(c) CLERICAL AMENDMENTS.—

(1) The heading for section 1414 of title 10, United States Code, is amended to read as follows:

''§ 1414. Members eligible for retired pay who are also eligible for veterans' disability compensation: concurrent payment of retired pay and disability compensation''.

(2) The item relating to such section in the table of sections at the beginning of chapter 71 of such title is amended to read as follows:

''1414. Members eligible for retired pay who are also eligible for veterans' disability compensation: concurrent payment of retired pay and disability compensation.''.

SEC. 4. COORDINATION OF SERVICE ELIGIBILITY FOR COMBAT-RELATED SPECIAL COMPENSATION AND CONCURRENT RECEIPT.

(a) ELIGIBILITY FOR TERA RETIREES.—Section of section 1413a(c) of title 10, United States Code, is amended by striking ''entitled to retired pay who—'' and all that follows and inserting ''who—

''(1) is entitled to retired pay, other than a member retired under chapter 61 of this title with less than 20 years of service creditable under section 1405 of this title and less than 20 years of service computed under section 12732 of this title; and

''(2) has a combat-related disability''.

(b) AMENDMENTS TO STANDARDIZE SIMILAR PROVISIONS.—

(1) CLERICAL AMENDMENT.—The heading for paragraph (3) of section 1413a(b) of title 10, United States Code, is amended by striking ''RULES'' and inserting ''RULE''.

(2) STANDARDIZATION WITH CRSC RULE FOR CHAPTER 61 RETIREES.—Section 1414(b) of such title is amended—

(A) by striking ''SPECIAL RULES'' and all that follows through ''is subject to'' in paragraph (1) and inserting ''SPECIAL RULE FOR CHAPTER 61 DISABILITY RETIREES.—In the case of a qualified retiree who is retired under chapter 61 of this title, the retired pay of the member is subject to''; and

(B) by striking paragraph (2).

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect as of January 1, 2006, and shall apply to payments for months beginning on or after that date.

By Mr. DURBIN:

S. 846. A bill to provide fair wages for America's workers; read the first time.

Mr. DURBIN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 846

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

TITLE I—OVERTIME RIGHTS PROTECTION

SEC. 101. CLARIFICATION OF REGULATIONS RELATING TO OVERTIME COMPENSATION.

Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

''(k)(1) Notwithstanding the provisions of subchapter II of chapter 5 and chapter 7 of title 5, United States Code (commonly referred to as the Administrative Procedures Act) or any other provision of law, any portion of the final rule promulgated on April 23, 2004, revising part 541 of title 29, Code of Federal Regulations, that exempts from the overtime pay provision of section 7 of this Act any employee who would not otherwise be exempt if the regulations in effect on March 31, 2003, remained in effect, shall have no force or effect and that portion of such regulations (as in effect on March 31, 2003) that would prevent such employee from being exempt shall be reinstated.

''(2) The Secretary shall adjust the minimum salary level for exemption under section 13(a)(1) in the following manner:

''(A) Not later than 60 days after the date of enactment of this subsection, the Secretary shall increase the minimum salary level for exemption under subsection (a)(1) for executive, administrative, and managerial occupations from the level of $155 per week in 1975 to $591 per week (an amount equal to the increase in the Employment Cost Index (published by the Bureau of Labor Statistics) for executive, administrative, and managerial occupations between 1975 and 2005).

''(B) Not later than December 31 of the calendar year following the increase required in subparagraph (A), and each December 31 thereafter, the Secretary shall increase the minimum salary level for exemption under subsection (a)(1) by an amount equal to the increase in the Employment Cost Index for executive, administrative, and managerial occupations for the year involved.''.

TITLE II—FAIR MINIMUM WAGE

SEC. 111. MINIMUM WAGE.

(a) IN GENERAL.—Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

''(1) except as otherwise provided in this section, not less than—

''(A) $5.85 an hour, beginning on the 60th day after the date of enactment of this paragraph;

''(B) $6.55 an hour, beginning 12 months after that 60th day; and

''(C) $7.25 an hour, beginning 24 months after that 60th day;''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 60 days after the date of enactment of this Act.

TITLE III—SENSE OF THE SENATE REGARDING MULTIEMPLOYER PENSION PLANS

SEC. 121. SENSE OF THE SENATE REGARDING MULTIEMPLOYER PENSION PLANS.

(a) FINDINGS.—The Senate makes the following findings:

(1) Multiemployer pension plans have been a major force in the delivery of employee benefits to active and retired American workers and their dependents for over half a century.

(2) There are approximately 1,700 multiemployer defined benefit pension plans in which approximately 9,700,000 workers and retirees participate.

(3) Three-quarters of the approximately 60,000 to 65,000 employers that participate in multiemployer plans have fewer that 100 employees.

(4) Multiemployer plans allow for greater access and affordability for smaller employers and pension portability for their employees as they move from one job to another, and permit workers to earn a pension where they might otherwise not be able to do so.

(5) The 2000–2002 drop in the stock market and decline in equity values has affected all investors, including multiemployer plans.

(6) The decline in value sustained by multiemployer defined benefit pension plans have threatened the stability of this private sector source of secure retirement income.

(7) Participating employers could face onerous excise taxes and other penalties as a result of the serious, adverse financial impact due to these market losses.

(8) In 2004, the United States Senate recognized the severity of this situation and passed by an overwhelmingly, large bipartisan margin of 86 to 9 temporary relief provisions for single and multiemployer defined benefit pension plans.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Senate—

(1) expresses its strong support for multiemployer defined benefit pension plans;

(2) recognizes the importance of an environment in which multiemployer plans can continue their vital role in providing benefits to working men and women;

(3) recognizes that multiemployer pension plan relief must be designed for the multiemployer labor-relations environment that supports the plans; and

(4) supports legislation to strengthen and protect the viability of multiemployer pension plans for the continued benefit of current and retired members, and their families and survivors, and to strengthen the ability of all plans to address funding problems that occur.

By Mr. FRIST (for himself and Mr. LUGAR):

S. 850. A bill to establish the Global Health Corps, and for other purposes; to the Committee on Foreign Relations.

Mr. FRIST. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 850

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Global Health Corps Act of 2005''.

SEC. 2. GLOBAL HEALTH CORPS.

Title II of the Public Health Services Act (42 U.S.C. 202 et seq.) is amended by adding at the end the following:

PART D—GLOBAL HEALTH CORPS

''SEC. 271. DEFINITIONS.

''In this part:

''(1) AGENCY.—The term 'Agency' means the United States Agency for International Development.

''(2) CANDIDATE.—The term 'candidate' means an individual described in section 273(d).

''(3) CORPS.—Except as otherwise provided, the term 'Corps' means the Global Health Corps established under section 273(a).

''(4) DEPARTMENT.—Except as otherwise provided, the term 'Department' means the Department of Health and Human Services.

''(5) DIRECTOR.—The term 'Director' means the Director of the Global Health Corps described in section 272(a)(3).

''(6) OFFICE.—The term 'Office' means the Office of the Global Health Corps established under section 272(a)(1).

''(7) PARTICIPANT.—The term 'participant' means a member of the Corps as described in section 273(e).

''SEC. 272. OFFICE OF THE GLOBAL HEALTH CORPS.

''(a) OFFICE OF THE GLOBAL HEALTH CORPS.—

''(1) ESTABLISHMENT.—There is established within the Department an Office of the Global Health Corps to assist in improving the health, welfare, and development of communities in foreign countries and regions through the provision of health care personnel, items, and related services.

''(2) PURPOSES.—The purposes of the Office are—

''(A) to expand the availability of health care personnel, items, and related services to improve the health, welfare, and development of communities in select foreign countries and regions;

''(B) to promote United States public diplomacy in such foreign countries and regions by matching the needs of such communities with the services available from the Global Health Corps;

''(C) to provide for the effective management and administration of the Global Health Corps; and

''(D) to coordinate, unify, strengthen, and focus the provision of health care personnel, items, and related services to foreign countries and regions by departments, agencies, and offices of the United States, by non-Federal volunteers, and by private voluntary organizations.

''(3) DIRECTOR.—The head of the Office shall be the Director of the Global Health Corps, who shall be appointed by, and report directly to, the Secretary.

''(b) FUNCTIONS OF THE OFFICE.—The functions of the Office include the following:

''(1) Recruiting individuals to serve in the Corps, including distributing recruiting information to colleges, universities, hospitals, clinics, and nongovernmental organizations. Such individuals may include those with fellowship or scholarship support from private or public institutions and organizations.

''(2) Processing applications for enrollment in the Corps.

''(3) Verifying the training and credentials of candidates seeking to participate in the Corps

''(4) Reviewing requests for Corps personnel and services made by the head of a United States mission, a foreign country, a nongovernmental organization, an agency of the Government of the United States or other person, as determined by the Secretary.

''(5) Matching the skills of participants with the requests for health care personnel, items, and related services described in paragraph (4) to provide such services effectively and efficiently.

''(6) Providing administrative support and management for the Corps, including—

''(A) assisting candidates in the application and training process, as appropriate;

''(B) facilitating the travel of participants to foreign countries and regions and the work of participants in foreign countries and regions;

''(C) ensuring participants have appropriate legal protections and immunities through mechanisms including bilateral agreements with agencies, organizations, or countries receiving participants, hiring non-Federal volunteers as intermittent Federal employees, or providing participants status as employees of the Government of the United States for the purposes of such protections, as appropriate;

''(D) providing strategic guidance and policy for the human resources management of the Corps;

''(E) carrying out activities to retain participants in the Corps, including maintaining a database of current and former participants; and

''(F) ensuring participants have appropriate health, security, and cultural training prior to arriving in a foreign country.

''(7) Serving as a liaison between the Corps and other appropriate persons or government agencies, including—

''(A) leading or participating in interagency working groups, as appropriate;

''(B) coordinating the activities of the Corps with activities carried out by other bureaus of the Department and by the Agency, the Department of Defense, the Department of State, the Peace Corps, and other executive department, as appropriate, to advance and promote the purpose and activities of the Corps as effectively and efficiently as possible;

''(C) meeting routinely with representatives from the Agency, the Peace Corps, the National Disaster Medical System, the Medical Reserve Corps, the Office of Force Readiness and Deployment, Volunteers for Prosperity, the Office of Foreign Disaster Assistance of the Agency, the Bureau of Global Health Affairs of the Agency, the Coordinator of United States Government Activities to Combat HIV/AIDS Globally, and others, as appropriate, to improve the health, welfare, and development of communities in foreign countries and regions through the provision of health care personnel, items, and related services on a short-term or long-term basis; and

''(D) maintaining contact with appropriate international organizations to carry out the purpose of the Corps and with foreign governments that are current or prospective recipients of services provided by the Corps.

''(8) Providing participants with appropriate training and equipment, including—

''(A) ensuring participants have the appropriate medical equipment, supplies, and other resources necessary to provide health care services under austere and challenging conditions while serving in the Corps; and

''(B) establishing, managing, and directing any training provided under section 274(e).

''(9) Maintaining contact with participants during their service in the Corps.

''(10) Establishing performance objectives for the Corps, and appropriate metrics to assess the performance of the Corps in achieving its purposes, consistent with this part, and assessing the performance of the Office in achieving its purposes, consistent with section 272.

''(11) Submitting to Congress an annual report on the objectives and metrics described in paragraph (10) and on the Corps performance in meeting such objectives.

''SEC. 273. ESTABLISHMENT OF THE GLOBAL HEALTH CORPS.

''(a) ESTABLISHMENT.—The Secretary, in consultation with the Secretary of State, shall establish a Global Health Corps.

''(b) PURPOSE.—The purpose of the Corps is to improve the health, welfare, and development of communities in select foreign countries and regions, to advance United States public diplomacy in such locations, and to provide individuals in the United States with the opportunity to serve such communities by providing a broad range of needed health care and related services in such communities.

''(c) COMPOSITION OF THE CORPS.—

''(1) IN GENERAL.—The Corps shall include the following components:

''(A) Volunteers who are not employees of the Government of the United States or enrolled in the Peace Corps.

''(B) Employees of the Government of the United States.

''(C) Peace Corps volunteers who participate in the Corps under section 5A of the Peace Corps Act.

''(D) The Director and any staff of the Office.

''(E) Any other individual that the Director determines is appropriate to include in the Corps.

''(d) CANDIDATE.—An individual may be a candidate for the Corps if such individual meets the following:

''(1) NON-FEDERAL VOLUNTEER.—A individual who—

''(A)(i) is citizen or national of the United States; or

''(ii) is a resident of the United States, at the discretion of the Secretary;

''(B) is not an employee of the Government of the United States;

''(C)(i) is a trained health care professional and meets the educational and licensure requirements necessary to be such a professional, including a physician, nurse, dentist, veterinarian, or other professional determined to be appropriate by the Director; or

''(ii) is a trained health care practitioner or other professional that meets the educational requirements determined to be appropriate by the Secretary; and

''(D) is seeking membership in the Corps and is willing to work under austere and challenging conditions.

''(2) FEDERAL EMPLOYEE.—A citizen, national, or resident of the United States who—

''(A) is an employee of the Government of the United States;

''(B) meets the requirements of clause (i) or (ii) of paragraph (1)(C); and

''(C) is seeking membership in the Corps, or is designated as a candidate by the head of the executive department that employs such citizen, national, or resident.

''(3) PEACE CORPS VOLUNTEER.—A citizen or national of the United States who—

''(A) is a Peace Corp volunteer

''(B)(i) meets the requirements of clause (i) or (ii) of paragraph (1)(C); or

''(ii) is qualified to participate in the comprehensive training program established under section 274(e)(2), as determined by the Director; and

''(C) is seeking enrollment in the Corps.

''(e) MEMBERSHIP IN THE CORPS.—

''(1) IN GENERAL.—The Director may—

''(A) enroll and accept the services of candidates who are not employees of the Government of the United States in the Corps, without regard to section 1342 of title 31, United States Code;

''(B) designate candidates who are employees of the Government of the United States as members of the Corps, with the approval of the head of the executive department that employs such employee; and

''(C) accept details or assignments of employees of the Government of the United States to serve in the Corps on a reimbursable or nonreimbursable basis.

''(2) APPLICATION.—The Director shall establish procedures for individuals to submit applications for enrollment in the Corps.

''SEC. 274. FUNCTIONS AND TRAINING OF THE CORPS.

''(a) IN GENERAL.—Participants shall be available to provide the services described in subsection (b) to individuals and communities in the locations described in subsection (c).

''(b) SERVICES.—Subject to subsection (f), the services referred to in subsection (a) are services, including assistance and training, provided to individuals and communities to carry out the purpose of the Corps, including the provision of—

''(1) health care items and related services, including dental care;

''(2) preventive care, treatment, and services;

''(3) veterinary and related services;

''(4) sanitation, hygiene, food preparation, and clean water training;

''(5) disease surveillance and basic health care services to individuals and communities affected by diseases or illnesses as identified by the Director;

''(6) education and training related to the services described in paragraphs (1) through (5);

''(7) education and training to local persons to improve health care outcomes, and to assist in the development of local and indigenous health care delivery capacity and self-sufficiency; and

''(8) other health care items and related services determined to be appropriate by the Director, including health care training, health systems development, and technical support.

''(c) LOCATIONS.—The Director is authorized to provide, with the concurrence of the Secretary of State, the services described in subsection (b) to individuals and communities in a foreign country or region if—

''(1) the Secretary of State has determined that such country or region is in need of such services; and

''(2) the Secretary of State has determined that the provision of such services may help promote a better understanding of the people of the United States on the part of the peoples served in such a foreign country or region.

''(d) PLACEMENT OF PARTICIPANTS.—

''(1) IN GENERAL.—The Director shall decide on the placement of a participant in a foreign country or region described in subsection (c) after—

''(A) determining that the location or organization is in need of the services provided by the Corps in which the participant has expertise and training;

''(B) consulting with the Secretary of State on the extent to which the placement of the participant in a particular location or organization advances the foreign policy and public diplomacy objectives of the United States; and

''(C) considering the skills, qualifications, and availability of the participant.

''(2) REQUIRED CONSULTATION.—The Director shall, prior to placing a participant in a foreign country or region, consult with—

''(A) the head of the executive department that employs the participant, if the participant is an employee of the Government of the United States;

''(B) the United States Ambassador to such foreign country; and

''(C) the head of any executive department that is providing health care or related services in such foreign country.

''(e) TRAINING.—

''(1) REQUIREMENT.—The Secretary shall ensure that appropriate training programs are available, including the comprehensive training program described in paragraph (2) and appropriate health, security, and cultural training for participants, to prepare participants to provide the services described in subsection (b).

''(2) COMPREHENSIVE TRAINING PROGRAM.—

''(A) ESTABLISHMENT.—The Director shall establish and carry out a program, either separately or jointly with a Federal, public, or private sector health care provider or health care institution, to provide members of Corps selected by the Director training in a variety of health care disciplines, including basic medical, dental, public health, nursing, epidemiological services, and veterinary care.

''(B) TRAINING PROVIDED.—The program established under subparagraph (A) shall be designed by the Director, in consultation with the Secretary, Administrator of the Agency, the Secretary of Agriculture, the Secretary of Defense, the Secretary of State and the Director of the Peace Corps, to provide comprehensive basic training for a period of not more than 6 months to each participant who is a member of the Peace Corps and each other participant that the Director determines is appropriate to enable such participant to provide the services described in subsection (b), including training in a variety of health care disciplines, including basic medical, dental, public health, nursing, epidemiological service, and veterinary care.

''(C) REIMBURSEMENT.—The Director is authorized to permit a participant who is not a member of the Peace Corps to receive training in the program established under subparagraph (A) on a reimbursable basis, unless determined otherwise by the Secretary.

''(D) PROGRAM MODEL.—The program established under subparagraph (A) should be modeled on successful public and private programs, including the Joint Special Operations Medical Training Center program conducted by the Department of Defense and those conducted by various medical and nursing schools around the country.

''(E) PROHIBITION ON PARTICIPATION IN SIMILAR TRAINING.—A participant may not participate in the Joint Special Operations Medical Training Center program conducted at Fort Bragg, North Carolina.

''(3) SERVICE REQUIREMENT.—

''(A) NON-FEDERAL VOLUNTEERS.—A participant who is not an employee of the Government of the United States or a Peace Corps volunteer and who attends a training program established under paragraph (1), other than the training program established under paragraph (2), shall be obligated to complete the amount of service in the Corps, commensurate with the type and amount of training received, that the Secretary determines is appropriate.

''(B) ALL PARTICIPANTS.—A participant who attends the training program established under paragraph (2) shall be obligated to complete the amount of service in the Corps, commensurate with the type and amount of training received, that the Secretary deems appropriate. Such service shall be at the discretion of the Director, during any 5-year period, and in a manner consistent with this part and with the concurrence of the Director of the Peace Corps if such participant is a Peace Corps volunteer.

''(f) PROHIBITION.—A member of the Corps may not carry out an activity under this part if—

''(1) section 104(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)) prohibits providing funding for such activity; or

''(2) any provision of the annual Foreign Operations, Export Financing, and Related Programs Appropriations Act that relates to abortion prohibits providing assistance for such activity.

''SEC. 275. PERSONNEL AND ADMINISTRATIVE PROVISIONS.

''(a) COMPENSATION OF PARTICIPANTS.—

''(1) NON-FEDERAL VOLUNTEERS.—A participant who is not an employee of the Government of the United States or a Peace Corps volunteer shall serve in the Corps without compensation from the Government of the United States to either the participant or to any other person.

''(2) FEDERAL EMPLOYEES.—A participant who is an officer or employee of the Government of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

''(3) PEACE CORPS VOLUNTEERS.—A participant who is a Peace Corps volunteer shall serve without compensation in addition to that received for their services in the Peace Corps under the Peace Corps Act (22 U.S.C. 2501 et seq.).

''(b) TRAVEL EXPENSES.—

''(1) NON-FEDERAL VOLUNTEERS.—The Director may provide a participant who is a not an employee of the Government of the United States or a Peace Corps volunteer travel expenses, excluding per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while such participant is serving in the Corps.

''(2) FEDERAL EMPLOYEES.—The Director shall provide a participant who is an employee of the Government of the United States travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Corps.

''(3) PEACE CORPS VOLUNTEERS.—The Director may not provide a participant who is a Peace Corps volunteer travel expenses in addition to such expenses provided for under the Peace Corp Act (22 U.S.C. 2501 et seq.).

''(c) APPLICABILITY OF LAWS TO NON-FEDERAL VOLUNTEERS.—

''(1) IN GENERAL.—A member of the Corps who is not an employee of the Government of the United States or a Peace Corps volunteer may not be considered an employee of the Government of the United States, except for the purposes of—

''(A) section 272(b)(6)(C);

''(B) chapter 81 of title 5, United States Code (relating to compensation for work-related injuries); and

''(C) chapter 11 of title 18, United States Code (relating to conflicts of interest).

''(2) VOLUNTEER PROTECTION ACT OF 1997.—

''(A) VOLUNTEER STATUS.—A member of the Corps who is not an employee of the United States or a Peace Corps volunteer shall be deemed to be a volunteer for a nonprofit organization or governmental entity for the purposes of the Volunteer Protection Act of 1997 (42 U.S.C. 14501 et seq.).

''(B) INAPPLICABILITY OF EXCEPTIONS.—Section 4(d) of such Act (42 U.S.C. 14503(d)) may not apply to a member of the Corps who is not an employee of the United States or a Peace Corps volunteer.

''(d) TERMS AND CONDITIONS.—With respect to the membership of a candidate in the Corps, the terms and conditions of the enrollment, training, compensation, hours of work, benefits, leave, termination, and all other terms and conditions of the service of such participant shall be exclusively those set forth in this part and those consistent with such terms and conditions which the Secretary may prescribe.

''(e) TERMINATION.—The membership in the Corps of a participant may be terminated at any time at the pleasure of the Director.

''SEC. 276. PUBLIC HEALTH SERVICE MEMBERS IN THE GLOBAL HEALTH CORPS.

''(a) AUTHORITY TO ENROLL.—A member of the Service may enroll in the Corps and provide services as a member of the Corps described in this part.

''(b) MINIMUM NUMBER.—Not later than 2 years after the date of enactment of the Global Health Corps Act of 2005, the Secretary shall designate not less than 500 employees of the Service as members of the Corps and make such employees available to provide non-emergency, routine health care items and related services in the Corps, as the Secretary and the Secretary of State determine appropriate.

''(c) RAPID RESPONSE CAPACITY.—Not later than 2 years after the date of enactment of the Global Health Corps Act of 2005, the Secretary shall establish within the Commissioned Corps of the Service a rapid response capacity, consisting of not less than 250 individuals, to provide health care items and related services in foreign countries or regions to carry out the purpose of the Corps on short notice, in coordination with the Secretary of State. A member of the Commissioned Corps who is included in such rapid response capacity shall—

''(1) be trained, equipped, and able to deploy to a foreign country or region within 72 hours of notification of such deployment; and

''(2) be considered a participant in the Corps.''.

SEC. 3. PEACE CORPS VOLUNTEERS IN THE CORPS.

The Peace Corps Act (22 U.S.C. 2501) is amended by inserting after section 5 the following new section:

''GLOBAL HEALTH CORPS VOLUNTEERS

''SEC. 5A. (a) Volunteers are authorized to participate in the Global Health Corps, established in section 273 of the Public Health Service Act.

''(b) Not later than 2 years after the date of enactment of the Global Health Corps Act of 2005, the Director of the Peace Corps shall make available not less than 250 positions within the Peace Corps for volunteers to serve in the Global Health Corps.

''(c) A volunteer may apply and be approved for enrollment in the Global Health Corps at such time and in such manner as the Director of the Peace Corps and the Secretary of Health and Human Services require.

''(d) A volunteer who is enrolled in the Global Health Corps shall receive training under section 274(e)(2) of the Public Health Service Act, unless such volunteer meets the requirements of clause (i) or (ii) of section 273(d)(1)(C) of such Act.

''(e) A volunteer who is enrolled in the Global Health Corps shall provide services as a member of the Global Health Corps as described in part D of title II of the Public Health Service Act.

''(f) A volunteer who is enrolled in the Global Health Corps shall be subject to all other terms and conditions of service under this Act.''.

SEC. 4. VOLUNTEERS FOR PROSPERITY.

(a) FINDING.—Congress finds that the Volunteers for Prosperity program, organized pursuant to Executive Order 13317 (42 U.S.C. 12501 note), is a model to link non-Federal volunteers with non-Federal organizations to carry out important initiatives.

(b) REQUIREMENT FOR CORPS INITIATIVE.—The head of the Volunteers for Prosperity program shall establish an initiative known as the Health Care for Peace initiative within such program for the purpose of making available non-Federal volunteers to participate in the Global Health Corps established under section 273 of the Public Health Service Act.

SEC. 5. PUBLIC-PRIVATE PARTNERSHIPS.

(a) IN GENERAL.—Under the authority of subsections (a) and (b) of section 601 of the Foreign Assistance Act of 1961 (22 U.S.C. 2351) and section 635(d) of such Act (22 U.S.C. 2395(d)), the Director of the Global Health Corps may establish private-public partnerships in furtherance of the purposes of this Act and the Global Health Corps. Such partnerships may include activities such as—

(1) corporate volunteer programs;

(2) training;

(3) transportation;

(4) field support;

(5) volunteer identification;

(6) lodging;

(7) communications;

(8) fellowships and scholarships; and

(9) other activities relevant to the mission of the Global Health Corps or the operation of the Office of the Global Health Corps, as determined by the Director of the Global Health Corps.

(b) CONSULTATION.—The Director of the Global Health Corps shall consult with the Global Development Alliance Secretariat at the United States Agency for International Development to develop a model for such public-private partnerships and gain information on established best practices.

SEC. 6. REPORT ON IMPLEMENTATION.

Not later than 120 days after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a detailed plan for the implementation of this Act and the amendments made by this Act. Such report shall include recommendations for improving the functioning and activities of the Global Health Corps, including the feasibility, cost, utility, and desirability of establishing incentives to recruit candidates into the Corps.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act and the amendments made by this Act.

By Mr. SPECTER (for himself, Mr. LEAHY, Mr. HATCH, Mrs. FEINSTEIN, Mr. GRASSLEY, Mr. DEWINE, Mr. BAUCUS, and Mr. VOINOVICH):

S. 852. 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; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I have sought recognition to introduce legislation which may be cited as the Fairness In Asbestos Injury Resolution Act of 2005. I do so on behalf of Senator LEAHY, the ranking member of the Judiciary Committee, Senator HATCH, the former chairman of the committee, Senator FEINSTEIN, Senator DEWINE, Senator BAUCUS, Senator VOINOVICH and Senator GRASSLEY. There are others in the wings waiting to cosponsor, but this is a very complex bill, ranging over 300 pages. Quite a number of my colleagues have told me they are supportive of the bill and are making the final check to determine cosponsorship.

Several months ago, a discussion draft was circulated. Last week, after a great many refinements had been added, the current bill was circulated. There have been a couple of relatively minor changes which have been added to this bill, but it is essentially the same as the circulation bill which was submitted a week ago.

I compliment my distinguished colleague, Senator LEAHY, the ranking member, for his diligence, hard work and cooperation in structuring a bill with a great many moving parts, which he and I have been able to agree upon on the core principles.

We have adopted a position that we will work jointly to retain these core provisions. We are open to suggestions and amendments and modifications which do not impact on these core provisions. But it is a very difficult matter to structure an asbestos bill which can pass the Senate. There are 55 Republicans. You need at least five Democrats. It has to be a balanced bill, and it is our submission that this is a balanced bill.

A great deal of credit is due to senior Federal Judge Edward R. Becker, who until May 5, his 70th birthday, in the year 2003 was the chief judge of the Court of Appeals for the Third Circuit who wrote the opinion on the asbestos litigation which reached the Supreme Court of the United States.

When the Judiciary Committee passed out of committee legislation on asbestos in July of 2003, the distinguished Presiding Officer was on the committee at that time and can attest to the 12-hour marathon session we had. We did so significantly along party lines to move the legislation along, recognizing it had many problems. At my request, Judge Becker then convened the so-called stakeholders in his chambers in Philadelphia for 2 days in August, the stakeholders being identified as the manufacturers, the AFL–CIO, the insurance industry, and the trial lawyers.

To recite the power and diversity and difference of opinion of these groups is to suggest the complication of bringing the stakeholders together on a piece of complex legislation.

Following those 2 days of meetings in Judge Becker's chambers, we have had some 36 sessions in my conference room here in the Hart Senate Office Building where Judge Becker presided and I assisted, and we worked out a great many of the issues to the satisfaction of the stakeholders.

One of the core provisions of the bill is that there is a trust fund of $140 billion. It is always difficult on projections to be absolutely certain, but I believe there is a very high probability that this trust fund will be adequate to pay all of the claims.

In very extensive testimony from Goldman Sachs on very carefully calculated projections, it was projected that the total cost of payments would be $118 billion. There is a considerable cushion between $118 billion and $140 billion. If for some unexpected reason the trust fund is insufficient, then those who have been injured by exposure to asbestos will be able to revert to jury trials.

All of us are mindful of the very substantial factor when a claimant gives up a constitutional right to jury trial, but in a program structured largely along lines of workmen's compensation, it is our conclusion that it is a fair exchange.

When you find that there are many people who are suffering deadly ailments from asbestos, mesothelioma and other deadly injuries, who are not being compensated, this is a way to compensate those individuals whose companies have gone bankrupt. Over 75 companies have gone bankrupt at a tremendous impact to the economy. This will relieve the companies of the onerous threat of bankruptcy—and they are taking additional companies with rapidity.

On one development which candidly surprised me, last week, when we circulated the draft bill a week ago today, there was a 25-point bump in the stock market for asbestos companies. When we had a meeting later in the day and deferred production of the bill, the stock market went down to some extent. There is some consideration that the stock market is wiser even than Congress. Perhaps that would take a whole lot. But the reaction of the stock market is an indication of the importance of resolving this asbestos issue in order to give the economy a start.

The hour is late. There are others who wish to seek recognition. The distinguished chairman of the Appropriations Committee is waiting through this nongermane part of his business, and the distinguished Democratic leader, I know, wants to seek recognition.

I shall include the remainder of my statement in the RECORD and ask unanimous consent that it be printed.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Mr. President, I have sought recognition to introduce new legislation, the Fairness in Asbestos Injury Resolution Act of 2005, FAIR Act, the successor to S. 1125 and S. 2290, the FAIR Acts of 2003 and 2004. My colleagues Senator Frist, Senator Hatch and Senator Leahy deserve enormous credit for the drafting of these acts and for the development of this legislation. There is a will in the Senate to enact legislation that should put an end to the ongoing rash of bankruptcies, growing monthly; diverting resources from those who are truly sick; endangering jobs and pensions; and creating the worst litigation crisis in the history of the American judicial system. The Congress plainly wants a more rational asbestos claims system, and I believe that this legislation offers a realistic prospect of accomplishing that result.

This legislation provides substantial assurances of acceptable compensation to asbestos victims and substantial assurances to manufacturers and insurers to resolve, with finality, asbestos claims. For more than two decades, a solution to the asbestos crisis has eluded Congress and the courts. Seventy-four companies have gone bankrupt, thousands of individuals who have been exposed to asbestos have deadly diseases—mesothelioma and other such ailments—and are not being compensated. According to The Rand Institute for Civil Justice, ''about two-thirds of the claims are now filed by the unimpaired, while in the past they were filed only by the manifestly ill.'' According to Rand, the number of claims continues to rise, with over 600,000 claims filed already and 300,000 pending. The number of asbestos defendants also has risen sharply, from about 300 in the 1980s, to more than 8,400 today and most are users of the product, not its manufacturers. These companies span 85 percent of the U.S. economy and nearly every U.S. industry, and include automakers, shipbuilders, textile mills, retailers, insurers, shipbuilders, electric utilities and virtually any company involved in manufacturing or construction in the last 30 years.

Asbestos leaves many victims in its wake. First and foremost, the sick and their families have suffered. But the flawed asbestos litigation system not only hurts the sick and their chance at receiving fair compensation, but also claims other victims. These include employees, retirees and shareholders of affected companies whose jobs, savings and retirement plans are also jeopardized by the tide of asbestos cases. With asbestos litigation affecting so many companies, this also impacts the overall economy, including jobs, pensions, stock prices, tax revenues and insurance costs. According to a 2002 study by Nobel laureate Joseph Stiglitz, asbestos bankruptcies have cost nearly 60,000 workers their jobs and $200 million in lost wages. Employees' retirement funds have shrunken by 25 percent.

In July 2003, the Judiciary Committee voted out S. 1125, a bill with many problems, largely along party lines, in an effort to move the legislation. S. 1125 created the basic structure of the legislation, and made a huge stride in working out the medical criteria. However, the bill floundered on other issues. In August 2003, at my request, Judge Edward R. Becker, a Federal judge for 34 years, convened in his chambers in Philadelphia for 2 days the so-called stakeholders—manufacturers, labor, AFL–CIO, insurers and trial lawyers—to determine if some common ground could be found. Until the preceding May, Judge Becker had been the chief judge of the Third Circuit Court of Appeals and wrote the opinion in the asbestos class action suit which was affirmed by the U.S. Supreme Court.

From September 2003 through January 2005, there were some 36 stakeholder meetings held in my conference room, with Judge Becker as a pro-bono mediator, usually attended by 25 to 40 representatives and sometimes over 75 present. I have also met 15 times since January with various officials from the administration, members of the Senate Judiciary Committee and their staffs, the Senate leadership and other various senators all in an effort to move this bill forward. Judge Becker and I have sought an equitable bill which took into account, to the maximum extent possible, the concerns of the stakeholders and to get their input on drafting of the bill. After analysis and deliberation, we found we could accommodate many of the competing interests.

This process commenced with the blessing of Chairman Hatch and Ranking Member Leahy of the Judiciary Committee. This extended process allowed the stakeholders an extraordinary ''hearing'' process and really amounted to the longest ''mark-up'' in Senate history although not in the customary framework. We have had the cooperation of many Senators. Senators Hatch and Leahy have had representatives at all the meetings. The majority leader, Senator Hatch, and Senator Leahy have addressed this ''working group'' at our meetings. Senator Hatch and Senator Leahy's representatives have been active participants at every meeting, as well as the members of the staffs of Senators Baucus, Biden, Brownback, Burns, Carper, Chafee, Chambliss, Coburn, Cornyn, Craig, DeWine, Dodd, Durbin, Feingold, Feinstein, L. Graham, Grassley, Hagel, Kennedy, Kohl, Kyl, Landrieu, Levin, Lincoln, Murray, Ben Nelson, Pryor, Schumer, Sessions, Snowe, Stabenow, and Voinovich.

The concept of a trust fund is an outstanding idea. Senator Hatch deserves great credit for moving the legislation in the direction of a trust fund with a schedule of payments analogous to workers' compensation so the cases would not have to go through the litigation process. Under this proposal, the Federal Government would establish a national trust fund privately financed by asbestos defendant companies and insurers. No taxpayer money would be involved. Asbestos victims would simply submit their claims to the fund. Claimants would be fairly compensated if they meet medical criteria for certain illnesses and show past asbestos exposure. The trust fund would guarantee compensation for impaired victims.

Through the series of meetings with Judge Becker, we have wrestled with and have been able to solve a number of very complex issues. The size of the trust fund was always a principal issue of dispute, starting at $108 billion. The manufacturers/insurers raised their offer to $140 billion. Last October, Majority Leader Frist and then-Democratic Leader Daschle agreed to $140 billion. When Senator Frist and Senator Daschle, in an adversarial context, agreed to the adequacy of the $140 billion figure, it is difficult to exceed it even though the AFL–CIO did not contemporaneously agree.

It is not possible to say definitely what figure would be adequate because it depends on the uncertainty of how many claims will be filed. There is support for the adequacy of the $140 billion figure from reputable projections. But they are, admittedly, only projections.

The real safety valve, if the fund is unable to pay claims, is for the injured to have the ability to go back to court if the system is not operational and able to pay exigent health claims within 9 months after enactment, and all other valid claims within 24 months of enactment. Upon reversion to the tort system, the bill provides that claimants may file suits either in Federal court or

State court in the state in which the plaintiff resides or State court in the state where the asbestos exposure took place.

The claimants object to any hiatus between access to the courts and an operating system; but the reality is that court delays are customarily longer than the delay structured in this system. The defendants and insurers object saying it is too short a time frame, but they have the power to expedite the process by promptly paying their assessments. I am confident that there will be no problem in administering the system and processing the claims. The leaders of the Manville Trust and the Rand Institute study and point out that the volume of claims can be efficiently administered by the fund administrator using a technique developed by the Manville Trust and other similar claims facilities that have processed asbestos claims for many years. The Manville Trust has processed as many as 150,000 claims per year. The number of exigent claims anticipated in the first 9 months of the fund is vastly smaller and even the total number of claims anticipated in the first 24 months is significantly less that which the Manville Trust has handled in a comparable period. Additionally, the bill provides the administrator with the option to contract out the exigent claims to a claims facility for expedited processing under the standards of the fund on a voluntary basis. The short time frame will prod the system to become operative at an early date. The bill sends the claims back to the fund as soon as it is certified operational with a credit for any payment of the scheduled amount.

Similarly, the defendants seek a commitment that the legislation will bar return to the courts for at least 7½ years. It is hard to see how the substantial fund would be expended in a lesser period. Here again, the legislation gives the defendant substantial assurances that the system will last at least 7½ years. If it collapses, the claimants should not bear the burden, but should reclaim their constitutional right to a jury trial. However, sunset cannot take place before there is an extensive and rigorous ''program review.'' This would give the administrator an opportunity re-fashion the program to compensate for any major shortcomings.

The claimants sought $60 billion in startup contributions within 5 years and the defendants countered with a maximum of $40 billion. The fund's borrowing power should enable it to borrow at least the balance of $20 billion because of the defendants continuing substantial financial commitments. Here again, the bill meets the standard of substantial assurances, albeit not perfect certainty, that $60 billion will be in hand within the first 5 years.

A key issue for the claimant has been that of workers' compensation subrogation. This issue is important because the value of an award to the claimant depends on whether the claimant may have to pay a substantial amount of it to others. While the precise picture is different from State to State, in general, workers' compensation laws give employers—and their insurance carriers—subrogation rights against third-party tortfeasors and a lien on the injured employee's recovery from a third-part tortfeasor. This is a big issue because workers' compensation covers the employee's medical costs.

I closely examined and considered including a proposal that would have called for a so-called workers' compensation ''holiday.'' Such a proposal would have provided for a ''holiday'' from worker's compensation payments during the period of receipt of payments from trust fund except to the extent that the compensation would exceed them, with a waiver of past and future subrogation. However, as each State has different workers' compensation laws and I concluded that such a proposal may go beyond the practice in a number of States, leaving some claimants with a significantly reduced award.

Furthermore, while not undisputed like some other matters on this legislation, there is some significant basis in the assertion by claimants that the award values in the bill were designed with the concept in mind that there would be no liens or rights of subrogation against the claimants based on workers' compensation awards and health insurance payments.

Therefore, in the final analysis, it has been determined that to be fair to victims, claimants should be allowed to retain and receive the full value of both their fund awards and workers' compensation payments. It is important that the bill must extinguish any liens or rights of subrogation that other parties might otherwise assert against the claimants based on workers' compensation awards and health insurance payments.

Another key issue for the claimants has been the legislation's treatment of asbestos disease claims under the Federal Employers' Liability Act, FELA, the workers' compensation system for rail workers. Earlier versions of the bill would have preempted FELA claims for asbestos-related diseases, limiting victim's recovery to compensation under a national asbestos trust fund. Rail labor asserts that such an approach is unfair to rail workers, since for all other workers, the bill maintains workers' compensation rights. Alternative approaches to dealing with the FELA issue have been proposed, including providing for a supplemental payment, in addition to awards under the bill, to provide compensation to rail workers for work-related asbestos diseases. The AFL–CIO's affiliates who represent workers in the rail industry have been engaged in discussions with industry on this issue, and a fair resolution has been reached. The bill provides for a principled compromise that would allow for a special adjustment for railroad workers so that the compensation award would be structured in a manner that would allow for corollary benefits—similar benefits for workers under FELA and workers compensation. It also clarifies that this legislation intends to deal solely with asbestos claims and does not in any manner impact FELA.

In these marathon discussions, plus the January 11 and February 2 hearings, I understand the deep concerns expressed by the stakeholder representatives on more concessions for their clients. On the state of the 20-year record, this choice is not between this bill and one which would give their clients more concessions. The choice is between this bill and the continuation of the present chaotic system which leaves uncompensated thousands of victims suffering from deadly diseases and litigation driving more companies into bankruptcy.

We considered at length the manufactures/insurers objections to medical screening, but concluded such a provision was necessary as an offset to the reduced role of claimant's attorney. With the previous potential of a substantial contingent fee, claimant's attorneys identified those damaged by exposure to asbestos. Absent that motivation, with the attorneys fees capped at 5 percent, it is reasonable to have routine examinations for people who would not be expected to go for such checkups on their own; so as a matter of basic fairness, such screening is provided. By establishing a program with rigorous standards, as we have done in this bill, unmeritorious claims can be avoided with the fair determination of those entitled to compensation under the statutory standard.

The legislation has closely examined the issues of so-called ''leakage'' in the fund and has provided that all asbestos claims pending on the date of enactment, except for nonconsolidated cases actually on trial, and except cases subject to a verdict or final order or final judgment, will be brought into the asbestos trust fund. Furthermore, only written settlement agreements, executed prior to date of enactment, between a defendant and a specifically identifiable plaintiff will be preserved outside of the fund; the settlement agreement must contain an express obligation by the settling defendant to make a future monetary payment to the individual plaintiff, but gives the plaintiff 30 days to fulfill all conditions of the settlement agreement.

The legislation includes language which is designed to ensure prompt judicial review of a variety of regulatory actions and to ensure that any constitutional uncertainties with regard to the legislation are resolved as quickly as possible. Specifically, it provides that any action challenging the constitutionality of any provision of the act must be brought in the United States District Court for the District of Columbia. The bill also authorizes direct appeal to the Supreme Court on an expedited basis. An action under this section is to be filed within 60 days after the date of enactment or 60 days after the final action of the administrator or the commission giving rise to the action, whichever is later. The district court and Supreme Court are required to expedite to the greatest possible extent the disposition of the action and appeal.

Claimants also expressed the need for assurances that the manufacturers payment into the fund. Therefore, the legislation also requires enhanced ''transparency'' of the payments by the defendants and insurers into the fund. The proposal provides that 20 days after the end of such 60-day period, the administrator shall publish in the Federal Register a list of such submissions, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned. After publication of such list, any person may submit to the administrator information on the identity of any other person that may have obligations under the fund. In addition, there are enhanced notice and disclosure requirements included in the draft. It also provides that within 60 days after the date of enactment, any person who, acting in good faith, has knowledge that such person or such person's affiliated group would result in placement in the top tiers, shall submit to the administrator either the name of such person or such person's ultimate parent; and the likely tier to which such person or affiliated group may be assigned under this act.

This legislation deals with a number of very complex issues, one of them being that of ''mixed-dust.'' I held a hearing in the Judiciary Committee on this issue on February 2, 2005. The manufacturers fear that many asbestos claims will be ''repackaged'' as silica claims in the tort system. Evidence adduced at the hearing reflects that this has been happening in a number of jurisdictions. If a claim is due to asbestos exposure at all, the program should be the exclusive means of compensation. The stakeholders agree that this is an asbestos bill, designed to dispose of all asbestos claims but that workers with genuine silica exposure disease ought to be able to pursue their claims in the tort system. The problem is that with those claims where the point of demarcation is unclear. Silica/asbestos defendants are worried that they will find themselves in court with the burden of proving that the plaintiff's injury is due to asbestos rather than silica. This legislation makes clear that pure silica claims are not preempted, but claims involving asbestos disease are preempted. A claimant must provide rigorous medical evidence

establishing by a preponderance of evidence that their functional impairment was caused by exposure to silica, and asbestos exposure was not a significant contributing factor. Although this does impose the burden on the claimant, this is no different than the burden the plaintiff or any party advancing a position has in producing medical evidence in any case that the will physician will state that a disease was caused by some condition or exposure or that it was not caused by some condition or exposure. In addition, the testimony given at the February 2 hearing on the issue established that asbestos and silica are easily distinguishable on xray and that asbestos and silica rarely are found in the same patient.

Another very complicated issue addressed this legislation, is that of providing for award adjustments for exceptional mesothelioma cases based on age and the number of dependents of the claimant. For example, a mesothelioma victim who is 40 years old with two children will be able to get an upwards adjustment in his award amount as compared to a 80 years mesothelioma victim with no dependents. The impact of such adjustments to the fund will remain revenue-neutral.

There has been a strong concern that this bill should not become a ''smokers'' bill rather than an asbestos bill—that thousands of smokers will claim to be in the Level VII compensation tier in order to get money even if asbestos had nothing to do with their disease. After long discussions with the various sides, it has been decided to remove Level VII cases from the fund, cases which had the potential to bring down the entire fund.

There has also been a concern with the legitimacy of the Level VI compensation tier. I requested that the Institute of Medicine, IOM, commence a study to assess the medical evidence so as to determine whether colorectal, laryngeal, esophageal, pharyngeal or stomach cancer can be caused by asbestos exposure. The IOM will conclude its study of Level VI causation by April 2006. With a 270-day stay on exigent cases and 2-year stay of all other cases, this has the practical impact of the IOM study results being conclusive on inclusion or exclusion of Level VI prior to any claim being filed.

Therefore, the bill retains the Level VI tier pending the IOM study conclusions but continues to provide extensive safeguards to the fund against those individuals with these diseases making claims against the asbestos trust fund. Any Level VI claim must be based on findings by a board certified pathologists accompanied by evidence of a bilateral asbestos-related nonmalignant disease; evidence of 15 or more weighted years of substantial occupations exposure to asbestos; and supporting medical documentation establishing asbestos exposure as a contributing factor in causing the cancer in question. The claim must also be referred to a physicians panel for a determination that it is more probable than not that asbestos exposure was a substantial contributing factor in causing the other cancer in question. Further, the bill mandates that the physicians panel review the claimants smoking history as opposed to ''claimant may request.''

This is a complicated bill, but one that is both integrated and comprehensive and reflective of a remarkable will to enact legislation. If this bill is rejected, I do not see the agenda of this Senate Judiciary Committee revisiting the issue. I cannot conceive of a more strenuous effort being directed to this subject that has been done over the past two years. This is the last best chance.

I remain confident that we can forge and enact a bill that is fair to the claimants and to business and that will put an end once and for all to this nightmare chapter in American legal, economic and social history. If We can summon the legislative will in a bipartisan spirit, it can be done.

Mr. SPECTER. Mr. President, I ask unanimous consent that the text of the bill be printed.

Mr. President, I ask unanimous consent between the comments I have made, which have not been made from a text, and the text of my language which I am currently stating, be included, so that those who read the CONGRESSIONAL RECORD, if anyone does, will know the repetition in the prepared text is occasioned by the fact that the initial statement was made without reference to a text and there will necessarily be some repetition in the prepared text.

I thank the Chair. I yield the floor.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 852

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Fairness in Asbestos Injury Resolution Act of 2005'' or the ''FAIR Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of 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.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

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

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

(3) The injuries caused by asbestos can have latency periods of up to 40 years, and even limited exposure to some forms of asbestos may result in injury in some cases.

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

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

(6) The United States Supreme Court has recognized that Congress must act to create a more rational asbestos claims system. In 1991, a Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist, found that the ''ultimate solution should be legislation recognizing the national proportions of the problem . . . and creating a national asbestos dispute resolution scheme . . .''. The Court found in 1997 in Amchem Products Inc. v. Windsor, 521 U.S. 591, 595 (1997), that ''[t]he

argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.'' In 1999, the Court in Ortiz v. Fibreboard Corp., 527 U.S. 819, 821 (1999), found that the ''elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation.'' That finding was again recognized in 2003 by the Court in Norfolk & Western Railway Co. v. Ayers, 123 S. Ct. 1210 (2003).

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

(8) This crisis has also imposed a deleterious burden upon the United States bankruptcy courts, which have assumed a heavy burden of administering complicated and protracted bankruptcies with limited personnel.

(9) This crisis has devastated many communities across the country, but hardest hit has been Libby, Montana, where tremolite asbestos, 1 of the most deadly forms of asbestos, was contained in the vermiculite ore mined from the area and despite ongoing cleanup by the Environmental Protection Agency, many still suffer from the deadly dust.

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

(1) create a privately funded, publicly administered fund to provide the necessary resources for a fair and efficient system to resolve asbestos injury claims that will provide compensation for legitimate present and future claimants of asbestos exposure as provided in this Act;

(2) provide compensation to those present and future victims based on the severity of their injuries, while establishing a system flexible enough to accommodate individuals whose conditions worsens;

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

(4) increase economic stability by resolving the asbestos litigation crisis that has bankrupted companies with asbestos liability, diverted resources from the truly sick, and endangered jobs and pensions.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Office of Asbestos Disease Compensation appointed under section 101(b).

(2) ASBESTOS.—The term ''asbestos'' includes—

(A) chrysotile;

(B) amosite;

(C) crocidolite;

(D) tremolite asbestos;

(E) winchite asbestos;

(F) richterite asbestos;

(G) anthophyllite asbestos;

(H) actinolite asbestos;

(I) amphibole asbestos;

(J) any of the minerals listed under subparagraphs (A) through (I) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof; and

(K) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(3) ASBESTOS CLAIM.—

(A) IN GENERAL.—The term ''asbestos claim'' means any claim, premised on any theory, allegation, or cause of action for damages or other relief presented in a civil action or bankruptcy proceeding, directly, indirectly, or derivatively arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child, or other relative of any exposed person.

(B) EXCLUSION.—The term does not include—

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

(ii) claims for benefits under a workers' compensation law or veterans' benefits program;

(iii) claims arising under any governmental or private health, welfare, disability, death or compensation policy, program or plan;

(iv) claims arising under any employment contract or collective bargaining agreement; or

(v) claims arising out of medical malpractice.

(4) ASBESTOS CLAIMANT.—The term ''asbestos claimant'' means an individual who files a claim under section 113.

(5) CIVIL ACTION.—The term ''civil action'' means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(6) COLLATERAL SOURCE COMPENSATION.—The term ''collateral source compensation'' means the compensation that the claimant received, or is entitled to receive, from a defendant or an insurer of that defendant, or compensation trust as a result of a final judgment or settlement for an asbestos-related injury that is the subject of a claim filed under section 113.

(7) ELIGIBLE DISEASE OR CONDITION.—The term ''eligible disease or condition'' means the extent that an illness meets the medical criteria requirements established under subtitle C of title I.

(8) EMPLOYERS' LIABILITY ACT.—The term ''Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employer's Liability Act'' shall, for all purposes of this Act, include the Act of June 5, 1920 (46 U.S.C. App. 688), commonly known as the Jones Act, and the related phrase ''operations as a common carrier by railroad'' shall include operations as an employer of seamen.

(9) FUND.—The term ''Fund'' means the Asbestos Injury Claims Resolution Fund established under section 221.

(10) INSURANCE RECEIVERSHIP PROCEEDING.—The term ''insurance receivership proceeding'' means any State proceeding with respect to a financially impaired or insolvent insurer or reinsurer including the liquidation, rehabilitation, conservation, supervision, or ancillary receivership of an insurer under State law.

(11) LAW.—The term ''law'' includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.

(12) PARTICIPANT.—

(A) IN GENERAL.—The term ''participant'' means any person subject to the funding requirements of title II, including—

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

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

(iii) any successor in interest of a participant.

(B) EXCEPTION.—

(i) IN GENERAL.—A defendant participant shall not include any person protected from any asbestos claim by reason of an injunction entered in connection with a plan of reorganization under chapter 11 of title 11, United States Code, that has been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(ii) APPLICABILITY.—Clause (i) shall not apply to a person who may be liable under subtitle A of title II based on prior asbestos expenditures related to asbestos claims that are not covered by an injunction described under clause (i).

(13) PERSON.—The term ''person''—

(A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and

(B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.

(14) STATE.—The term ''State'' means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

(15) SUBSTANTIALLY CONTINUES.—The term ''substantially continues'' means that the business operations have not been significantly modified by the change in ownership.

(16) SUCCESSOR IN INTEREST.—The term ''successor in interest'' means any person that acquires assets, and substantially continues the business operations, of a participant. The factors to be considered in determining whether a person is a successor in interest include—

(A) retention of the same facilities or location;

(B) retention of the same employees;

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

(D) retention of the same supervisory personnel;

(E) continuity of assets;

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

(G) retention of the same name;

(H) maintenance of the same customer base;

(I) identity of stocks, stockholders, and directors between the asset seller and the purchaser; or

(J) whether the successor holds itself out as continuation of previous enterprise, but expressly does not include whether the person actually knew of the liability of the participant under this Act.

(17) VETERANS' BENEFITS PROGRAM.—The term ''veterans' benefits program'' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(18) WORKERS' COMPENSATION LAW.—The term ''workers' compensation law''—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et

seq.) and chapter 81 of title 5, United States Code; and

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

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DISEASE COMPENSATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—There is established within the Department of Labor the Office of Asbestos Disease Compensation (hereinafter referred to in this Act as the ''Office''), which shall be headed by an Administrator.

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

(3) EXPENSES.—There shall be available from the Asbestos Injury Claims Resolution Fund to the Administrator such sums as are necessary for the administrative expenses of the Office, including the sums necessary for conducting the studies provided for in section 121(e).

(b) APPOINTMENT OF ADMINISTRATOR.—

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

(2) REPORTING.—The Administrator shall report directly to the Assistant Secretary of Labor for the Employment Standards Administration.

(c) DUTIES OF ADMINISTRATOR.—

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

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

(B) determining, levying, and collecting assessments on participants under title II;

(C) appointing or contracting for the services of such personnel, making such expenditures, and taking any other actions as may be necessary and appropriate to carry out the responsibilities of the Office, including entering into cooperative agreements with other Federal agencies or State agencies and entering into contracts with nongovernmental entities;

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

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

(i) administering, in a fiduciary capacity, the assets of the Fund for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries;

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

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

(iv) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets; and

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

(F) promulgating such rules, regulations, and procedures as may be necessary and appropriate to implement the provisions of this Act;

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

(H) excluding evidence and disqualifying or debarring any attorney, physician, provider of medical or diagnostic services, including laboratories and others who provide evidence in support of a claimant's application for compensation where the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by such individuals or entities; and

(I) having all other powers incidental, necessary, or appropriate to carrying out the functions of the Office.

(2) CERTAIN ENFORCEMENTS.—For each infraction relating to paragraph (1)(H), the Administrator also may impose a civil penalty not to exceed $10,000 on any person or entity found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall prescribe appropriate regulations to implement paragraph (1)(H).

(3) SELECTION OF DEPUTY ADMINISTRATORS.—The Administrator shall select a Deputy Administrator for Claims Administration to carry out the Administrator's responsibilities under this title and a Deputy Administrator for Fund Management to carry out the Administrator's responsibilities under title II of this Act. The Deputy Administrators shall report directly to the Administrator and shall be in the Senior Executive Service.

(d) EXPEDITIOUS DETERMINATIONS.—The Administrator shall prescribe rules to expedite claims for asbestos claimants with exigent circumstances in order to expedite the payment of such claims as soon as possible after startup of the Fund. The Administrator shall contract out the processing of such claims.

(e) AUDIT AND PERSONNEL REVIEW PROCEDURES.—The Administrator shall establish audit and personnel review procedures for evaluating the accuracy of eligibility recommendations of agency and contract personnel.

(f) APPLICATION OF FOIA.—

(1) IN GENERAL.—Section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) shall apply to the Office of Asbestos Disease Compensation and the Asbestos Insurers Commission.

(2) CONFIDENTIALITY.—Any person may designate any record submitted under this section as a confidential commercial or financial record for purposes of section 552 of title 5, United States Code. The Administrator and the Chairman of the Asbestos Insurers Commission shall adopt procedures for designating such records as confidential. Information on reserves and asbestos-related liabilities submitted by any participant for the purpose of the allocation of payments under subtitles A and B of title II shall be deemed to be confidential financial records.

SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE COMPENSATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Administrator shall establish an Advisory Committee on Asbestos Disease Compensation (hereinafter the ''Advisory Committee'').

(2) COMPOSITION AND APPOINTMENT.—The Advisory Committee shall be composed of 24 members, appointed as follows—

(A) The Majority and Minority Leaders of the Senate, the Speaker of the House, and the Minority Leader of the House shall each appoint 4 members. Of the 4—

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

(ii) 2 shall be selected to represent the interests of participants, 1 of whom shall be selected to represent the interests of the insurer participants and 1 of whom shall be selected to represent the interests of the defendant participants.

(B) The Administrator shall appoint 8 members, who shall be individuals with qualifications and expertise in occupational or pulmonary medicine, occupational health, workers' compensation programs, financial administration, investment of funds, program auditing, or other relevant fields.

(3) QUALIFICATIONS.—All of the members described in paragraph (2) shall have expertise or experience relevant to the asbestos compensation program, including experience or expertise in diagnosing asbestos-related diseases and conditions, assessing asbestos exposure and health risks, filing asbestos claims, administering a compensation or insurance program, or as actuaries, auditors, or investment managers. None of the members described in paragraph (2)(B) shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

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

(1) claims filing and claims processing procedures;

(2) claimant assistance programs;

(3) audit procedures and programs to ensure the quality and integrity of the compensation program;

(4) the development of a list of industries, occupations and time periods for which there is a presumption of substantial occupational exposure to asbestos;

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

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

(7) such other matters related to the implementation of this Act as the Administrator considers appropriate.

(c) OPERATION OF THE COMMITTEE.—

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

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

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

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

(2) Any member appointed to fill a vacancy occurring before the expiration of the term shall be appointed only for the remainder of such term.

(3) The Administrator shall designate a Chairperson and Vice Chairperson from among members of the Advisory Committee appointed under subsection (a)(2)(B).

(4) The Advisory Committee shall meet at the call of the Chairperson or the majority of its members, and at a minimum shall meet at least 4 times per year during the first 5 years of the asbestos compensation program, and at least 2 times per year thereafter.

(5) The Administrator shall provide to the Committee such information as is necessary and appropriate for the Committee to carry out its responsibilities under this section. The Administrator may, upon request of the

Advisory Committee, secure directly from any Federal, State, or local department or agency such information as may be necessary and appropriate to enable the Advisory Committee to carry out its duties under this section. Upon request of the Administrator, the head of such department or agency shall furnish such information to the Advisory Committee.

(6) The Administrator shall provide the Advisory Committee with such administrative support as is reasonably necessary to enable it to perform its functions.

(d) EXPENSES.—Members of the Advisory Committee, other than full-time employees of the United States, while attending meetings of the Advisory Committee or while otherwise serving at the request of the Administrator, and while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

SEC. 103. MEDICAL ADVISORY COMMITTEE.

(a) IN GENERAL.—The Administrator shall establish a Medical Advisory Committee to provide expert advice regarding medical issues arising under the statute.

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

SEC. 104. CLAIMANT ASSISTANCE.

(a) ESTABLISHMENT.—Not later than 180 days after the enactment of this Act, the Administrator shall establish a comprehensive asbestos claimant assistance program to—

(1) publicize and provide information to potential claimants about the availability of benefits for eligible claimants under this Act, and the procedures for filing claims and for obtaining assistance in filing claims;

(2) provide assistance to potential claimants in preparing and submitting claims, including assistance in obtaining the documentation necessary to support a claim;

(3) respond to inquiries from claimants and potential claimants;

(4) provide training with respect to the applicable procedures for the preparation and filing of claims to persons who provide assistance or representation to claimants; and

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

(b) RESOURCE CENTERS.—The claimant assistance program shall provide for the establishment of resource centers in areas where there are determined to be large concentrations of potential claimants. These centers shall be located, to the extent feasible, in facilities of the Department of Labor or other Federal agencies.

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

(d) LEGAL ASSISTANCE.—

(1) IN GENERAL.—As part of the program established under subsection (a), the Administrator shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) LIST OF QUALIFIED ATTORNEYS.—As part of the program, the Administrator shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Administrator. The claimants shall not be required to use the attorneys listed on such roster.

(3) NOTICE.—

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

(i) pro bono services for legal assistance available to those claimants; and

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

(B) NOTICE BY ATTORNEYS.—Before a person becomes a client of an attorney with respect to an asbestos claim, that attorney shall provide notice to that person of pro bono services for legal assistance available for that claim.

(e) ATTORNEY'S FEES.—

(1) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under the Fund, more than 5 percent of a final award made (whether by the Administrator initially or as a result of administrative review) under the Fund on such claim.

(2) PENALTY.—Any representative of an asbestos claimant who violates this subsection shall be fined not more than the greater of—

(A) $5,000; or

(B) twice the amount received by the representative for services rendered in connection with each such violation.

SEC. 105. PHYSICIANS PANELS.

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

(b) FORMATION OF PANELS.—

(1) IN GENERAL.—The Administrator shall periodically determine—

(A) the number of Physicians Panels necessary for the efficient conduct of the medical review process under section 121;

(B) the number of Physicians Panels necessary for the efficient conduct of the exceptional medical claims process under section 121; and

(C) the particular expertise necessary for each panel.

(2) EXPERTISE.—Each Physicians Panel shall be composed of members having the particular expertise determined necessary by the Administrator, randomly selected from among the physicians appointed under subsection (a) having such expertise.

(3) PANEL MEMBERS.—

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

(B) WAIVER.—The Administrator may waive the provisions of subparagraph (A) and may provide for panels of less than 3 physicians, if the Administrator determines that—

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

(ii) such shortage will result in administrative delay in the claims process.

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

(1) a physician licensed in any State;

(2) board-certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology; and

(3) an individual who, for each of the 5 years before and during his or her appointment to a Physicians Panel, has earned not more than 15 percent of his or her income as an employee of a participating defendant or insurer or a law firm representing any party in asbestos litigation or as a consultant or expert witness in matters related to asbestos litigation.

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

(1) make such medical determinations as are required to be made by Physicians Panels under section 121; and

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

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

(f) FEDERAL ADVISORY COMMITTEE ACT.—A Physicians Panel established under this section shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2).

SEC. 106. PROGRAM STARTUP.

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

(b) INTERIM PERSONNEL.—The Secretary of Labor and the Assistant Secretary of Labor for the Employment Standards Administration may make available to the Administrator on a temporary basis such personnel and other resources as may be necessary to facilitate the expeditious startup of the program. The Administrator may in addition contract with individuals or entities having relevant experience to assist in the expeditious startup of the program. Such relevant experience shall include, but not be limited to, experience with the review of workers' compensation, occupational disease, or similar claims and with financial matters relevant to the operation of the program.

(c) EXIGENT HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures to provide for an expedited process to categorize, evaluate, and pay exigent health claims. Such procedures shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of exigent health claims.

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

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

(B) a declaration or affidavit, from a physician who has examined the claimant within 120 days before the date of such declaration or affidavit, that the physician has diagnosed the claimant as being terminally ill from an asbestos-related illness and having a life expectancy of less than 1 year.

(3) ADDITIONAL EXIGENT HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as exigent health claims under this subsection.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of exigent health claims, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, may enter into settlements with claimants. In the absence of an offer of judgment as provided under section 106(f)(2), the claimant may submit a claim to that claims facility. The claims facility shall receive the claimant's submissions and

evaluate the claim in accordance with subtitles B and C. The claims facility shall then submit the file to the Administrator for payment in accordance with subtitle D. This subsection shall not apply to exceptional medical claims under section 121(f). A claimant may appeal any decision at a claims facility with the Administrator in accordance with section 114.

(5) AUTHORIZATION FOR CONTRACTS WITH CLAIMS FACILITIES.—The Administrator may enter into contracts with claims facilities for the processing of claims (except for exceptional medical claims) in accordance with this title.

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

(e) INTERIM ADMINISTRATOR.—Until an Administrator is appointed and confirmed under section 101(b), the responsibilities of the Administrator under this Act shall be performed by the Assistant Secretary of Labor for the Employment Standards Administration, who shall have all the authority conferred by this Act on the Administrator and who shall be deemed to be the Administrator for purposes of this Act. Before final regulations being promulgated relating to claims processing, the Interim Administrator may prioritize claims processing, without regard to the time requirements prescribed in subtitle B of this title, based on severity of illness and likelihood that the illness in question was caused by exposure to asbestos.

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

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

(2) EXIGENT HEALTH CLAIMS.—

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

(i) IN GENERAL.—Any person that has filed a timely exigent health claim seeking a judgment or order for monetary damages in any Federal or State court before or after the date of enactment of this Act, may immediately seek an offer of judgment of such claim in accordance with this subparagraph.

(ii) FILING.—

(I) IN GENERAL.—The claimant shall file with the Administrator and serve upon all defendants in the pending court action an election to pursue an offer of judgment—

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

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

(II) STAY.—If the claimant fails to file and serve a timely election under this clause, the stay under subparagraph (B) shall remain in effect.

(iii) INFORMATION.—A claimant who has filed a timely election under clause (ii) shall within 60 days after filing provide to each defendant and to the Administrator—

(I) the amount received or due to be received as a result of all settlements that would qualify as a collateral source under section 134, together with copies of all settlement agreements and related documents sufficient to show the accuracy of that amount;

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

(III) a certification by the claimant that the information provided is true and complete.

(iv) CERTIFICATION.—The certification provided under clause (iii) shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator in support of a claim.

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

(vi) ACCEPTANCE OR REJECTION.—Within 20 days after the service of the last offer of judgment, the claimant shall either accept or reject such offers. If the amount of the offer made by any defendant individually, or by any defendants jointly, equals or exceeds 100 percent of what the claimant would receive under the Fund, the claimant shall accept such offer and release any outstanding asbestos claims.

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

(viii) RECOVERY OF COSTS.—Any defendant whose offer of judgment is accepted and has settled an asbestos claim under clauses (vi) and (vii) may recover the cost of such settlement by deducting from its next and subsequent contributions to the Fund for the full amount of the payment made by such defendant to the exigent health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that—

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

(II) the defendant's offer was collusive or otherwise not in good faith.

(ix) INDEMNIFICATION.—In any case in which the Administrator refuses to grant full indemnification under clause (viii), the Administrator may provide such partial indemnification as may be fair and just in the circumstances. If Administrator denies indemnification, the defendant may seek contribution from other non-settling defendants, as well as reimbursement under the defendant's applicable insurance policies. If the Administrator refuses to grant full or partial indemnification based on collusive action, the defendant may pursue any available remedy against the claimant.

(x) REFUSAL TO MAKE OFFER.—If a defendant refuses to make an offer of judgment, the claimant may continue to seek a judgment or order for monetary damages from the court where the case is currently pending in an amount not to exceed 150 percent of what the claimant would receive if the claimant had filed a claim with the Fund. Such a judgment or order may also provide an award for claimant's attorneys' fees and the costs of litigation.

(xi) REJECTION OF OFFER.—If the claimant rejects the offer as less than what the claimant would qualify to receive under section 131, the claimant may immediately pursue the claim in court where the claimant shall demonstrate, in addition to all other essential elements of the claimant's claim against any defendant, that the claimant meets the requirements of section 121.

(B) PURSUAL OF EXIGENT HEALTH CLAIMS.—

(i) STAY.—If a claimant does not elect to seek an offer of judgment under subparagraph (A), the pending claim is stayed for 9 months after the date of enactment of this Act.

(ii) DEFENDANT OFFER.—If a claimant does not elect to seek an offer of judgment under subparagraph (A), the defendant may elect to make an offer according to the provisions of this paragraph, except that a claimant shall not be required to accept that offer. The claimant shall accept or reject the offer within 20 days.

(iii) CLAIMS FACILITY.—If a claimant does not elect to seek an offer of judgment under subparagraph (A), the claimant may seek an award from the Fund through the claims facility under section 106 (c)(4).

(iv) CONTINUANCE OF CLAIMS.—If, after 9 months after the date of enactment of this Act, the Administrator cannot certify to Congress that the Fund is operational and paying exigent health claims at a reasonable rate, each person that has filed an exigent health claim before such date of enactment and stayed under this paragraph may continue their exigent health claims in the court where the case was pending on the date of enactment of this Act. For exigent claims filed after the date of enactment of this Act, by claimants who do not elect to seek an offer of judgment under subparagraph (A), the pending claim is stayed for 9 months after the date the claim is filed, unless during that period the Administrator can certify to Congress that the Fund is operational and paying valid claims at a reasonable rate.

(C) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL FUND.—If an asbestos claim is pursued in Federal or State court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134.

(3) PURSUAL OF ASBESTOS CLAIMS IN FEDERAL OR STATE COURT.—

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

(i) the State of residence of the claimant; or

(ii) the State in which the asbestos exposure arose.

(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described in clause (i) or (ii) of subparagraph (A), the claim may be pursued in the Federal district court or State court located within any State in which the defendant may be found.

(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than 1 county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(D) STATE VENUE REQUIREMENTS.—Nothing in this paragraph shall preempt or supersede any State's law relating to venue requirements within that State which are more restrictive.

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

(i) CREDIT OF CLAIM.—If an asbestos claim is pursued in Federal or State court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134.

(ii) OPERATIONAL FUND.—If the Administrator subsequently certifies to Congress that the Fund has become operational and paying all valid asbestos claims at a reasonable rate, any claim in a civil action in Federal or State court that is not actually on trial before a jury which has been impaneled and presentation of evidence has commenced, but before its deliberation, or before a judge and is at the presentation of evidence, may, at the option of the claimant, be deemed a reinstated claim against the Fund and the civil action before the Federal or State court shall be null and void.

(iii) NONOPERATIONAL FUND.—Notwithstanding any other provision of this Act, if the Administrator subsequently certifies to Congress that the Fund cannot become operational and paying all valid asbestos claims at a reasonable rate, all asbestos claims that have a stay may be filed or reinstated.

SEC. 107. AUTHORITY OF THE ADMINISTRATOR.

The Administrator, on any matter within the jurisdiction of the Administrator under this Act, may—

(1) issue subpoenas for and compel the attendance of witnesses within a radius of 200 miles;

(2) administer oaths;

(3) examine witnesses;

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

(5) request assistance from other Federal agencies with the performance of the duties of the Administrator under this Act.

Subtitle B—Asbestos Disease Compensation Procedures

SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.

To be eligible for an award under this Act for an asbestos-related disease or injury, an individual shall—

(1) file a claim in a timely manner in accordance with section 113; and

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

SEC. 112. GENERAL RULE CONCERNING NO-FAULT COMPENSATION.

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

SEC. 113. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

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

(2) DEFINITION.—In this Act, the term ''personal representative'' shall have the same meaning as that term is defined in section 104.4 of title 28 of the Code of Federal Regulations, as in effect on December 31, 2004.

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

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, if an individual fails to file a claim with the Office under this section within 5 years after the date on which the individual first—

(A) received a medical diagnosis of an eligible disease or condition as provided for under this subtitle and subtitle C; or

(B) discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to an eligible disease or condition,

any claim relating to that injury, and any other asbestos claim related to that injury, shall be extinguished, and any recovery thereon shall be prohibited.

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

(3) EFFECT ON PENDING CLAIMS.—

(A) IN GENERAL.—If, on the date of enactment of this Act, an asbestos claimant has any timely filed asbestos claim that is preempted under section 403(e), such claimant shall file a claim under this section within 5 years after such date of enactment, or any claim relating to that injury, and any other asbestos claim related to that injury shall be extinguished, and recovery there shall be prohibited.

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

(i) a non-contingent right to the payment of future installments of a fixed award; or

(ii) a contingent right to recover some additional amount from the trust on the occurrence of a future event, such as the reevaluation of the trust's funding adequacy or projected claims experience.

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—An asbestos claimant who receives an award under this title for an eligible disease or condition, and who subsequently develops another such injury, shall be eligible for additional awards under this title (subject to appropriate setoffs for such prior recovery of any award under this title and from any other collateral source) and the statute of limitations under paragraph (1) shall not begin to run with respect to such subsequent injury until such claimant obtains a medical diagnosis of such other injury or discovers facts that would have led a reasonable person to obtain such a diagnosis.

(B) SETOFFS.—Except as provided in subparagraph (C), any amounts paid or to be paid for a prior award under this Act shall be deducted as a setoff against amounts payable for the second injury claim.

(C) EXCEPTION.—Any amounts paid or to be paid for a prior claim for a nonmalignant disease (Levels I through V) filed against the Fund shall not be deducted as a setoff against amounts payable for the second injury claim for a malignant disease (Levels VI through IX), unless the malignancy was diagnosed, or the asbestos claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis, before the date on which the nonmalignancy claim was compensated.

(c) REQUIRED INFORMATION.—A claim filed under subsection (a) shall be in such form, and contain such information in such detail, as the Administrator shall by regulation prescribe. At a minimum, a claim shall include—

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

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) an employment history sufficient to establish required asbestos exposure, accompanied by social security or other payment records or a signed release permitting access to such records;

(4) a description of the asbestos exposure of the claimant, including, to the extent known, information on the site, or location of exposure, and duration and intensity of exposure;

(5) a description of the tobacco product use history of the claimant, including frequency and duration;

(6) an identification and description of the asbestos-related diseases or conditions of the claimant, accompanied by a written report by the claimant's physician with medical diagnoses and x-ray films, and other test results necessary to establish eligibility for an award under this Act;

(7) a description of any prior or pending civil action or other claim brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal, or pleural injury, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise; and

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

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

(e) INCOMPLETE CLAIMS.—If a claim filed under subsection (a) is incomplete, the Administrator shall notify the claimant of the information necessary to complete the claim and inform the claimant of such services as may be available through the Claimant Assistance Program established under section 104 to assist the claimant in completing the claim. Any time periods for the processing of the claim shall be suspended until such time as the claimant submits the information necessary to complete the claim. If such information is not received within 1 year after the date of such notification, the claim shall be dismissed.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) IN GENERAL.—

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

(2) ADDITIONAL EVIDENCE.—The Administrator may request the submission of medical evidence in addition to the minimum requirements of section 113(c) if necessary or appropriate to make a determination of eligibility for an award, in which case the cost of obtaining such additional information or testing shall be borne by the Office.

(b) PROPOSED DECISIONS.—Not later than 90 days after the filing of a claim, the Administrator shall provide to the claimant (and the claimant's representative) a proposed decision accepting or rejecting the claim in whole or in part and specifying the amount of the proposed award, if any. The proposed decision shall be in writing, shall contain findings of fact and conclusions of law, and shall contain an explanation of the procedure for obtaining review of the proposed decision.

(c) PAYMENTS IF NO TIMELY PROPOSED DECISION.—If the Administrator has received a

complete claim and has not provided a proposed decision to the claimant under subsection (b) within 180 days after the filing of the claim, the claim shall be deemed accepted and the claimant shall be entitled to payment under section 133(a)(2). If the Administrator subsequently rejects the claim the claimant shall receive no further payments under section 133. If the Administrator subsequently rejects the claim in part, the Administrator shall adjust future payments due the claimant under section 133 accordingly. In no event may the Administrator recover amounts properly paid under this section from a claimant.

(d) REVIEW OF PROPOSED DECISIONS.—

(1) RIGHT TO HEARING.—

(A) IN GENERAL.—Any claimant not satisfied with a proposed decision of the Administrator under subsection (b) shall be entitled, on written request made within 90 days after the date of the issuance of the decision, to a hearing on the claim of that claimant before a representative of the Administrator. At the hearing, the claimant shall be entitled to present oral evidence and written testimony in further support of that claim.

(B) CONDUCT OF HEARING.—When practicable, the hearing will be set at a time and place convenient for the claimant. In conducting the hearing, the representative of the Administrator shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of title 5, United States Code, except as provided by this Act, but shall conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative shall receive such relevant evidence as the claimant adduces and such other evidence as the representative determines necessary or useful in evaluating the claim.

(C) REQUEST FOR SUBPOENAS.—

(i) IN GENERAL.—A claimant may request a subpoena but the decision to grant or deny such a request is within the discretion of the representative of the Administrator. The representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers, or other relevant documents. Subpoenas are issued for documents only if such documents are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(ii) REQUEST.—A claimant may request a subpoena only as part of the hearing process. To request a subpoena, the requester shall—

(I) submit the request in writing and send it to the representative as early as possible, but no later than 30 days after the date of the original hearing request; and

(II) explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(iii) FEES AND MILEAGE.—Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. Such fees and mileage shall be paid from the Fund.

(2) REVIEW OF WRITTEN RECORD.—In lieu of a hearing under paragraph (1), any claimant not satisfied with a proposed decision of the Administrator shall have the option, on written request made within 90 days after the date of the issuance of the decision, of obtaining a review of the written record by a representative of the Administrator. If such review is requested, the claimant shall be afforded an opportunity to submit any written evidence or argument which the claimant believes relevant.

(e) FINAL DECISIONS.—

(1) IN GENERAL.—If the period of time for requesting review of the proposed decision expires and no request has been filed, or if the claimant waives any objections to the proposed decision, the Administrator shall issue a final decision. If such decision materially differs from the proposed decision, the claimant shall be entitled to review of the decision under subsection (d).

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

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

SEC. 115. MEDICAL EVIDENCE AUDITING PROCEDURES.

(a) IN GENERAL.—

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

(2) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

(A) IN GENERAL.—If the Administrator determines that an audit conducted in accordance with the methods developed under paragraph (1) demonstrates that the medical evidence submitted by a specific physician or medical facility is not consistent with prevailing medical practices or the applicable requirements of this Act, any medical evidence from such physician or facility shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(B) NOTIFICATION.—Upon a determination by the Administrator under subparagraph (A), the Administrator shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal such determination under procedures issued by the Administrator.

(b) REVIEW OF CERTIFIED B-READERS.—

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

(2) DISAGREEMENT.—If an independent certified B-reader assigned under paragraph (1) disagrees with the quality grading or ILO level assigned to an x-ray submitted in support of a claim, the Administrator shall require a review of such x-rays by a second independent certified B-reader.

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

(4) CERTIFIED B-READERS.—The Administrator shall maintain a list of a minimum of 50 certified B-readers eligible to participate in the independent reviews, chosen from all certified B-readers. When an x-ray is sent for independent review, the Administrator shall choose the certified B-reader at random from that list.

(c) SMOKING ASSESSMENT.—

(1) IN GENERAL.—

(A) RECORDS AND DOCUMENTS.—To aid in the assessment of the accuracy of claimant representations as to their smoking status for purposes of determining eligibility and amount of award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, and exceptional medical claims, the Administrator shall have the authority to obtain relevant records and documents, including—

(i) records of past medical treatment and evaluation;

(ii) affidavits of appropriate individuals;

(iii) applications for insurance and supporting materials; and

(iv) employer records of medical examinations.

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

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

(3) CONSENT.—The Administrator may require the performance of blood tests or any other appropriate medical test, such as serum cotinine screening, where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, or as an exceptional medical claim, the cost of which shall be borne by the Office.

(4) PENALTY FOR FALSE STATEMENTS.—Any false information submitted under this subsection shall be subject to criminal prosecution or civil penalties as provided under section 1348 of title 18, United States Code (as added by this Act) and section 101(c)(2).

Subtitle C—Medical Criteria

SEC. 121. MEDICAL CRITERIA REQUIREMENTS.

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ASBESTOSIS DETERMINED BY PATHOLOGY.—The term ''asbestosis determined by pathology'' means indications of asbestosis based on the pathological grading system for asbestosis described in the Special Issues of the Archives of Pathology and Laboratory Medicine, ''Asbestos-associated Diseases'', Vol. 106, No. 11, App. 3 (October 8, 1982).

(2) BILATERAL ASBESTOS-RELATED NONMALIGNANT DISEASE.—The term ''bilateral asbestos-related nonmalignant disease'' means a diagnosis of bilateral asbestos-related nonmalignant disease based on—

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

(B) bilateral pleural plaques;

(C) bilateral pleural thickening; or

(D) bilateral pleural calcification.

(3) BILATERAL PLEURAL DISEASE OF B2.—The term ''bilateral pleural disease of B2'' means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least ¼ of the projection of the lateral chest wall.

(4) CERTIFIED B-READER.—The term ''certified B-reader'' means an individual who is certified by the National Institute of Occupational Safety and Health and whose certification by the National Institute of Occupational Safety and Health is up to date.

(5) DIFFUSE PLEURAL THICKENING.—The term ''diffuse pleural thickening'' means blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening.

(6) DLCO.—The term ''DLCO'' means the single-breath diffusing capacity of the lung

(carbon monoxide) technique used to measure the volume of carbon monoxide transferred from the alveoli to blood in the pulmonary capillaries for each unit of driving pressure of the carbon monoxide.

(7) FEV1.—The term ''FEV1'' means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.

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

(9) ILO GRADE.—The term ''ILO grade'' means the radiological ratings for the presence of lung changes as determined from a chest x-ray, all as established from time to time by the International Labor Organization.

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

(11) NONSMOKER.—The term ''nonsmoker'' means a claimant who—

(A) never smoked; or

(B) has smoked fewer than 100 cigarettes or the equivalent amount of other tobacco products during the claimant's lifetime.

(12) PO_2.—The term ''PO_2'' means the partial pressure (tension) of oxygen, which measures the amount of dissolved oxygen in the blood.

(13) PULMONARY FUNCTION TESTING.—The term ''pulmonary function testing'' means spirometry testing that is in material compliance with the quality criteria established by the American Thoracic Society and is performed on equipment which is in material compliance with the standards of the American Thoracic Society for technical quality and calibration.

(14) SUBSTANTIAL OCCUPATIONAL EXPOSURE TO ASBESTOS.—

(A) IN GENERAL.—The term ''substantial occupational exposure'' means employment in an industry and an occupation where for a substantial portion of a normal work year for that occupation, the claimant—

(i) handled raw asbestos fibers;

(ii) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed to raw asbestos fibers;

(iii) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or

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

(B) REGULAR BASIS.—In this paragraph, the term ''on a regular basis'' means on a frequent or recurring basis.

(15) TLC.—The term ''TLC'' means total lung capacity, which is the total volume of air in the lung after maximal inspiration.

(16) WEIGHTED OCCUPATIONAL EXPOSURE.—

(A) IN GENERAL.—The term ''weighted occupational exposure'' means exposure for a period of years calculated according to the exposure weighting formula under subparagraphs (B) through (E).

(B) MODERATE EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved working in areas immediate to where asbestos-containing products were being installed, repaired, or removed under circumstances that involved regular airborne emissions of asbestos fibers, shall count as 1 year of substantial occupational exposure.

(C) HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved the direct installation, repair, or removal of asbestos-containing products such that the person was exposed on a regular basis to asbestos fibers, shall count as 2 years of substantial occupational exposure.

(D) VERY HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, was in primary asbestos manufacturing, a World War II shipyard, or the asbestos insulation trades, such that the person was exposed on a regular basis to asbestos fibers, shall count as 4 years of substantial occupational exposure.

(E) DATES OF EXPOSURE.—Each year of exposure calculated under subparagraphs (B), (C), and (D) that occurred before 1976 shall be counted at its full value. Each year from 1976 to 1986 shall be counted as ½ of its value. Each year after 1986 shall be counted as 1/10 of its value.

(F) OTHER CLAIMS.—Individuals who do not meet the provisions of subparagraphs (A) through (E) and believe their post-1976 or post-1986 exposures exceeded the Occupational Safety and Health Administration standard may submit evidence, documentation, work history, or other information to substantiate noncompliance with the Occupational Safety and Health Administration standard (such as lack of engineering or work practice controls, or protective equipment) such that exposures would be equivalent to exposures before 1976 or 1986, or to documented exposures in similar jobs or occupations where control measures had not been implemented. Claims under this subparagraph shall be evaluated on an individual basis by a Physicians Panel.

(b) MEDICAL EVIDENCE.—

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

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

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

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

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

(i) a physical examination of the claimant by the physician providing the diagnosis;

(ii) an evaluation of smoking history and exposure history before making a diagnosis;

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

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

(B) for disease Levels I through V, in the case of a claimant who was deceased at the time the claim was filed, a report from a physician based upon a review of the claimant's medical records which shall include—

(i) pathological evidence of the nonmalignant asbestos-related disease; or

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

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

(i) a physical examination by the claimant's physician providing the diagnosis; or

(ii) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

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

(i) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

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

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

(A) x-rays or computerized tomography;

(B) detailed results of pulmonary function tests;

(C) laboratory tests;

(D) tissue samples;

(E) results of medical examinations;

(F) reviews of other medical evidence; and

(G) medical evidence that complies with recognized medical standards regarding equipment, testing methods, and procedure to ensure the reliability of such evidence as may be submitted.

(c) EXPOSURE EVIDENCE.—

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

(A) a minimum exposure to asbestos or asbestos-containing products;

(B) the exposure occurred in the United States, its territories or possessions, or while a United States citizen, while an employee of an entity organized under any Federal or State law regardless of location, or while a United States citizen while serving on any United States flagged or owned ship, provided the exposure results from such employment or service; and

(C) any additional asbestos exposure requirement under this section.

(2) PROOF OF EXPOSURE.—

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

(i) the claimant; or

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

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

(3) TAKE-HOME EXPOSURE.—

(A) IN GENERAL.—A claimant may alternatively satisfy the medical criteria requirements of this section where a claim is filed by a person who alleges their exposure to asbestos was the result of living with a person who, if the claim had been filed by that person, would have met the exposure criteria for the given disease level, and the claimant lived with such person for the time period necessary to satisfy the exposure requirement, for the claimed disease level.

(B) REVIEW.—Except for claims for disease Level IX (mesothelioma), all claims alleging take-home exposure shall be submitted as an exceptional medical claim under section 121(f) for review by a Physicians Panel.

(4) WAIVER FOR WORKERS AND RESIDENTS OF LIBBY, MONTANA.—Because of the unique nature of the asbestos exposure related to the vermiculite mining and milling operations in Libby, Montana, the Administrator shall waive the exposure requirements under this

subtitle for individuals who worked at the vermiculite mining and milling facility in Libby, Montana, or lived or worked within a 20-mile radius of Libby, Montana, for at least 12 consecutive months before December 31, 2004. Claimants under this section shall provide such supporting documentation as the Administrator shall require.

(5) EXPOSURE PRESUMPTIONS.—

(A) IN GENERAL.—The Administrator shall prescribe rules identifying specific industries, occupations within such industries, and time periods in which workers employed in those industries or occupations typically had substantial occupational exposure to asbestos as defined under section 121(a). Until 5 years after the Administrator certifies that the Fund is paying claims at a reasonable rate, the industries, occupations and time periods identified by the Administrator shall at a minimum include those identified in the 2002 Trust Distribution Process of the Manville Personal Injury Settlement Trust as of January 1, 2005, as industries, occupations and time periods in which workers were presumed to have had significant occupational exposure to asbestos. Thereafter, the Administrator may by rule modify or eliminate those exposure presumptions required to be adopted from the Manville Personal Injury Settlement Trust, if there is evidence that demonstrates that the typical exposure for workers in such industries and occupations during such time periods did not constitute substantial occupational exposure in asbestos.

(B) CLAIMANTS ENTITLED TO PRESUMPTIONS.—Any claimant who demonstrates through meaningful and credible evidence that such claimant was employed during relevant time periods in industries or occupations identified under subparagraph (A) shall be entitled to a presumption that the claimant had substantial occupational exposure to asbestos during those time periods. That presumption shall not be conclusive, and the Administrator may find that the claimant does not have substantial occupational exposure if other information demonstrates that the claimant did not in fact have substantial occupational exposure during any part of the relevant time periods.

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

(d) ASBESTOS DISEASE LEVELS.—

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

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

(B) evidence of 5 years cumulative occupational exposure to asbestos.

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

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater, and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening of at least grade B2 or greater, or bilateral pleural disease of grade B2 or greater;

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

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question.

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

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/0 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B) evidence of TLC less than 80 percent, FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent, or evidence of a decline in FVC of 20 percent or greater, after allowing for the expected decrease due to aging, and an FEV1/FVC ratio greater than or equal to 65 percent documented with a second spirometry;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation—

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

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

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

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

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

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

(D) supporting medical documentation—

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

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

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

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B)(i) evidence of TLC less than 50 percent or FVC less than 50 percent, and FEV1/FVC ratio greater than or equal to 65 percent;

(ii) DLCO less than 40 percent of predicted, plus a FEV1/FVC ratio not less than 65 percent; or

(iii) PO_2 less than 55 mm/Hg, plus a FEV1/FVC ratio not less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation—

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

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

(6) MALIGNANT LEVEL VI.—

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

(i) a diagnosis of a primary colorectal, laryngeal, esophageal, pharyngeal, or stomach cancer on the basis of findings by a board certified pathologist;

(ii) evidence of a bilateral asbestos-related nonmalignant disease;

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

(iv) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the cancer in question.

(B) REFERRAL TO PHYSICIANS PANEL.—All claims filed with respect to Level VI under this paragraph shall be referred to a Physicians Panel for a determination that it is more probable than not that asbestos exposure was a substantial contributing factor in causing the other cancer in question. If the claimant meets the requirements of subparagraph (A), there shall be a presumption of eligibility for the scheduled value of compensation unless there is evidence determined by the Physicians Panel that rebuts that presumption. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(7) MALIGNANT LEVEL VII.—

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

(i) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

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

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

(iv) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the lung cancer in question.

(B) PHYSICIANS PANEL.—A claimant filing a claim relating to Level VII under this paragraph may request that the claim be referred to a Physicians Panel for a determination of whether the claimant qualifies for the disease category and relevant smoking status. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(8) MALIGNANT LEVEL VIII.—

(A) IN GENERAL.—To receive Level VIII compensation, a claimant shall provide a diagnosis of—

(i) a primary lung cancer disease on the basis of findings by a board certified pathologist;

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

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

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

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

(III) asbestosis determined by pathology and 10 or more weighted years of substantial occupational exposure to asbestos; or

(IV) asbestosis as determined by CT Scan, the cost of which shall not be borne by the Fund. The CT Scan must be interpreted by a

board certified radiologist and confirmed by a board certified radiologist; and

(iii) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the lung cancer in question; and 10 or more weighted years of substantial occupational exposure to asbestos.

(B) PHYSICIANS PANEL.—A claimant filing a claim with respect to Level VIII under this paragraph may request that the claim be referred to a Physicians Panel for a determination of whether the claimant qualifies for the disease category and relevant smoking status. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

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

(A) a diagnosis of malignant mesothelioma disease on the basis of findings by a board certified pathologist; and

(B) credible evidence of identifiable exposure to asbestos resulting from—

(i) occupational exposure to asbestos;

(ii) exposure to asbestos fibers brought into the home of the claimant by a worker occupationally exposed to asbestos;

(iii) exposure to asbestos fibers resulting from living or working in the proximate vicinity of a factory, shipyard, building demolition site, or other operation that regularly released asbestos fibers into the air due to operations involving asbestos at that site; or

(iv) other identifiable exposure to asbestos fibers, in which case the claim shall be reviewed by a Physicians Panel under section 121(f) for a determination of eligibility.

(e) INSTITUTE OF MEDICINE STUDY.—Not later than April 1, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health of the causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers. The Institute of Medicine shall issue a report on its findings on causation, which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels. The Institute of Medicine report shall be binding on the Administrator and the Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor under section 121(d)(6)(B).

(f) EXCEPTIONAL MEDICAL CLAIMS.—

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

(2) APPLICATION.—When submitting an application for review of an exceptional medical claim, the claimant shall—

(A) state that the claim does not meet the medical criteria requirements under this section; or

(B) seek designation as an exceptional medical claim within 60 days after a determination that the claim is ineligible solely for failure to meet the medical criteria requirements under subsection (d).

(3) REPORT OF PHYSICIAN.—

(A) IN GENERAL.—Any claimant applying for designation of a claim as an exceptional medical claim shall support an application filed under paragraph (1) with a report from a physician meeting the requirements of this section.

(B) CONTENTS.—A report filed under subparagraph (A) shall include—

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

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

(iii) a detailed explanation as to why the claim meets the requirements of paragraph (4)(B).

(4) REVIEW.—

(A) IN GENERAL.—The Administrator shall refer all applications and supporting documentation submitted under paragraph (2) to a Physicians Panel for review for eligibility as an exceptional medical claim.

(B) STANDARD.—A claim shall be designated as an exceptional medical claim if the claimant, for reasons beyond the control of the claimant, cannot satisfy the requirements under this section, but is able, through comparably reliable evidence that meets the standards under this section, to show that the claimant has an asbestos-related condition that is substantially comparable to that of a medical condition that would satisfy the requirements of a category under this section.

(C) ADDITIONAL INFORMATION.—A Physicians Panel may request additional reasonable testing to support the claimant's application.

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

(5) APPROVAL.—

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

(B) REFERRAL.—Upon the issuance of a certificate under subparagraph (A), the Physicians Panel shall submit the claim to the Administrator, who shall give due consideration to the recommendation of the Physicians Panel in determining whether the claimant meets the requirements for compensation under this Act.

(6) RESUBMISSION.—Any claimant whose application for designation as an exceptional medical claim is rejected may resubmit an application if new evidence becomes available. The application shall identify any prior applications and state the new evidence that forms the basis of the resubmission.

(7) RULES.—The Administrator shall promulgate rules governing the procedures for seeking designation of a claim as an exceptional medical claim.

(8) LIBBY, MONTANA.—

(A) IN GENERAL.—A Libby, Montana, claimant may elect to have the claimant's claims designated as exceptional medical claims and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by a Libby, Montana claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in Libby, Montana, including the nature of the pleural disease related to asbestos exposure in Libby, Montana.

(B) CLAIMS.—For all claims for Levels II through IV filed by Libby, Montana claimants, as described under subsection (c)(4), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to a Libby, Montana claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance with this section, or the value of the award determined in accordance with section 114, the Libby, Montana claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by Libby, Montana claimants, the Libby, Montana claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

Subtitle D—Awards

SEC. 131. AMOUNT.

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

(b) BENEFIT TABLE.—

(1) IN GENERAL.—An asbestos claimant with an eligible disease or condition established in accordance with section 121 shall be eligible for an award as determined under this subsection. The award for all asbestos claimants with an eligible disease or condition established in accordance with section 121 shall be according to the following schedule:

Level	Scheduled Condition or Disease	Scheduled Value
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 Asbestosis	smokers, $600,000; ex-smokers, $975,000; non-smokers, $1,100,000
IX	Mesothelioma	$1,100,000

(2) DEFINITIONS.—In this section—

(A) the term ''nonsmoker'' means a claimant who—

(i) never smoked; or

(ii) has smoked fewer than 100 cigarettes or the equivalent of other tobacco products during the claimant's lifetime; and

(B) the term ''ex-smoker'' means a claimant who has not smoked during any portion of the 12-year period preceding the diagnosis of lung cancer.

(3) LEVEL IX ADJUSTMENTS.—

(A) IN GENERAL.—If the Administrator determines that the impact of all adjustments under this paragraph on the Fund is cost neutral, the Administrator may—

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

(ii) decrease awards for Level IX claimants who are at least 65 years of age, but in no case shall an award for Level IX be less than $1,000,000.

(B) IMPLEMENTATION.—Before making adjustments under this paragraph, the Administrator shall publish in the Federal Register notice of, and a plan for, making such adjustments.

(4) SPECIAL ADJUSTMENT FOR FELA CASES.—

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

(B) REGULATIONS.—

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

(ii) JOINT PROPOSAL.—Not later than 45 days after the date of enactment of this Act, representatives of railroad management and representatives of railroad labor shall submit to the Administrator a joint proposal for regulations describing the eligibility for and amount of special adjustments under this paragraph. If a joint proposal is submitted, the Administrator shall promulgate regulations that reflect the joint proposal.

(iii) ABSENCE OF JOINT PROPOSAL.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the benefits prescribed in subparagraph (E) shall be the benefits available to claimants, and the Administrator shall promulgate regulations containing such benefits.

(iv) REVIEW.—The parties participating in the arbitration may file in the United States District Court for the District of Columbia a petition for review of the Administrator's order. The court shall have jurisdiction to affirm the order of the Administrator, or to set it aside, in whole or in part, or it may remand the proceedings to the Administrator for such further action as it may direct. On such review, the findings and order of the Administrator shall be conclusive on the parties, except that the order of the Administrator may be set aside, in whole or in parts or remanded to the Administrator, for failure of the Administrator to comply with the requirements of this section, for failure of the order to conform, or confine itself, to matters within the scope of the Administrator's jurisdiction, or for fraud or corruption.

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

(D) AMOUNT.—

(i) IN GENERAL.—The amount of the special adjustment shall be based on the type and severity of asbestos disease, and shall be 110 percent of the average amount an injured individual with a disease caused by asbestos, as described in section 121(d) of this Act, would have received, during the 5-year period before the enactment of this Act, adjusted for inflation. This adjustment shall be in addition to any other award for which the claimant is eligible under this Act. The amount of the special adjustment shall be reduced by an amount reasonably calculated to take into account all expenses of litigation normally borne by plaintiffs, including attorney's fees.

(ii) LIMITATION.—The amount under clause (i) may not exceed the amount the claimant is eligible to receive before applying the special adjustment under that clause.

(E) ARBITRATED BENEFITS.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the Administrator shall appoint an arbitrator to determine the benefits under subparagraph (D). The Administrator shall appoint an arbitrator who shall be acceptable to both railroad management and railroad labor. Railroad management and railroad labor shall each designate their representatives to participate in the arbitration. The arbitrator shall submit the benefits levels to the Administrator not later than 30 days after appointment and such benefits levels shall be based on information provided by rail labor and rail management. The information submitted to the arbitrator by railroad management and railroad labor shall be considered confidential and shall be disclosed to the other party upon execution of an appropriate confidentiality agreement. Unless the submitting party provides written consent, neither the arbitrator nor either party to the arbitration shall divulge to any third party any information or data, in any form, submitted to the arbitrator under this section. Nor shall either party use such information or data for any purpose other than participation in the arbitration proceeding, and each party shall return to the other any information it has received from the other party as soon the arbitration is concluded. Information submitted to the arbitrator may not be admitted into evidence, nor discovered, in any civil litigation in Federal or State court. The nature of the information submitted to the arbitrator shall be within the sole discretion of the submitting party, and the arbitrator may not require a party to submit any particular information, including information subject to a prior confidentiality agreement.

(F) DEMONSTRATION OF ELIGIBILITY.—

(i) IN GENERAL.—A claimant under this paragraph shall be required to demonstrate—

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

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

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

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

(5) MEDICAL MONITORING.—An asbestos claimant with asymptomatic exposure, based on the criteria under section 121(d)(1), shall only be eligible for medical monitoring reimbursement as provided under section 132.

(6) COST-OF-LIVING ADJUSTMENT.—

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

(B) CALCULATION OF COST-OF-LIVING ADJUSTMENT.—For the purposes of subparagraph (A), the cost-of-living adjustment for any calendar year shall be the percentage, if any, by which the consumer price index for the succeeding calendar year exceeds the consumer price index for calendar year 2005.

(C) CONSUMER PRICE INDEX.—

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

(ii) DEFINITION.—For purposes of clause (i), the term ''consumer price index'' means the consumer price index published by the Department of Labor. The consumer price index series to be used for award escalations shall include the consumer price index used for all-urban consumers, with an area coverage of the United States city average, for all items, based on the 1982–1984 index based period, as published by the Department of Labor.

SEC. 132. MEDICAL MONITORING.

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

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

(c) REGULATIONS.—The Administrator shall promulgate regulations that establish—

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

(2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENT.

(a) STRUCTURED PAYMENTS.—

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

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

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

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

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

(3) EXTENSION OF PAYMENT PERIOD.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for the payment period of an award under subsection (a) to be extended to a 4-year period if such action is warranted in order to preserve the overall solvency of the Fund. Such guidelines shall include reference to the number of claims made to the Fund and the awards made and scheduled to be paid from the Fund as provided under section 405.

(B) LIMITATIONS.—In no event shall less than 50 percent of an award be paid in the first 2 years of the payment period under this subsection.

(4) ACCELERATED PAYMENTS.—The Administrator shall develop guidelines to provide for accelerated payments to asbestos claimants who are mesothelioma victims and who are alive on the date on which the Administrator receives notice of the eligibility of the claimant. Such payments shall be credited against the first regular payment under the structured payment plan for the claimant.

(5) EXPEDITED PAYMENTS.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of exigent circumstances or extreme hardship caused by asbestos-related injury.

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

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

(c) CREDITORS.—An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

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

(e) EXEMPT PROPERTY IN ASBESTOS CLAIMANT'S BANKRUPTCY CASE.—If an asbestos claimant files a petition for relief under section 301 of title 11, United States Code, no award granted under this Act shall be treated as property of the bankruptcy estate of the asbestos claimant in accordance with section 541(b)(6) of title 11, United States Code.

SEC. 134. REDUCTION IN BENEFIT PAYMENTS FOR COLLATERAL SOURCES.

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant

under this title shall be reduced by the amount of collateral source compensation.

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

SEC. 135. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT OF AWARDS.

(a) IN GENERAL.—The payment of an award under section 106 or 133 shall not be considered a form of compensation or reimbursement for a loss for purposes of imposing liability on any asbestos claimant receiving such payment to repay any—

(1) insurance carrier for insurance payments; or

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

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

(1) an insurance carrier with respect to insurance; or

(2) against any person or governmental entity with respect to worker's compensation, healthcare, or disability.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) AFFILIATED GROUP.—The term ''affiliated group''—

(A) means a defendant participant that is an ultimate parent and any person whose entire beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and

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

(2) CLASS ACTION TRUST.—The term ''class action trust'' means a trust or similar entity established to hold assets for the payment of asbestos claims asserted against a debtor or participating defendant, under a settlement that—

(A) is a settlement of class action claims under rule 23 of the Federal Rules of Civil Procedure; and

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

(3) DEBTOR.—The term ''debtor''—

(A) means—

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

(ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and

(B) shall not include an entity—

(i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or

(ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(4) INDEMNIFIABLE COST.—The term ''indemnifiable cost'' means a cost, expense, debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.

(5) INDEMNITEE.—The term ''indemnitee'' means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(6) INDEMNITOR.—The term ''indemnitor'' means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(7) PRIOR ASBESTOS EXPENDITURES.—The term ''prior asbestos expenditures''—

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

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

(C) shall not include any payment made by a person in connection with or as a result of changes in insurance reserves required by contract or any activity or dispute related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad, including settlement, judgment, defense, or indemnity costs associated with these claims.

(8) TRUST.—The term ''trust'' means any trust, as described in sections 524(g)(2)(B)(i) or 524(h) of title 11, United States Code, or established in conjunction with an order issued under section 105 of title 11, United States Code, established or formed under the terms of a chapter 11 plan of reorganization, which in whole or in part provides compensation for asbestos claims.

(9) ULTIMATE PARENT.—The term ''ultimate parent'' means a person—

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person (other than a natural person).

SEC. 202. AUTHORITY AND TIERS.

(a) LIABILITY FOR PAYMENTS TO THE FUND.—

(1) IN GENERAL.—Defendant participants shall be liable for payments to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE PAYMENT OBLIGATIONS LEVEL.—The total payments required of all defendant participants over the life of the Fund shall not exceed a sum equal to $90,000,000,000 less any bankruptcy trust credits under section 222(e). The Administrator shall have the authority to allocate the payments required of the defendant participants among the tiers as provided in this title.

(3) ABILITY TO ENTER REORGANIZATION.—Notwithstanding any other provision of this Act, all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures less than $1,000,000 may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code. Any asbestos claim made in conjunction with a plan of reorganization allowable under the preceding sentence shall be subject to section 403(d) of this Act.

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

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

(1) DEFINITION.—

(A) IN GENERAL.—In this subsection, the term ''bankrupt business entity'' means a person that is not a natural person that—

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

(ii) has not substantially consummated, as such term is defined under section 1101(2) of title 11, United States Code, a plan of reorganization as of the date of enactment of this Act; and

(iii) the bankruptcy court presiding over the business entity's case determines, after notice and a hearing upon motion filed by the entity within 30 days after the date of enactment of this Act, that asbestos liability was not the sole or precipitating cause of the entity's chapter 11 filing.

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

(i) an affidavit or declaration of the chief executive officer, chief financial officer, or chief legal officer of the business entity; and

(ii) copies of the entity's public statements and securities filings made in connection with the entity's filing for chapter 11 protection.

Notice of such motion shall be as directed by the bankruptcy court, and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity's chapter 11 filing. The bankruptcy court shall hold a hearing and make its determination with respect to the motion within 60 days after the date the motion is filed. In making its determination, the bankruptcy court shall take into account the affidavits, public statements, and securities filings, and other information, if any, submitted by the entity and all other facts and circumstances presented by an objecting party. Any review of this determination shall be an expedited appeal and limited to whether the decision was against the weight of the evidence. Any appeal of a determination shall be an expedited review to the United States Circuit Court of Appeals for the circuit in which the bankruptcy is filed.

(2) PROCEEDING WITH REORGANIZATION PLAN.—A bankrupt business entity may proceed with the filing, solicitation, confirmation, and consummation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction described in section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if the bankruptcy court makes a favorable determination under paragraph (1)(B), unless the bankruptcy court's determination is overruled on appeal and all appeals are final. Such a bankrupt business entity may continue to so proceed, if—

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

(i) confirmation is necessary to permit the reorganization of that entity and assure that all creditors and that entity are treated fairly and equitably; and

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

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

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

(4) OFFSETS.—

(A) PAYMENTS BY INSURERS.—To the extent that a bankrupt business entity or debtor successfully confirms a plan of reorganization, including a trust, and channeling injunction that involves payments by insurers who are otherwise subject to this Act as described under section 524(g) of title 11, United States Code, an insurer who makes payments to the trust shall obtain a dollar-for-dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

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

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

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

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

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

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

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

(e) TIER PLACEMENT AND COSTS.—

(1) PERMANENT TIER PLACEMENT.—After a defendant participant or affiliated group is assigned to a tier and subtier under section 204(i)(6), the participant or affiliated group shall remain in that tier and subtier throughout the life of the Fund, regardless of subsequent events, including—

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

(B) a discharge of debt in bankruptcy;

(C) the confirmation of a plan of reorganization; or

(D) the sale or transfer of assets to any other person or affiliated group, unless the Administrator finds that the information submitted by the participant or affiliated group to support its inclusion in that tier was inaccurate.

(2) COSTS.—Payments to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act—

(A) shall constitute costs and expenses of administration of the case under section 503 of title 11, United States Code, and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;

(B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and

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

(f) SUPERSEDING PROVISIONS.—

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

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

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

(C) Any agreement, understanding, or undertaking by any such debtor or any third party with respect to the treatment of any asbestos claim filed in a debtor's bankruptcy case or with respect to a debtor before the date of enactment of this Act, whenever such debtor's case is either still pending, if such case is pending under a chapter other than chapter 11 of title 11, United States Code, or subject to confirmation or substantial consummation of a plan of reorganization under chapter 11 of title 11, United States Code.

(2) PRIOR AGREEMENTS OF NO EFFECT.—Notwithstanding section 403(c)(3), any plan of reorganization, agreement, understanding, or undertaking by any debtor (including any pre-petition agreement, understanding, or undertaking that requires future performance) or any third party under paragraph (1), and any agreement, understanding, or undertaking entered into in anticipation, contemplation, or furtherance of a plan of reorganization, to the extent it relates to any asbestos claim, shall be of no force or effect, and no person shall have any right or claim with respect to any such agreement, understanding, or undertaking.

SEC. 203. SUBTIERS.

(a) IN GENERAL.—

(1) SUBTIER LIABILITY.—Except as otherwise provided under subsections (b), (d), and (l) of section 204, persons or affiliated groups shall be included within Tiers I through VII and shall pay amounts to the Fund in accordance with this section.

(2) REVENUES.—

(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant or affiliated group would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

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

(C) DEBTORS.—Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is included in Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person. If a debtor or affiliated group includes a person in respect of whose liabilities for asbestos claims a class action trust has been established, there shall be excluded from the 2002 revenues of such debtor or affiliated group—

(i) all revenues of the person in respect of whose liabilities for asbestos claims the class action trust was established; and

(ii) all revenues of the debtor and affiliated group attributable to the historical business operations or assets of such person, regardless of whether such business operations or assets were owned or conducted during the year 2002 by such person or by any other person included within such debtor and affiliated group.

(b) TIER I SUBTIERS.—

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

(2) SUBTIER 1.—

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

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

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

(D) LIABILITY.—

(i) IN GENERAL.—If a person who is subject to a case pending under a chapter of title 11, United States Code, as defined in section 201(3)(A)(i), does not pay when due any payment obligation for the debtor, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the debtor may be liable under sections 223 and 224) from any of the direct or indirect majority-owned subsidiaries under section 201(3)(A)(ii).

(ii) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within a debtor under section 201(3)(A) (i) and (ii) with respect to the payment obligations under this Act.

(iii) RIGHT OF CONTRIBUTION.—

(I) IN GENERAL.—Notwithstanding any other provision of this Act, if a direct or indirect majority-owned foreign subsidiary of a debtor participant (with such relationship to the debtor participant as determined on the date of enactment of this Act) is or becomes subject to any foreign insolvency proceedings, and such foreign direct or indirect-majority owned subsidiary is liquidated in connection with such foreign insolvency proceedings (or if the debtor participant's interest in such foreign subsidiary is otherwise

canceled or terminated in connection with such foreign insolvency proceedings), the debtor participant shall have a claim against such foreign subsidiary or the estate of such foreign subsidiary in an amount equal to the greater of—

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

(bb) the foreign subsidiary's allocable share of the debtor participant's funding obligations to the Fund as determined by such foreign subsidiary's allocable share of the debtor participant's 2002 gross revenue.

(II) DETERMINATION OF CLAIM AMOUNT.—The claim amount under subclause (I) (aa) or (bb) shall be determined by a court of competent jurisdiction in the United States.

(III) EFFECT ON PAYMENT OBLIGATION.—The right to, or recovery under, any such claim shall not reduce, limit, delay, or otherwise affect the debtor participant's payment obligations under this Act.

(iv) MAXIMUM ANNUAL PAYMENT OBLIGATION.—Subject to any payments under sections 204(l) and 222(d), and paragraphs (3), (4), and (5) of this subsection, the annual payment obligation by a debtor under subparagraph (B) of this paragraph shall not exceed $80,000,000.

(3) SUBTIER 2.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations but hold cash or other assets that have been allocated or earmarked for the settlement of asbestos claims shall be included in Subtier 2.

(B) ASSIGNMENT OF ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 2 shall assign all of its assets to the Fund.

(4) SUBTIER 3.—

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

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

(C) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, less—

(i) all allowable administrative expenses;

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

(iii) allowable secured claims.

(5) CLASS ACTION TRUST.—The assets of any class action trust that has been established in respect of the liabilities for asbestos claims of any person included within a debtor and affiliated group that has been included in Tier I (exclusive of any assets needed to pay previously incurred expenses and asbestos claims within the meaning of section 403(d)(1), before the date of enactment of this Act) shall be transferred to the Fund not later than 6 months after the date of enactment of this Act.

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

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

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

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

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

(E) those persons or affiliated groups remaining included in Subtier 3.

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

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

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

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

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

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

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

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

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

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

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

(E) those persons or affiliated groups remaining included in Subtier 3.

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

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

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

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

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

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

(e) TIER IV SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier IV shall be included in 1 of the 4 subtiers of Tier IV, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

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

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

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

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

(D) Subtier 4: $550,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 3 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

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

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

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 3 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

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

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(h) TIER VII.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, or VI, a person or affiliated group shall also be included in Tier VII, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims.

(2) ADDITIONAL AMOUNT.—The payment requirement for persons or affiliated groups included in Tier VII shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VI.

(3) SUBTIER 1.—Each person or affiliated group in Tier VII with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated group in Tier VII with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated group in Tier VII with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) IN GENERAL.—Each defendant participant or affiliated group shall pay to the Fund in the amounts provided under this subtitle as appropriate for its tier and subtier each year until the earlier to occur of the following:

(1) The participant or affiliated group has satisfied its obligations under this subtitle during the 30 annual payment cycles of the operation of the Fund.

(2) The amount received by the Fund from defendant participants, excluding any amounts rebated to defendant participants under subsection (d), equals the maximum aggregate payment obligation of section 202(a)(2).

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

(c) PROCEDURES.—The Administrator shall prescribe procedures on how amounts payable under this subtitle are to be paid, including, to the extent the Administrator determines appropriate, procedures relating to payment in installments.

(d) ADJUSTMENTS.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Administrator's determination under this subsection under the procedures prescribed in subsection (i)(10). The Administrator may adjust a defendant participant's payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (j) after payment of the otherwise applicable payment obligation, at the discretion of the Administrator.

(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant may apply for an adjustment based on financial hardship at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such adjustment by demonstrating that the amount of its payment obligation under the statutory allocation would constitute a severe financial hardship.

(B) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), a financial hardship adjustment under this subsection shall have a term of 3 years.

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

(D) REINSTATEMENT.—Following the expiration of the hardship adjustment period provided for under this section and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in the financial condition of the defendant participant such that the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate under terms and conditions established by the Administrator any part or all of the defendant participant's payment obligation under the statutory allocation that was not paid during the hardship adjustment term.

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of its payment obligation under the statutory allocation is exceptionally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund;

(II) when compared to the median payment rate for all defendant participants in the same tier; or

(III) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant;

(ii) shall qualify for a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote, and for purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act; and

(iii) shall be granted a two-tier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such participant's prior asbestos expenditures arose from asbestos claims based on successor liability arising from a merger to which the participant or its predecessor was a party that occurred at least 30 years before the date of enactment of this Act, and that such prior asbestos expenditures exceed the inflation-adjusted value of the assets of the company from which such liability was derived in such merger, and upon such demonstration the Administrator shall grant such adjustment for the life of the Fund and amounts paid by such defendant participant prior to such adjustment in excess of its adjusted payment obligation under this clause shall be credited against next succeeding required payment obligations.

(B) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(C) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), an inequity adjustment under this subsection shall have a term of 3 years.

(D) RENEWAL.—A defendant participant may renew an inequity adjustment every 3 years by demonstrating that the adjustment remains justified.

(E) REINSTATEMENT.—

(i) IN GENERAL.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant participant's payment under the statutory allocation was not inequitable. Based on this determination, the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 3-year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Administrator may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Administrator.

(4) LIMITATION ON ADJUSTMENTS.—The aggregate total of financial hardship adjustments under paragraph (2) and inequity adjustments under paragraph (3) in effect in any given year shall not exceed $300,000,000, except to the extent additional monies are available for such adjustments as a result of carryover of prior years' funds under subsection (j)(3) or as a result of monies being made available in that year under subsection (k)(1)(A).

(5) ADVISORY PANELS.—

(A) APPOINTMENT.—The Administrator shall appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

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

(C) COORDINATION.—The panels appointed under subparagraph (A) shall coordinate their deliberations and advice.

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

(f) CONSOLIDATION OF PAYMENTS.—

(1) IN GENERAL.—For purposes of determining the payment levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submissions to be made under paragraphs (1) and (3) of subsection (i), to report on a consolidated basis all of the information necessary to determine the payment level under this subtitle and pay to the Fund on a consolidated basis.

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

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including with respect to the assessment of a single annual payment under this subtitle for the entire affiliated group;

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

(C) all members of the affiliated group shall be identified in the submission under subsection (i) and shall certify compliance with this subsection and the Administrator's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(3) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within an affiliated group with respect to the payment obligations under this Act.

(g) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES.—

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

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

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

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee; and

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

(4) TREATMENT OF CERTAIN EXPENDITURES.—Notwithstanding any other provision of this Act, where—

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

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

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

(ii) filed after the date of the agreement and prior to the 10-year anniversary of the stock sale,

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

(h) MINIMUM ANNUAL PAYMENTS.—

(1) IN GENERAL.—The aggregate annual payments of defendant participants to the Fund shall be at least $3,000,000,000 for each calendar year in the first 30 years of the Fund, or until such shorter time as the condition set forth in subsection (a)(2) is attained.

(2) GUARANTEED PAYMENT ACCOUNT.—To the extent payments in accordance with sections 202 and 203 (as modified by subsections (b), (d), (f) and (g) of this section) fail in any year to raise at least $3,000,000,000 net of any adjustments under subsection (d), the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(3) GUARANTEED PAYMENT SURCHARGE.—To the extent the procedure set forth in paragraph (2) is insufficient to satisfy the required minimum aggregate annual payment net of any adjustments under subsection (d), the Administrator may assess a guaranteed payment surcharge under subsection (l).

(i) PROCEDURES FOR MAKING PAYMENTS.—

(1) INITIAL YEAR: TIERS II–VI.—

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

(i) a statement of whether the defendant participant irrevocably elects to report on a consolidated basis under subsection (f);

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

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

(iv) payment in the amount specified in section 203 for the lowest subtier of the tier within which the defendant participant falls, except that if the defendant participant, or the affiliated group including the defendant participant, had 2002 revenues exceeding $3,000,000,000, it or its affiliated group shall pay the amount specified for Subtier 3 of Tiers II, III, or IV or Subtier 2 of Tiers V or VI, depending on the applicable Tier.

(B) RELIEF.—

(i) IN GENERAL.—The Administrator shall establish procedures to grant a defendant participant relief from its initial payment obligation if the participant shows that—

(I) the participant is likely to qualify for a financial hardship adjustment; and

(II) failure to provide interim relief would cause severe irreparable harm.

(ii) JUDICIAL RELIEF.—The Administrator's refusal to grant relief under clause (i) is subject to immediate judicial review under section 303.

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

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

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

(C) a statement whether it has material continuing business operations and, if not, whether it holds cash or other assets that have been allocated or earmarked for asbestos settlements;

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

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

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

(3) INITIAL YEAR: TIER VII.—Not later than 90 days after enactment of this Act, each defendant participant in Tier VII shall file with the Administrator—

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

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

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

(4) NOTICE TO PARTICIPANTS.—Not later than 240 days after enactment of this Act, the Administrator shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund; and

(B) publish in the Federal Register a notice—

(i) setting forth the criteria in this Act, and as prescribed by the Administrator in accordance with this Act, for paying under this subtitle as a defendant participant and requiring any person who may be a defendant participant to submit such information; and

(ii) that includes a list of all defendant participants notified by the Administrator under subparagraph (A), and provides for 30 days for the submission by the public of comments or information regarding the completeness and accuracy of the list of identified defendant participants.

(5) RESPONSE REQUIRED.—

(A) IN GENERAL.—Any person who receives notice under paragraph (4)(A), and any other person meeting the criteria specified in the notice published under paragraph (4)(B), shall provide the Administrator with an address to send any notice from the Administrator in accordance with this Act and all the information required by the Administrator in accordance with this subsection no later than the earlier of—

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

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

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(C) CONSENT TO AUDIT AUTHORITY.—The response submitted under subparagraph (A) shall include, on behalf of the defendant participant or affiliated group, a consent to the Administrator's audit authority under section 221(d).

(6) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INDIVIDUAL.—Not later than 60 days after receiving a response under paragraph (5), the Administrator shall send the person a notice of initial determination identifying the tier and subtier, if any, into which the person falls and the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Administrator and identified to the defendant participant.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to defendant participants, the Administrator shall publish in the Federal Register a notice listing the defendant participants that have been sent such notification, and the initial determination identifying the tier and subtier assignment and annual payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response in accordance with paragraph (5) is received from a defendant participant, or if the response is incomplete, the initial determination shall be based on the best information available to the Administrator.

(C) PAYMENTS.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Administrator the amount required by the notice, after deducting any previous payment made by the participant under this subsection. If the amount that the defendant participant is required to pay is less than any previous payment made by the participant under this subsection, the Administrator shall credit any excess payment against the future payment obligations of that defendant participant. The pendency of a petition for rehearing under paragraph (10) shall not stay the obligation of the participant to make the payment specified in the Administrator's notice.

(7) EXEMPTIONS FOR INFORMATION REQUIRED.—

(A) PRIOR ASBESTOS EXPENDITURES.—In lieu of submitting information related to prior asbestos expenditures as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Tier II.

(B) REVENUES.—In lieu of submitting information related to revenues as may be required for purposes of this subtitle, a nondebtor defendant participant may consent to be assigned to Subtier 1 of the defendant participant's applicable tier.

(8) NEW INFORMATION.—

(A) EXISTING PARTICIPANT.—The Administrator shall adopt procedures for requiring additional payment, or refunding amounts already paid, based on new information received.

(B) ADDITIONAL PARTICIPANT.—If the Administrator, at any time, receives information that an additional person may qualify as a defendant participant, the Administrator shall require such person to submit information necessary to determine whether that person is required to make payments, and in what amount, under this subtitle and shall make any determination or take any other act consistent with this Act based on such information or any other information available to the Administrator with respect to such person.

(9) SUBPOENAS.—The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(10) REHEARING.—A defendant participant has a right to obtain rehearing of the Administrator's determination under this subsection of the applicable tier or subtier and of the Administrator's determination under subsection (d) of a financial hardship or inequity adjustment, if the request for rehearing is filed within 30 days after the defendant participant's receipt of notice from the Administrator of the determination. A defendant participant may not file an action under section 303 unless the defendant participant requests a rehearing under this paragraph. The Administrator shall publish a notice in the Federal Register of any change in a defendant participant's tier or subtier assignment or payment obligation as a result of a rehearing.

(j) DEFENDANT HARDSHIP AND INEQUITY ADJUSTMENT ACCOUNT.—

(1) IN GENERAL.—To the extent the total payments by defendant participants in any given year exceed the minimum aggregate annual payments under subsection (h), excess monies up to a maximum of $300,000,000 in any such year shall be placed in a defendant hardship and inequity adjustment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant hardship and inequity adjustment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to make up for any relief granted to a defendant participant for severe financial hardship or demonstrated inequity under subsection (d) or to reimburse any defendant participant granted such relief after its payment of the amount otherwise due; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(3) CARRYOVER OF UNUSED FUNDS.—To the extent the Administrator does not, in any given year, use all of the funds allocated to the account under paragraph (1) for adjustments granted under subsection (d), remaining funds in the account shall be carried forward for use by the Administrator for adjustments in subsequent years.

(k) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (h) and (j), if there are excess monies paid by defendant participants in any given year, including any bankruptcy trust credits that may be due under section 222(e), such monies—

(A) at the discretion of the Administrator, may be used to provide additional adjustments under subsection (d), up to a maximum aggregate of $50,000,000 in such year; and

(B) to the extent not used under subparagraph (A), shall be placed in a defendant guaranteed payment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant guaranteed payment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to ensure the minimum aggregate annual payment set forth in subsection (h) net of any adjustments under subsection (d) is reached each year; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(l) GUARANTEED PAYMENT SURCHARGE.—

(1) IN GENERAL.—To the extent there are insufficient monies in the defendant guaranteed payment account established in subsection (k) to attain the minimum aggregate annual payment net of any adjustments under subsection (d) in any given year, the Administrator may impose on each defendant participant a surcharge as necessary to raise the balance required to attain the minimum aggregate annual payment net of any adjustments under subsection (d), as provided in this subsection. Any such surcharge shall be imposed on a pro rata basis, in accordance with each defendant participant's relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), and (g) of this section).

(2) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a guaranteed payment surcharge under this subsection, the Administrator shall certify that he or she has used all reasonable efforts to collect mandatory payments for all defendant participants, including by using the authority in subsection (i)(9) of this section and section 223.

(B) NOTICE AND COMMENT.—Before making a final certification under subparagraph (C), the Administrator shall publish a notice in the Federal Register of a proposed certification and provide in such notice for a public comment period of 30 days.

(C) FINAL CERTIFICATION.—

(i) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of all comments submitted under subparagraph (B).

(ii) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under clause (i), the Administrator shall provide each defendant participant with written notice of that defendant participant's payment, including the amount of any surcharge.

SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.

(a) STEPDOWNS.—

(1) IN GENERAL.—Subject to paragraph (2), the minimum aggregate annual funding obligation under section 204(h) shall be reduced by 10 percent of the initial minimum aggregate funding obligation at the end of the tenth, fifteenth, twentieth, and twenty-fifth years after the date of enactment of this Act. The reductions under this paragraph shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant participants in Tier 1, Subtiers 2 and 3, and class action trusts.

(2) LIMITATION.—The Administrator shall suspend, cancel, reduce, or delay any reduction under paragraph (1) if at any time the Administrator finds, in accordance with subsection (c), that such action is necessary and appropriate to ensure that the assets of the Fund and expected future payments remain sufficient to satisfy the Fund's anticipated obligations.

(b) FUNDING HOLIDAYS.—

(1) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments, taking into consideration any reductions under subsection (a), are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from defendant participants for that year.

(2) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under paragraph (1) every year.

(3) LIMITATIONS ON FUNDING HOLIDAYS.—Any reduction or waiver of the defendant participants' funding obligations shall—

(A) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(B) be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(4) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(c) CERTIFICATION.—

(1) IN GENERAL.—Before suspending, canceling, reducing, or delaying any reduction under subsection (a) or granting or revoking a reduction or waiver under subsection (b), the Administrator shall certify that the requirements of this section are satisfied.

(2) NOTICE AND COMMENT.—Before making a final certification under this subsection, the Administrator shall publish a notice in the Federal Register of a proposed certification and a statement of the basis therefor and provide in such notice for a public comment period of 30 days.

(3) FINAL CERTIFICATION.—

(A) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of all comments submitted under paragraph (2).

(B) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under subparagraph (A), the Administrator shall provide each defendant participant with written notice of that defendant's funding obligation for that year.

Subtitle B—Asbestos Insurers Commission

SEC. 210. DEFINITION.

In this subtitle, the term ''captive insurance company'' means a company—

(1) whose entire beneficial interest is owned on the date of enactment of this Act,

directly or indirectly, by a defendant participant or by the ultimate parent or the affiliated group of a defendant participant;

(2) whose primary commercial business during the period from calendar years 1940 through 1986 was to provide insurance to its ultimate parent or affiliated group, or any portion of the affiliated group or a combination thereof; and

(3) that was incorporated or operating no later than December 31, 2003.

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.

(a) ESTABLISHMENT.—There is established the Asbestos Insurers Commission (referred to in this subtitle as the ''Commission'') to carry out the duties described in section 212.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—

(A) EXPERTISE.—Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST.—

(i) IN GENERAL.—No member of the Commission appointed under paragraph (1) may be an employee or immediate family member of an employee of an insurer participant. No member of the Commission shall be a shareholder of any insurer participant. No member of the Commission shall be a former officer or director, or a former employee or former shareholder of any insurer participant who was such an employee, shareholder, officer, or director at any time during the 2-year period ending on the date of the appointment, unless that is fully disclosed before consideration in the Senate of the nomination for appointment to the Commission.

(ii) DEFINITION.—In clause (i), the term ''shareholder'' shall not include a broadly based mutual fund that includes the stocks of insurer participants as a portion of its overall holdings.

(C) FEDERAL EMPLOYMENT.—A member of the Commission may not be an officer or employee of the Federal Government, except by reason of membership on the Commission.

(3) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Commission.

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) CHAIRMAN.—The President shall select a Chairman from among the members of the Commission.

(c) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) SUBSEQUENT MEETINGS.—The Commission shall meet at the call of the Chairman, as necessary to accomplish the duties under section 212.

(3) QUORUM.—No business may be conducted or hearings held without the participation of a majority of the members of the Commission.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.

(a) DETERMINATION OF INSURER PAYMENT OBLIGATIONS.—

(1) IN GENERAL.—

(A) DEFINITIONS.—For the purposes of this Act, the terms ''insurer'' and ''insurer participant'' shall, unless stated otherwise, include direct insurers and reinsurers, as well as any run-off entity established, in whole or in part, to review and pay asbestos claims.

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—The Commission shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Commission shall make this determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such methodology to determine the individual payment for each insurer participant. The methodology may include 1 or more allocation formulas to be applied to all insurer participants or groups of similarly situated participants. The Commission's rule shall include a methodology for adjusting payments by insurer participants to make up, during any applicable payment year, any amount by which aggregate insurer payments fall below the level required in paragraph (3)(C). The Commission shall conduct a thorough study (within the time limitations under this subparagraph) of the accuracy of the reserve allocation of each insurer participant, and may request information from the Securities and Exchange Commission or any State regulatory agency. Under this procedure, not later than 120 days after the initial meeting of the Commission, the Commission shall commence a rulemaking proceeding under section 213(a) to propose and adopt a methodology for allocating payments among insurer participants. In proposing an allocation methodology, the Commission may consult with such actuaries and other experts as it deems appropriate. After hearings and public comment on the proposed allocation methodology, the Commission shall as promptly as possible promulgate a final rule establishing such methodology. After promulgation of the final rule, the Commission shall determine the individual payment of each insurer participant under the procedures set forth in subsection (b).

(C) SCOPE.—Every insurer, reinsurer, and runoff entity with asbestos-related obligations in the United States shall be subject to the Commission's and Administrator's authority under this Act, including allocation determinations, and shall be required to fulfill its payment obligation without regard as to whether it is licensed in the United States. Every insurer participant not licensed or domiciled in the United States shall, upon the first payment to the Fund, submit a written consent to the Commission's and Administrator's authority under this Act, and to the jurisdiction of the courts of the United States for purposes of enforcing this Act, in a form determined by the Administrator. Any insurer participant refusing to provide a written consent shall be subject to fines and penalties as provided in section 223.

(D) ISSUERS OF FINITE RISK POLICIES.—

(i) IN GENERAL.—The issuer of any policy of reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a loss transfer to insure for incurred asbestos losses and other losses (both known and unknown), including those policies commonly referred to as ''finite risk'', ''aggregate stop loss'', ''aggregate excess of loss'', or ''loss portfolio transfer'' policies, shall be obligated to make payments required under this Act directly to the Fund on behalf of the insurer participant who is the beneficiary of such policy, subject to the underlying retention and the limits of liability applicable to such policy.

(ii) PAYMENTS.—Payments to the Fund required under this Act shall be treated as loss payments for asbestos bodily injury (as if such payments were incurred as liabilities imposed in the tort system) and shall not be subject to exclusion under policies described under clause (i) as a liability with respect to tax or assessment. Within 90 days after the scheduled date to make an annual payment to the Fund, the insurer participant shall, at its discretion, direct the reinsurer issuing such policy to pay all or a portion of the annual payment directly to the Fund up to the full applicable limits of liability under the policy. The reinsurer issuing such policy shall be obligated to make such payments directly to the Fund and shall be subject to the enforcement provisions under section 223. The insurer participant shall remain obligated to make payment to the Fund of that portion of the annual payment not directed to the issuer of such reinsurance policy.

(2) AMOUNT OF PAYMENTS.—

(A) AGGREGATE PAYMENT OBLIGATION.—The total payment required of all insurer participants over the life of the Fund shall be equal to $46,025,000,000.

(B) ACCOUNTING STANDARDS.—In determining the payment obligations of participants that are not licensed or domiciled in the United States or that are runoff entities, the Commission shall use accounting standards required for United States licensed direct insurers.

(C) CAPTIVE INSURANCE COMPANIES.—No payment to the Fund shall be required from a captive insurance company, unless and only to the extent a captive insurance company, on the date of enactment of this Act, has liability, directly or indirectly, for any asbestos claim of a person or persons other than and unaffiliated with its ultimate parent or affiliated group or pool in which the ultimate parent participates or participated, or unaffiliated with a person that was its ultimate parent or a member of its affiliated group or pool at the time the relevant insurance or reinsurance was issued by the captive insurance company.

(D) SEVERAL LIABILITY.—Unless otherwise provided under this Act, each insurer participant's obligation to make payments to the Fund is several. Unless otherwise provided under this Act, there is no joint liability, and the future insolvency by any insurer participant shall not affect the payment required of any other insurer participant.

(3) PAYMENT OF CRITERIA.—

(A) INCLUSION IN INSURER PARTICIPANT CATEGORY.—

(i) IN GENERAL.—Insurers that have paid, or been assessed by a legal judgment or settlement, at least $1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance shall be insurer participants in the Fund. Other insurers shall be exempt from mandatory payments.

(ii) INAPPLICABILITY OF SECTION 202.—Since insurers may be subject in certain jurisdictions to direct action suits, and it is not the intent of this Act to impose upon an insurer, due to its operation as an insurer, payment obligations to the Fund in situations where the insurer is the subject of a direct action, no insurer subject to mandatory payments under section 212 shall also be liable for payments to the Fund as a defendant participant under section 202.

(B) INSURER PARTICIPANT ALLOCATION METHODOLOGY.—

(i) IN GENERAL.—The Commission shall establish the payment obligations of individual insurer participants to reflect, on an equitable basis, the relative tort system liability of the participating insurers in the absence of this Act, considering and weighting, as appropriate (but exclusive of workers' compensation), such factors as—

(I) historic premium for lines of insurance associated with asbestos exposure over relevant periods of time;

(II) recent loss experience for asbestos liability;

(III) amounts reserved for asbestos liability;

(IV) the likely cost to each insurer participant of its future liabilities under applicable insurance policies; and

(V) any other factor the Commission may determine is relevant and appropriate.

(ii) DETERMINATION OF RESERVES.—The Commission may establish procedures and standards for determination of the asbestos reserves of insurer participants. The reserves of a United States licensed reinsurer that is wholly owned by, or under common control of, a United States licensed direct insurer shall be included as part of the direct insurer's reserves when the reinsurer's financial results are included as part of the direct insurer's United States operations, as reflected in footnote 33 of its filings with the National Association of Insurance Commissioners or in published financial statements prepared in accordance with generally accepted accounting principles.

(C) PAYMENT SCHEDULE.—The aggregate annual amount of payments by insurer participants over the life of the Fund shall be as follows:

(i) For years 1 and 2, $2,700,000,000 annually.

(ii) For years 3 through 5, $5,075,000,000 annually.

(iii) For years 6 through 27, $1,147,000,000 annually.

(iv) For year 28, $166,000,000.

(D) CERTAIN RUNOFF ENTITIES.—

(i) IN GENERAL.—Whenever the Commission requires payments by a runoff entity that has assumed asbestos-related liabilities from a Lloyd's syndicate or names that are members of such a syndicate, the Commission shall not require payments from such syndicates and names to the extent that the runoff entity makes its required payments. In addition, such syndicates and names shall be required to make payments to the Fund in the amount of any adjustment granted to the runoff entity for severe financial hardship or exceptional circumstances.

(ii) INCLUDED RUNOFF ENTITIES.—Subject to clause (i), a runoff entity shall include any direct insurer or reinsurer whose asbestos liability reserves have been transferred, directly or indirectly, to the runoff entity and on whose behalf the runoff entity handles or adjusts and, where appropriate, pays asbestos claims.

(E) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—

(i) IN GENERAL.—Under the procedures established in subsection (b), an insurer participant may seek adjustment of the amount of its payments based on exceptional circumstances or severe financial hardship.

(ii) FINANCIAL ADJUSTMENTS.—An insurer participant may qualify for an adjustment based on severe financial hardship by demonstrating that payment of the amounts required by the Commission's methodology would jeopardize the solvency of such participant.

(iii) EXCEPTIONAL CIRCUMSTANCE ADJUSTMENT.—An insurer participant may qualify for an adjustment based on exceptional circumstances by demonstrating—

(I) that the amount of its payments under the Commission's allocation methodology is exceptionally inequitable when measured against the amount of the likely cost to the participant of its future liability in the tort system in the absence of the Fund;

(II) an offset credit as described in subparagraphs (A) and (C) of subsection (b)(4); or

(III) other exceptional circumstances.

The Commission may determine whether to grant an adjustment and the size of any such adjustment, but adjustments shall not reduce the aggregate payment obligations of insurer participants specified in paragraph (2)(A) and subparagraph (C) of this paragraph.

(iv) TIME PERIOD OF ADJUSTMENT.—Except for adjustments for offset credits, adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating to the Administrator that it remains justified.

(b) PROCEDURE FOR NOTIFYING INSURER PARTICIPANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

(1) NOTICE TO PARTICIPANTS.—Not later than 30 days after promulgation of the final rule establishing an allocation methodology under subsection (a)(1), the Commission shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund under the allocation methodology; and

(B) publish in the Federal Register a notice—

(i) requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information; and

(ii) that includes a list of all insurer participants notified by the Commission under subparagraph (A), and provides for 30 days for the submission of comments or information regarding the completeness and accuracy of the list of identified insurer participants.

(2) RESPONSE REQUIRED BY INDIVIDUAL INSURER PARTICIPANTS.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice under a schedule or by a date established by the Commission.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE TO INSURER PARTICIPANTS OF INITIAL PAYMENT DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INSURERS.—Not later than 120 days after receipt of the information required by paragraph (2), the Commission shall send each insurer participant a notice of initial determination requiring payments to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information. An insurer participant's payments shall be payable over the schedule established in subsection (a)(3)(C), in annual amounts proportionate to the aggregate annual amount of payments for all insurer participants for the applicable year.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to insurer participants, the Commission shall publish in the Federal Register a notice listing the insurer participants that have been sent such notification, and the initial determination on the payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination requiring a payment from the insurer participant shall be based on the best information available to the Commission.

(4) COMMISSION REVIEW, REVISION, AND FINALIZATION OF INITIAL PAYMENT DETERMINATIONS.—

(A) COMMENTS FROM INSURER PARTICIPANTS.—Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support adjustments to the required payments to reflect severe financial hardship or exceptional circumstances, including the provision of an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy judicially confirmed after May 22, 2003, but before the date of enactment of this Act.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Commission, the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether payments from that person should be required, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Commission shall adopt procedures for revising initial payments based on information received under subparagraphs (A) and (B), including a provision requiring an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy confirmed after May 22, 2003, but before the date of enactment of this Act.

(5) EXAMINATIONS AND SUBPOENAS.—

(A) EXAMINATIONS.—The Commission may conduct examinations of the books and records of insurer participants to determine the completeness and accuracy of information submitted, or required to be submitted, to the Commission for purposes of determining participant payments.

(B) SUBPOENAS.—The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) ESCROW PAYMENTS.—Without regard to an insurer participant's payment obligation under this section, any escrow or similar account established before the date of enactment of this Act by an insurer participant in connection with an asbestos trust fund that has not been judicially confirmed by final order by the date of enactment of this Act shall be the property of the insurer participant and returned to that insurer participant.

(7) NOTICE TO INSURER PARTICIPANTS OF FINAL PAYMENT DETERMINATIONS.—Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Commission shall send each insurer participant a notice of final determination.

(c) INSURER PARTICIPANTS VOLUNTARY ALLOCATION AGREEMENT.—

(1) IN GENERAL.—Not later than 30 days after the Commission proposes its rule establishing an allocation methodology under subsection (a)(1), direct insurer participants licensed or domiciled in the United States, other direct insurer participants, reinsurer participants licensed or domiciled in the United States, or other reinsurer participants, may submit an allocation agreement, approved by all of the participants in the applicable group, to the Commission.

(2) ALLOCATION AGREEMENT.—To the extent the participants in any such applicable group voluntarily agree upon an allocation arrangement, any such allocation agreement shall only govern the allocation of payments

within that group and shall not determine the aggregate amount due from that group.

(3) CERTIFICATION.—The Commission shall determine whether an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle and, if so, shall certify the agreement as establishing the allocation methodology governing the individual payment obligations of the participants who are parties to the agreement. The authority of the Commission under this subtitle shall, with respect to participants who are parties to a certified allocation agreement, terminate on the day after the Commission certifies such agreement. Under subsection (f), the Administrator shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) COMMISSION REPORT.—

(1) RECIPIENTS.—Until the work of the Commission has been completed and the Commission terminated, the Commission shall submit an annual report, containing the information described under paragraph (2), to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Administrator.

(2) CONTENTS.—The report under paragraph (1) shall state the amount that each insurer participant is required to pay to the Fund, including the payment schedule for such payments.

(e) INTERIM PAYMENTS.—

(1) AUTHORITY OF ADMINISTRATOR.—During the period between the date of enactment of this Act and the date when the Commission issues its final determinations of payments, the Administrator shall have the authority to require insurer participants to make interim payments to the Fund to assure adequate funding by insurer participants during such period.

(2) AMOUNT OF INTERIM PAYMENTS.—During any applicable year, the Administrator may require insurer participants to make aggregate interim payments not to exceed the annual aggregate amount specified in subsection (a)(3)(C).

(3) ALLOCATION OF PAYMENTS.—Interim payments shall be allocated among individual insurer participants on an equitable basis as determined by the Administrator. All payments required under this subparagraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Commission. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Administrator. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established in subsection (a)(3)(D).

(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Administrator to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.

(f) TRANSFER OF AUTHORITY FROM THE COMMISSION TO THE ADMINISTRATOR.—

(1) IN GENERAL.—Upon termination of the Commission under section 215, the Administrator shall assume all the responsibilities and authority of the Commission, except that the Administrator shall not have the power to modify the allocation methodology established by the Commission or by certified agreement or to promulgate a rule establishing any such methodology.

(2) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—Upon termination of the Commission under section 215, the Administrator shall have the authority, upon application by any insurer participant, to make adjustments to annual payments upon the same grounds as provided in subsection (a)(3)(D). Adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating that it remains justified. Upon the grant of any adjustment, the Administrator shall increase the payments required of all other insurer participants so that there is no reduction in the aggregate payment required of all insurer participants for the applicable years. The increase in an insurer participant's required payment shall be in proportion to such participant's share of the aggregate payment obligation of all insurer participants.

(3) FINANCIAL SECURITY REQUIREMENTS.—Whenever an insurer participant's A.M. Best's claims payment rating or Standard and Poor's financial strength rating falls below A−, and until such time as either the insurer participant's A.M. Best's Rating or Standard and Poor's rating is equal to or greater than A−, the Administrator shall have the authority to require that the participating insurer either—

(A) pay the present value of its remaining Fund payments at a discount rate determined by the Administrator; or

(B) provide an evergreen letter of credit or financial guarantee for future payments issued by an institution with an A.M. Best's claims payment rating or Standard & Poor's financial strength rating of at least A+.

(g) JUDICIAL REVIEW.—The Commission's rule establishing an allocation methodology, its final determinations of payment obligations and other final action shall be judicially reviewable as provided in title III.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.

(a) RULEMAKING.—The Commission shall promulgate such rules and regulations as necessary to implement its authority under this Act, including regulations governing an allocation methodology. Such rules and regulations shall be promulgated after providing interested parties with the opportunity for notice and comment.

(b) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Commission's adoption of a final regulation.

(c) INFORMATION FROM FEDERAL AND STATE AGENCIES.—The Commission may secure directly from any Federal or State department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

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

(e) GIFTS.—The Commission may not accept, use, or dispose of gifts or donations of services or property.

(f) EXPERT ADVICE.—In carrying out its responsibilities, the Commission may enter into such contracts and agreements as the Commission determines necessary to obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 90 days after the last date on which the Commission makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Commission is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMISSION.

All expenses of the Commission shall be paid from the Fund.

Subtitle C—Asbestos Injury Claims Resolution Fund

SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION FUND.

(a) ESTABLISHMENT.—There is established in the Office of Asbestos Disease Compensation the Asbestos Injury Claims Resolution Fund, which shall be available to pay—

(1) claims for awards for an eligible disease or condition determined under title I;

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (b);

(4) the remaining obligations to the asbestos trust of a debtor and the class action trust under section 405(f)(8); and

(5) administrative expenses to carry out the provisions of this Act.

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The Administrator is authorized to borrow from time to time amounts as set forth in this subsection, for purposes of enhancing liquidity available to the Fund for carrying out the obligations of the Fund under this Act. The Administrator may authorize borrowing in such form, over such term, with such necessary disclosure to its lenders as will most efficiently enhance the Fund's liquidity.

(2) FEDERAL FINANCING BANK.—In addition to the general authority in paragraph (1), the Administrator may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285), as needed for performance of the Administrator's duties under this Act for the first 5 years.

(3) BORROWING CAPACITY.—The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations of the Fund at the time of borrowing, can be repaid in full (with interest) in a timely fashion from—

(A) the available assets of the Fund as of the time of borrowing; and

(B) all amounts expected to be paid by participants during the subsequent 10 years.

(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Administrator under this subsection is limited solely to amounts available in the Asbestos Injury Claims Resolution Fund established under this section.

(c) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY CLAIMANTS.—

(1) IN GENERAL.—Within the Fund, the Administrator shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IX.

(B) A Lung Cancer Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level VIII.

(C) A Severe Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level V.

(D) A Moderate Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IV.

(2) ALLOCATION.—The Administrator shall allocate to each of the 4 accounts established under paragraph (1) a portion of payments made to the Fund adequate to compensate all anticipated claimants for each account. Within 60 days after the date of enactment of this Act, and periodically during the life of the Fund, the Administrator shall determine an appropriate amount to allocate to each account after consulting appropriate epidemiological and statistical studies.

(d) AUDIT AUTHORITY.—

(1) IN GENERAL.—For the purpose of ascertaining the correctness of any information provided or payments made to the Fund, or determining whether a person who has not made a payment to the Fund was required to do so, or determining the liability of any person for a payment to the Fund, or collecting any such liability, or inquiring into any offense connected with the administration or enforcement of this title, the Administrator is authorized—

(A) to examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(B) to summon the person liable for a payment under this title, or officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable or any other person the Administrator may deem proper, to appear before the Administrator at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(C) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(2) FALSE, FRAUDULENT, OR FICTITIOUS STATEMENTS OR PRACTICES.—If the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by persons submitting information to the Administrator or to the Asbestos Insurers Commission or any other person who provides evidence in support of such submissions for purposes of determining payment obligations under this Act, the Administrator may impose a civil penalty not to exceed $10,000 on any person found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall promulgate appropriate regulations to implement this paragraph.

(e) IDENTITY OF CERTAIN DEFENDANT PARTICIPANTS; TRANSPARENCY.—

(1) SUBMISSION OF INFORMATION.—Not later than 60 days after the date of enactment of this Act, any person who, acting in good faith, has knowledge that such person or such person's affiliated group has prior asbestos expenditures of $1,000,000 or greater, shall submit to the Administrator—

(A) either the name of such person, or such person's ultimate parent; and

(B) the likely tier to which such person or affiliated group may be assigned under this Act.

(2) PUBLICATION.—Not later than 20 days after the end of the 60-day period referred to in paragraph (1), the Administrator or Interim Administrator, if the Administrator is not yet appointed, shall publish in the Federal Register a list of submissions required by this subsection, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned. After publication of such list, any person who, acting in good faith, has knowledge that any other person has prior asbestos expenditures of $1,000,000 or greater may submit to the Administrator or Interim Administrator information on the identity of that person and the person's prior asbestos expenditures.

(f) NO PRIVATE RIGHT OF ACTION.—Except as provided in sections 203(b)(2)(D)(ii) and 204(f)(3), there shall be no private right of action under any Federal or State law against any participant based on a claim of compliance or noncompliance with this Act or the involvement of any participant in the enactment of this Act.

SEC. 222. MANAGEMENT OF THE FUND.

(a) IN GENERAL.—Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries, including those provided in subsection (c), and to otherwise defray the reasonable expenses of administering the Fund.

(b) INVESTMENTS.—

(1) IN GENERAL.—Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(2) STRATEGY.—The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action—

(A) the size of the Fund;

(B) the nature and estimated duration of the Fund;

(C) the liquidity and distribution requirements of the Fund;

(D) general economic conditions at the time of the investment;

(E) the possible effect of inflation or deflation on Fund assets;

(F) the role that each investment or course of action plays with respect to the overall assets of the Fund;

(G) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and

(H) the needs of asbestos claimants for current and future distributions authorized under this Act.

(c) MESOTHELIOMA RESEARCH AND TREATMENT CENTERS.—

(1) IN GENERAL.—The Administrator shall provide $1,000,000 from the Fund for each of fiscal years 2005 through 2009 for each of up to 10 mesothelioma disease research and treatment centers.

(2) REQUIREMENTS.—The Centers shall—

(A) be chosen by the Director of the National Institutes of Health;

(B) be chosen through competitive peer review;

(C) be geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

(D) be closely associated with Department of Veterans Affairs medical centers to provide research benefits and care to veterans who have suffered excessively from mesothelioma;

(E) be engaged in research to provide mechanisms for detection and prevention of mesothelioma, particularly in the areas of pain management and cures;

(F) be engaged in public education about mesothelioma and prevention, screening, and treatment;

(G) be participants in the National Mesothelioma Registry; and

(H) be coordinated in their research and treatment efforts with other Centers and institutions involved in exemplary mesothelioma research.

(d) BANKRUPTCY TRUST GUARANTEE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, the Administrator shall have the authority to impose a pro rata surcharge on all participants under this subsection to ensure the liquidity of the Fund, if—

(A) the declared assets from 1 or more bankruptcy trusts established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, are not available to the Fund because a final judgment that has been entered by a court and is no longer subject to any appeal or review has enjoined the transfer of assets required under section 524(j)(2) of title 11, United States Code (as amended by section 402(f) of this Act); and

(B) borrowing is insufficient to assure the Fund's ability to meet its obligations under this Act such that the required borrowed amount is likely to increase the risk of termination of this Act under section 405 based on reasonable claims projections.

(2) ALLOCATION.—Any surcharge imposed under this subsection shall be imposed over a period of 5 years on a pro rata basis upon all participants, in accordance with each participant's relative annual liability under this subtitle and subtitle B for those 5 years.

(3) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a surcharge under this subsection, the Administrator shall publish a notice in the Federal Register and provide in such notice for a public comment period of 30 days.

(B) CONTENTS OF NOTICE.—The notice required under subparagraph (A) shall include—

(i) information explaining the circumstances that make a surcharge necessary and a certification that the requirements under paragraph (1) are met;

(ii) the amount of the declared assets from any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, that was not made, or is no longer, available to the Fund;

(iii) the total aggregate amount of the necessary surcharge; and

(iv) the surcharge amount for each tier and subtier of defendant participants and for each insurer participant.

(C) FINAL NOTICE.—The Administrator shall publish a final notice in the Federal Register and provide each participant with written notice of that participant's schedule of payments under this subsection. In no event shall any required surcharge under this subsection be due before 60 days after the Administrator publishes the final notice in the Federal Register and provides each participant with written notice of its schedule of payments.

(4) MAXIMUM AMOUNT.—In no event shall the total aggregate surcharge imposed by the Administrator exceed the lesser of—

(A) the total aggregate amount of the declared assets of the trusts established under a plan of reorganization confirmed and substantially consummated prior to July 31, 2004, that are no longer available to the Fund; or

(B) $4,000,000,000.

(5) DECLARED ASSETS.—

(A) IN GENERAL.—In this subsection, the term ''declared assets'' means—

(i) the amount of assets transferred by any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, to the Fund that is required to be returned to that trust under the final judgment described in paragraph (1)(A); or

(ii) if no assets were transferred by the trust to the Fund, the amount of assets the Administrator determines would have been available for transfer to the Fund from that trust under section 402(f).

(B) DETERMINATION.—In making a determination under subparagraph (A)(ii), the Administrator may rely on any information reasonably available, and may request, and use subpoena authority of the Administrator if necessary to obtain, relevant information from any such trust or its trustees.

(e) BANKRUPTCY TRUST CREDITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, but subject to paragraph (2) of this subsection, the Administrator shall provide a credit toward the aggregate payment obligations under sections 202(a)(2) and 212(a)(2)(A) for assets received by the Fund from any bankruptcy trust established under a plan of reorganization confirmed and substantially consummated after July 31, 2004.

(2) ALLOCATION OF CREDITS.—The Administrator shall allocate, for each such bankruptcy trust, the credits for such assets between the defendant and insurer aggregate payment obligations as follows:

(A) DEFENDANT PARTICIPANTS.—The aggregate amount that all persons other than insurers contributing to the bankruptcy trust would have been required to pay as Tier I defendants under section 203(b) if the plan of reorganization under which the bankruptcy trust was established had not been confirmed and substantially consummated and the proceeding under chapter 11 of title 11, United States Code, that resulted in the establishment of the bankruptcy trust had remained pending as of the date of enactment of this Act.

(B) INSURER PARTICIPANTS.—The aggregate amount of all credits to which insurers are entitled to under section 202(c)(4)(A) of the Act.

SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.

(a) DEFAULT.—If any participant fails to make any payment in the amount of and according to the schedule under this Act or as prescribed by the Administrator, after demand and a 30-day opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY.—In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code. The United States Bankruptcy Court shall have jurisdiction over any issue or controversy regarding lien priority and lien perfection arising in a bankruptcy case due to a lien imposed under subsection (a).

(c) CIVIL ACTION.—

(1) IN GENERAL.—In any case in which there has been a refusal or failure to pay any liability imposed under this Act, the Administrator may bring a civil action in the United States District Court for the District of Columbia, or any other appropriate lawsuit or proceeding outside of the United States—

(A) to enforce the liability and any lien of the United States imposed under this section;

(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest to the payment of such liability; or

(C) for temporary, preliminary, or permanent relief.

(2) ADDITIONAL PENALTIES.—In any action under paragraph (1) in which the refusal or failure to pay was willful, the Administrator may seek recovery—

(A) of punitive damages;

(B) of the costs of any civil action under this subsection, including reasonable fees incurred for collection, expert witnesses, and attorney's fees; and

(C) in addition to any other penalty, of a fine equal to the total amount of the liability that has not been collected.

(d) ENFORCEMENT AUTHORITY AS TO INSURER PARTICIPANTS.—

(1) IN GENERAL.—In addition to or in lieu of the enforcement remedies described in subsection (c), the Administrator may seek to recover amounts in satisfaction of a payment not timely paid by an insurer participant under the procedures under this subsection.

(2) SUBROGATION.—To the extent required to establish personal jurisdiction over nonpaying insurer participants, the Administrator shall be deemed to be subrogated to the contractual rights of participants to seek recovery from nonpaying insuring participants that are domiciled outside the United States under the policies of liability insurance or contracts of liability reinsurance or retrocessional reinsurance applicable to asbestos claims, and the Administrator may bring an action or an arbitration against the nonpaying insurer participants under the provisions of such policies and contracts, provided that—

(A) any amounts collected under this subsection shall not increase the amount of deemed erosion allocated to any policy or contract under section 404, or otherwise reduce coverage available to a participant; and

(B) subrogation under this subsection shall have no effect on the validity of the insurance policies or reinsurance, and any contrary State law is expressly preempted.

(3) RECOVERABILITY OF CONTRIBUTION.—For purposes of this subsection—

(A) all contributions to the Fund required of a participant shall be deemed to be sums legally required to be paid for bodily injury resulting from exposure to asbestos;

(B) all contributions to the Fund required of any participant shall be deemed to be a single loss arising from a single occurrence under each contract to which the Administrator is subrogated; and

(C) with respect to reinsurance contracts, all contributions to the Fund required of a participant shall be deemed to be payments to a single claimant for a single loss.

(4) NO CREDIT OR OFFSET.—In any action brought under this subsection, the nonpaying insurer or reinsurer shall be entitled to no credit or offset for amounts collectible or potentially collectible from any participant nor shall such defaulting participant have any right to collect any sums payable under this section from any participant.

(5) COOPERATION.—Insureds and cedents shall cooperate with the Administrator's reasonable requests for assistance in any such proceeding. The positions taken or statements made by the Administrator in any such proceeding shall not be binding on or attributed to the insureds or cedents in any other proceeding. The outcome of such a proceeding shall not have a preclusive effect on the insureds or cedents in any other proceeding and shall not be admissible against any subrogee under this section. The Administrator shall have the authority to settle or compromise any claims against a nonpaying insurer participant under this subsection.

(e) BAR ON UNITED STATES BUSINESS.—If any direct insurer or reinsurer refuses to furnish any information requested by or to pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Administrator may issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States. Insurer participants or their affiliates seeking to obtain a license from any State to write any type of insurance shall be barred from obtaining any such license until payment of all contributions required as of the date of license application.

(f) CREDIT FOR REINSURANCE.—If the Administrator determines that an insurer participant that is a reinsurer is in default in paying any required contribution or otherwise not in compliance with this Act, the Administrator may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer. Any State law governing credit for reinsurance to the contrary is preempted.

(g) DEFENSE LIMITATION.—In any proceeding under this section, the participant shall be barred from bringing any challenge to any determination of the Administrator or the Asbestos Insurers Commission regarding its liability under this Act, or to the constitutionality of this Act or any provision thereof, if such challenge could have been made during the review provided under section 204(i)(10), or in a judicial review proceeding under section 303.

(h) DEPOSIT OF FUNDS.—

(1) IN GENERAL.—Any funds collected under subsection (c)(2) (A) or (C) shall be—

(A) deposited in the Fund; and

(B) used only to pay—

(i) claims for awards for an eligible disease or condition determined under title I; or

(ii) claims for reimbursement for medical monitoring determined under title I.

(2) NO EFFECT ON OTHER LIABILITIES.—The imposition of a fine under subsection (c)(2)(C) shall have no effect on—

(A) the assessment of contributions under subtitles A and B; or

(B) any other provision of this Act.

(i) PROPERTY OF THE ESTATE.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (4)(B)(ii), by striking ''or'' at the end;

(2) in paragraph (5), by striking ''prohibition.'' and inserting ''prohibition; or''; and

(3) by inserting after paragraph (5) and before the last undesignated sentence the following:

''(6) the value of any pending claim against or the amount of an award granted from the Asbestos Injury Claims Resolution Fund established under the Fairness in Asbestos Injury Resolution Act of 2005.''.

SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.

If any amount of payment obligation under this title is not paid on or before the last date prescribed for payment, the liable party shall pay interest on such amount at the Federal short-term rate determined under section 6621(b) of the Internal Revenue Code of 1986, plus 5 percentage points, for the period from such last date to the date paid.

SEC. 225. EDUCATION, CONSULTATION, SCREENING, AND MONITORING.

(a) IN GENERAL.—The Administrator shall establish a program for the education, consultation, medical screening, and medical monitoring of persons with exposure to asbestos. The program shall be funded by the Fund.

(b) OUTREACH AND EDUCATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall establish an outreach and education program, including a website designed to provide information about asbestos-related medical conditions to members of populations at risk of developing such conditions.

(2) INFORMATION.—The information provided under paragraph (1) shall include information about—

(A) the signs and symptoms of asbestos-related medical conditions;

(B) the value of appropriate medical screening programs; and

(C) actions that the individuals can take to reduce their future health risks related to asbestos exposure.

(3) CONTRACTS.—Preference in any contract under this subsection shall be given to providers that are existing nonprofit organizations with a history and experience of providing occupational health outreach and educational programs for individuals exposed to asbestos.

(c) MEDICAL SCREENING PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—Not sooner than 18 months or later than 24 months after the Administrator certifies that the Fund is fully operational and processing claims at a reasonable rate, the Administrator shall adopt guidelines establishing a medical screening program for individuals at high risk of asbestos-related disease resulting from an asbestos-related disease. In promulgating such guidelines, the Administrator shall consider the views of the Advisory Committee on Asbestos Disease Compensation, the Medical Advisory Committee, and the public.

(2) ELIGIBILITY CRITERIA.—

(A) IN GENERAL.—The guidelines promulgated under this subsection shall establish criteria for participation in the medical screening program.

(B) CONSIDERATIONS.—In promulgating eligibility criteria the Administrator shall take into consideration all factors relevant to the individual's effective cumulative exposure to asbestos, including—

(i) any industry in which the individual worked;

(ii) the individual's occupation and work setting;

(iii) the historical period in which exposure took place;

(iv) the duration of the exposure;

(v) the intensity and duration of non-occupational exposures; and

(vi) any other factors that the Administrator determines relevant.

(3) PROTOCOLS.—The guidelines developed under this subsection shall establish protocols for medical screening, which shall include—

(A) administration of a health evaluation and work history questionnaire;

(B) an evaluation of smoking history;

(C) a physical examination by a qualified physician with a doctor-patient relationship with the individual;

(D) a chest x-ray read by a certified B-reader as defined under section 121(a)(4); and

(E) pulmonary function testing as defined under section 121(a)(13).

(4) FREQUENCY.—The Administrator shall establish the frequency with which medical screening shall be provided or be made available to eligible individuals, which shall be not less than every 5 years.

(5) PROVISION OF SERVICES.—The Administrator shall provide medical screening to eligible individuals directly or by contract with another agency of the Federal Government, with State or local governments, or with private providers of medical services. The Administrator shall establish strict qualifications for the providers of such services, and shall periodically audit the providers of services under this subsection, to ensure their integrity, high degree of competence, and compliance with all applicable technical and professional standards. No provider of medical screening services may have earned more than 15 percent of their income from the provision of services of any kind in connection with asbestos litigation in any of the 3 years preceding the date of enactment of this Act. All contracts with providers of medical screening services under this subsection shall contain provisions allowing the Administrator to terminate such contracts for cause if the Administrator determines that the service provider fails to meet the qualifications established under this subsection.

(6) LIMITATION OF COMPENSATION FOR SERVICES.—The compensation required to be paid to a provider of medical screening services for such services furnished to an eligible individual shall be limited to the amount that would be reimbursed at the time of the furnishing of such services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for similar services if—

(A) the individual were entitled to benefits under part A of such title and enrolled under part B of such title; and

(B) such services are covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(7) FUNDING; PERIODIC REVIEW.—

(A) FUNDING.—The Administrator shall make such funds available from the Fund to implement this section, but not more than $30,000,000 each year in each of the 5 years following the effective date of the medical screening program. Notwithstanding the preceding sentence, the Administrator shall suspend the operation of the program or reduce its funding level if necessary to preserve the solvency of the Fund and to prevent the sunset of the overall program under section 405(f).

(B) REVIEW.—The Administrator's first annual report under section 405 following the close of the 4th year of operation of the medical screening program shall include an analysis of the usage of the program, its cost and effectiveness, its medical value, and the need to continue that program for an additional 5-year period. The Administrator shall also recommend to Congress any improvements that may be required to make the program more effective, efficient, and economical, and shall recommend a funding level for the program for the 5 years following the period of initial funding referred to under subparagraph (A).

(d) LIMITATION.—In no event shall the total amount allocated to the medical screening program established under this subsection over the lifetime of the Fund exceed $600,000,000.

(e) MEDICAL MONITORING PROGRAM AND PROTOCOLS.—

(1) IN GENERAL.—The Administrator shall establish procedures for a medical monitoring program for persons exposed to asbestos who have been approved for level I compensation under section 131.

(2) PROCEDURES.—The procedures for medical monitoring shall include—

(A) specific medical tests to be provided to eligible individuals and the periodicity of those tests, which shall initially be provided every 3 years and include—

(i) administration of a health evaluation and work history questionnaire;

(ii) physical examinations, including blood pressure measurement, chest examination, and examination for clubbing;

(iii) AP and lateral chest x-ray; and

(iv) spirometry performed according to ATS standards;

(B) qualifications of medical providers who are to provide the tests required under subparagraph (A); and

(C) administrative provisions for reimbursement from the Fund of the costs of monitoring eligible claimants, including the costs associated with the visits of the claimants to physicians in connection with medical monitoring, and with the costs of performing and analyzing the tests.

(3) PREFERENCES.—

(A) IN GENERAL.—In administering the monitoring program under this subsection, preference shall be given to medical and program providers with—

(i) a demonstrated capacity for identifying, contacting, and evaluating populations of workers or others previously exposed to asbestos; and

(ii) experience in establishing networks of medical providers to conduct medical screening and medical monitoring examinations.

(B) PROVISION OF LISTS.—Claimants that are eligible to participate in the medical monitoring program shall be provided with a list of approved providers in their geographic area at the time such claimants become eligible to receive medical monitoring.

(f) CONTRACTS.—The Administrator may enter into contracts with qualified program providers that would permit the program providers to undertake large-scale medical screening and medical monitoring programs by means of subcontracts with a network of medical providers, or other health providers.

(g) REVIEW.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Administrator shall review, and if necessary update, the protocols and procedures established under this section.

TITLE III—JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review rules or regulations promulgated by the Administrator or the Asbestos Insurers Commission under this Act.

(b) PERIOD FOR FILING PETITION.—A petition for review under this section shall be filed not later than 60 days after the date notice of such promulgation appears in the Federal Register.

(c) EXPEDITED PROCEDURES.—The United States Court of Appeals for the District of Columbia shall provide for expedited procedures for reviews under this section.

SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.

(a) IN GENERAL.—Any claimant adversely affected or aggrieved by a final decision of the Administrator awarding or denying compensation under title I may petition for judicial review of such decision. Any petition for review under this section shall be filed within 90 days of the issuance of a final decision of the Administrator.

(b) EXCLUSIVE JURISDICTION.—A petition for review may only be filed in the United States Court of Appeals for the circuit in which the claimant resides at the time of the issuance of the final order.

(c) STANDARD OF REVIEW.—The court shall uphold the decision of the Administrator unless the court determines, upon review of the record as a whole, that the decision is not supported by substantial evidence, is contrary to law, or is not in accordance with procedure required by law.

(d) EXPEDITED PROCEDURES.—The United States Court of Appeals shall provide for expedited procedures for reviews under this section.

SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESSMENTS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review a final determination by the Administrator or the Asbestos Insurers Commission regarding the liability of any person to make a payment to the Fund, including a notice of applicable subtier assignment under section 204(i), a notice of financial hardship or inequity determination under section 204(d), and a notice of insurer participant obligation under section 212(b).

(b) PERIOD FOR FILING ACTION.—A petition for review under subsection (a) shall be filed not later than 60 days after a final determination by the Administrator or the Commission giving rise to the action. Any defendant participant who receives a notice of its applicable subtier under section 204(i) or a notice of financial hardship or inequity determination under section 204(d) shall commence any action within 30 days after a decision on rehearing under section 204(i)(10), and any insurer participant who receives a notice of a payment obligation under section 212(b) shall commence any action within 30 days after receiving such notice. The court shall give such action expedited consideration.

SEC. 304. OTHER JUDICIAL CHALLENGES.

(a) EXCLUSIVE JURISDICTION.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action for declaratory or injunctive relief challenging any provision of this Act. An action under this section shall be filed not later than 60 days after the date of enactment of this Act or 60 days after the final action by the Administrator or the Commission giving rise to the action, whichever is later.

(b) DIRECT APPEAL.—A final decision in the action shall be reviewable on appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 30 days, and the filing of a jurisdictional statement within 60 days, of the entry of the final decision.

(c) EXPEDITED PROCEDURES.—It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL REVIEW.

(a) NO STAYS.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(b) EXCLUSIVITY OF REVIEW.—An action of the Administrator or the Asbestos Insurers Commission for which review could have been obtained under section 301, 302, or 303 shall not be subject to judicial review in any other proceeding.

(c) CONSTITUTIONAL REVIEW.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any interlocutory or final judgment, decree, or order of a Federal court holding this Act, or any provision or application thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court.

(2) PERIOD FOR FILING APPEAL.—Any such appeal shall be filed not more than 30 days after entry of such judgment, decree, or order.

(3) REPAYMENT TO ASBESTOS TRUST AND CLASS ACTION TRUST.—If the transfer of the assets of any asbestos trust of a debtor or any class action trust (or this Act as a whole) is held to be unconstitutional or otherwise unlawful, the Fund shall transfer the remaining balance of such assets (determined under section 405(f)(1)(A)(iii)) back to the appropriate asbestos trust or class action trust within 90 days after final judicial action on the legal challenge, including the exhaustion of all appeals.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FALSE INFORMATION.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund

''(a) FRAUD RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission under title II of the Fairness in Asbestos Injury Resolution Act of 2005 shall be fined under this title or imprisoned not more than 20 years, or both.

''(b) FALSE STATEMENT RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—Whoever, in any matter involving the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission, knowingly and willfully—

''(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

''(2) makes any materially false, fictitious, or fraudulent statements or representations; or

''(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the award of a claim or the determination of a participant's payment obligation under title I or II of the Fairness in Asbestos Injury Resolution Act of 2005 shall be fined under this title or imprisoned not more than 10 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund.''.

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

(a) NO AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2005, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).''.

(b) ASSUMPTION OF EXECUTORY CONTRACT.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.''.

(c) ALLOWED ADMINISTRATIVE EXPENSES.—Section 503 of title 11, United States Code, is amended by adding at the end the following:

''(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

''(2) For purposes of paragraph (1), the term 'asbestos payment obligation' means any payment obligation under title II of the Fairness in Asbestos Injury Resolution Act of 2005.''.

(d) NO DISCHARGE.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) of the debtor's payment obligations assessed against the participant under title II of that Act.''.

(e) PAYMENT.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) PARTICIPANT DEBTORS.—

''(1) IN GENERAL.—Paragraphs (2) and (3) shall apply to a debtor who—

''(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2005); and

''(B) is subject to a case under this title that is pending—

''(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005; or

''(ii) at any time during the 1-year period preceding the date of enactment of that Act.

''(2) TIER I DEBTORS.—A debtor that has been assigned to Tier I under section 202 of

the Fairness in Asbestos Injury Resolution Act of 2005, shall make payments in accordance with sections 202 and 203 of that Act.

''(3) TREATMENT OF PAYMENT OBLIGATIONS.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2005 shall—

''(A) constitute costs and expenses of administration of a case under section 503 of this title;

''(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

''(C) not be stayed;

''(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

''(E) not be impaired or discharged in any current or future case under this title.''.

(f) TREATMENT OF TRUSTS.—Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(j) ASBESTOS TRUSTS.—

''(1) IN GENERAL.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the 'Fund') as established under the Fairness in Asbestos Injury Resolution Act of 2005 if the trust qualifies as a 'trust' under section 201 of that Act.

''(2) TRANSFER OF TRUST ASSETS.—

''(A) IN GENERAL.—

''(i) Except as provided under subparagraphs (B), (C), and (E), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) shall be transferred to the Fund not later than 6 months after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(ii) Notwithstanding any other provision of Federal or State law, no liability of any kind may be imposed on a trustee of a trust for transferring assets to the Fund in accordance with clause (i).

''(B) AUTHORITY TO REFUSE ASSETS.—The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

''(C) ALLOCATION OF TRUST ASSETS.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. The trustees shall demonstrate to the satisfaction of the Administrator, or by clear and convincing evidence in a proceeding brought before the United States District Court for the District of Columbia in accordance with paragraph (4), that the amount reserved is properly allocable to claims other than asbestos claims.

''(D) SALE OF FUND ASSETS.—The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2005 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

''(E) LIQUIDATED CLAIMS.—Except as specifically provided in this subparagraph, all asbestos claims against a trust are superseded and preempted as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005, and a trust shall not make any payment relating to asbestos claims after that date. If, in the ordinary course and the normal and usual administration of the trust consistent with past practices, a trust had before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005, made all determinations necessary to entitle an individual claimant to a noncontingent cash payment from the trust, the trust shall (i) make any lump-sum cash payment due to that claimant, and (ii) make or provide for all remaining noncontingent payments on any award being paid or scheduled to be paid on an installment basis, in each case only to the same extent that the trust would have made such cash payments in the ordinary course and consistent with past practices before enactment of that Act. A trust shall not make any payment in respect of any alleged contingent right to recover any greater amount than the trust had already paid, or had completed all determinations necessary to pay, to a claimant in cash in accordance with its ordinary distribution procedures in effect as of June 1, 2003.

''(3) INJUNCTION.—

''(A) IN GENERAL.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect. No court, Federal or State, may enjoin the transfer of assets by a trust to the Fund in accordance with this subsection pending resolution of any litigation challenging such transfer or the validity of this subsection or of any provision of the Fairness in Asbestos Injury Resolution Act of 2005, and an interlocutory order denying such relief shall not be subject to immediate appeal under section 1291(a) of title 28.

''(B) AVAILABILITY OF FUND ASSETS.—Notwithstanding any other provision of law, once such a transfer has been made, the assets of the Fund shall be available to satisfy any final judgment entered in such an action and such transfer shall no longer be subject to any appeal or review—

''(i) declaring that the transfer effected a taking of a right or property for which an individual is constitutionally entitled to just compensation; or

''(ii) requiring the transfer back to a trust of any or all assets transferred by that trust to the Fund.

''(4) JURISDICTION.—Solely for purposes of implementing this subsection, personal jurisdiction over every covered trust, the trustees thereof, and any other necessary party, and exclusive subject matter jurisdiction over every question arising out of or related to this subsection, shall be vested in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 1127 of this title, that court may make any order necessary and appropriate to facilitate prompt compliance with this subsection, including assuming jurisdiction over and modifying, to the extent necessary, any applicable confirmation order or other order with continuing and prospective application to a covered trust. The court may also resolve any related challenge to the constitutionality of this subsection or of its application to any trust, trustee, or individual claimant. The Administrator of the Fund may bring an action seeking such an order or modification, under the standards of rule 60(b) of the Federal Rules of Civil Procedure or otherwise, and shall be entitled to intervene as of right in any action brought by any other party seeking interpretation, application, or invalidation of this subsection. Any order denying relief that would facilitate prompt compliance with the transfer provisions of this subsection shall be subject to immediate appeal under section 304 of the Fairness in Asbestos Injury Resolution Act of 2005. Notwithstanding any other provision of this paragraph, for purposes of implementing the sunset provisions of section 402(f) of such Act which apply to asbestos trusts and the class action trust, the bankruptcy court or United States district court having jurisdiction over any such trust as of the date of enactment of such Act shall retain such jurisdiction.''.

(g) NO AVOIDANCE OF TRANSFER.—Section 546 of title 11, United States Code, is amended by adding at the end the following:

''(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the trustee may not avoid a transfer made by the debtor under its payment obligations under section 202 or 203 of that Act.''.

(h) CONFIRMATION OF PLAN.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

''(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.''.

(i) EFFECT ON INSURANCE RECEIVERSHIP PROCEEDINGS.—

(1) LIEN.—In an insurance receivership proceeding involving a direct insurer, reinsurer or runoff participant, there shall be a lien in favor of the Fund for the amount of any assessment and any such lien shall be given priority over all other claims against the participant in receivership, except for the expenses of administration of the receivership and the perfected claims of the secured creditors. Any State law that provides for priorities inconsistent with this provision is preempted by this Act.

(2) PAYMENT OF ASSESSMENT.—Payment of any assessment required by this Act shall not be subject to any automatic or judicially entered stay in any insurance receivership proceeding. This Act shall preempt any State law requiring that payments by a direct insurer, reinsurer or runoff participant in an insurance receivership proceeding be approved by a court, receiver or other person. Payments of assessments by any direct insurer or reinsurer participant under this Act shall not be subject to the avoidance powers of a receiver or a court in or relating to an insurance receivership proceeding.

(j) STANDING IN BANKRUPTCY PROCEEDINGS.—The Administrator shall have standing in any bankruptcy case involving a debtor participant. No bankruptcy court may require the Administrator to return property seized to satisfy obligations to the Fund.

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON SILICA CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any personal injury claim attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and the exposed person (or another claiming on behalf of or through the exposed person) is not eligible for any monetary award under this Act; or

(II)(aa) the exposed person suffers or has suffered a functional impairment that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such functional impairment; and

(ii) satisfies the requirements of paragraph (2) .

(B) PREEMPTION.—Claims attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—

(A) IN GENERAL.—In any claim to which paragraph (1) applies, the initial pleading (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 60 days after such date, but not later than 60 days before trial, shall plead with particularity the elements of subparagraph (A)(i)(I) or (II) and shall be accompanied by the information described under subparagraph (B)(i) through (iv).

(B) PLEADINGS.—If the claim pleads the elements of paragraph (1)(A)(i)(II) and by the information described under clauses (i) through (iv) of this subparagraph if the claim pleads the elements of paragraph (1)(A)(i)(I)—

(i) admissible evidence, including at a minimum, a B-reader's report, the underlying x-ray film and such other evidence showing that the claim may be maintained and is not preempted under paragraph (1);

(ii) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(iii) if known by the plaintiff after reasonable inquiry by the plaintiff or his representative, the history of the exposed person's exposure, if any, to asbestos; and

(iv) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(c) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Except as provided under paragraph (3), any agreement, understanding, or undertaking by any person or affiliated group with respect to the treatment of any asbestos claim that requires future performance by any party, insurer of such party, settlement administrator, or escrow agent shall be superseded in its entirety by this Act.

(2) NO FORCE OR EFFECT.—Except as provided under paragraph (3), any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any such agreement, understanding, or undertaking.

(3) EXCEPTION.—

(A) IN GENERAL.—Except as provided in section 202(f), nothing in this Act shall abrogate a binding and legally enforceable written settlement agreement between any defendant participant or its insurer and a specific named plaintiff with respect to the settlement of an asbestos claim of the plaintiff if—

(i) before the date of enactment of this Act, the settlement agreement was executed directly by the settling defendant or the settling insurer and the individual plaintiff, or on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by an authorized legal representative;

(ii) the settlement agreement contains an express obligation by the settling defendant or settling insurer to make a future direct monetary payment or payments in a fixed amount or amounts to the individual plaintiff; and

(iii) within 30 days after the date of enactment of this Act, or such shorter time period specified in the settlement agreement, all conditions to payment under the settlement agreement have been fulfilled, so that the only remaining performance due under the settlement agreement is the payment or payments by the settling defendant or the settling insurer.

(B) BANKRUPTCY-RELATED AGREEMENTS.—The exception set forth in this paragraph shall not apply to any bankruptcy-related agreement.

(C) COLLATERAL SOURCE.—Any settlement payment under this section is a collateral source if the plaintiff seeks recovery from the Fund.

(D) ABROGATION.—Nothing in subparagraph (A) shall abrogate a settlement agreement otherwise satisfying the requirements of that subparagraph if such settlement agreement expressly anticipates the enactment of this Act and provides for the effects of this Act.

(E) HEALTH CARE INSURANCE OR EXPENSES SETTLEMENTS.—Nothing in this Act shall abrogate or terminate an otherwise fully enforceable settlement agreement which was executed before the date of enactment of this Act directly by the settling defendant or the settling insurer and a specific named plaintiff to pay the health care insurance or health care expenses of the plaintiff.

(d) EXCLUSIVE REMEDY.—

(1) IN GENERAL.—Except as provided under paragraph (2), the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(2) CIVIL ACTIONS AT TRIAL.—

(A) IN GENERAL.—This Act shall not apply to any asbestos claim that—

(i) is a civil action filed in a Federal or State court (not including a filing in a bankruptcy court);

(ii) is not part of a consolidation of actions or a class action; and

(iii) on the date of enactment of this Act—

(I) in the case of a civil action which includes a jury trial, is before the jury after its impanelling and commencement of presentation of evidence, but before its deliberations;

(II) in the case of a civil action which includes a trial in which a judge is the trier of fact, is at the presentation of evidence at trial; or

(III) a verdict, final order, or final judgment has been entered by a trial court.

(B) NONAPPLICABILITY.—This Act shall not apply to a civil action described under subparagraph (A) throughout the final disposition of the action.

(e) BAR ON ASBESTOS CLAIMS.—

(1) IN GENERAL.—No asbestos claim (including any claim described in paragraph (2)) may be pursued, and no pending asbestos claim may be maintained, in any Federal or State court, except as provided under subsection (d)(2).

(2) CERTAIN SPECIFIED CLAIMS.—

(A) IN GENERAL.—Subject to section 404 (d) and (e)(3) of this Act, no claim may be brought or pursued in any Federal or State court or insurance receivership proceeding—

(i) relating to any default, confessed or stipulated judgment on an asbestos claim if the judgment debtor expressly agreed, in writing or otherwise, not to contest the entry of judgment against it and the plaintiff expressly agreed, in writing or otherwise, to seek satisfaction of the judgment only against insurers or in bankruptcy;

(ii) relating to the defense, investigation, handling, litigation, settlement, or payment of any asbestos claim by any participant, including claims for bad faith or unfair or deceptive claims handling or breach of any duties of good faith; or

(iii) arising out of or relating to the asbestos-related injury of any individual and—

(I) asserting any conspiracy, concert of action, aiding or abetting, act, conduct, statement, misstatement, undertaking, publication, omission, or failure to detect, speak, disclose, publish, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos; or

(II) asserting any conspiracy, act, conduct, statement, omission, or failure to detect, disclose, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos, asserted as or in a direct action against an insurer or reinsurer based upon any theory, statutory, contract, tort, or otherwise; or

(iv) by any third party, and premised on any theory, allegation, or cause of action, for reimbursement of healthcare costs allegedly associated with the use of or exposure to asbestos, whether such claim is asserted directly, indirectly or derivatively.

(B) EXCEPTIONS.—Subparagraph (A) (ii) and (iii) shall not apply to claims against participants by persons—

(i) with whom the participant is in privity of contract;

(ii) who have received an assignment of insurance rights not otherwise voided by this Act; or

(iii) who are beneficiaries covered by the express terms of a contract with that participant.

(3) PREEMPTION.—Any action asserting an asbestos claim (including a claim described in paragraph (2)) in any Federal or State court is preempted by this Act, except as provided under subsection (d)(2).

(4) DISMISSAL.—Except as provided under subsection (d)(2), no judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(5) REMOVAL.—

(A) IN GENERAL.—If an action in any State court under paragraph (3) is preempted, barred, or otherwise precluded under this Act, and not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

(B) TIME LIMITS.—For actions originally filed after the date of enactment of this Act, the notice of removal shall be filed within the time limits specified in section 1441(b) of title 28, United States Code.

(C) PROCEDURES.—The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except as may be necessary to accommodate removal of any

actions pending (including on appeal) on the date of enactment of this Act.

(D) REVIEW OF REMAND ORDERS.—

(i) IN GENERAL.—Section 1447 of title 28, United States Code, shall apply to any removal of a case under this section, except that notwithstanding subsection (d) of that section, a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand an action to the State court from which it was removed if application is made to the court of appeals not less than 7 days after entry of the order.

(ii) TIME PERIOD FOR JUDGMENT.—If the court of appeals accepts an appeal under clause (i), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under clause (iii).

(iii) EXTENSION OF TIME PERIOD.—The court of appeals may grant an extension of the 60-day period described in clause (ii) if—

(I) all parties to the proceeding agree to such extension, for any period of time; or

(II) such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

(iv) DENIAL OF APPEAL.—If a final judgment on the appeal under clause (i) is not issued before the end of the period described in clause (ii), including any extension under clause (iii), the appeal shall be denied.

(E) JURISDICTION.—The jurisdiction of the district court shall be limited to—

(i) determining whether removal was proper; and

(ii) determining, based on the evidentiary record, whether the claim presented is preempted, barred, or otherwise precluded under this Act.

(6) CREDITS.—

(A) IN GENERAL.—If, notwithstanding the express intent of Congress stated in this section, any court finally determines for any reason that an asbestos claim is not barred under this subsection and is not subject to the exclusive remedy or preemption provisions of this section, then any participant required to satisfy a final judgment executed with respect to any such claim may elect to receive a credit against any assessment owed to the Fund equal to the amount of the payment made with respect to such executed judgment.

(B) REQUIREMENTS.—The Administrator shall require participants seeking credit under this paragraph to demonstrate that the participant—

(i) timely pursued all available remedies, including remedies available under this paragraph to obtain dismissal of the claim; and

(ii) notified the Administrator at least 20 days before the expiration of any period within which to appeal the denial of a motion to dismiss based on this section.

(C) INFORMATION.—The Administrator may require a participant seeking credit under this paragraph to furnish such further information as is necessary and appropriate to establish eligibility for, and the amount of, the credit.

(D) INTERVENTION.—The Administrator may intervene in any action in which a credit may be due under this paragraph.

SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CONTRACTS.

(a) EROSION OF INSURANCE COVERAGE LIMITS.—

(1) DEFINITIONS.—In this section, the following definitions shall apply:

(A) DEEMED EROSION AMOUNT.—The term ''deemed erosion amount'' means the amount of erosion deemed to occur at enactment under paragraph (2).

(B) EARLY SUNSET.—The term ''early sunset'' means an event causing termination of the program under section 405(f) which relieves the insurer participants of paying some portion of the aggregate payment level of $46,025,000,000 required under section 212(a)(2)(A).

(C) EARNED EROSION AMOUNT.—The term ''earned erosion amount'' means, in the event of any early sunset under section 405(f), the percentage, as set forth in the following schedule, depending on the year in which the defendant participants' funding obligations end, of those amounts which, at the time of the early sunset, a defendant participant has paid to the fund and remains obligated to pay into the fund.

Year After Enactment In Which Defendant Participant's Funding Obligation Ends:	Applicable Percentage:
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

(D) REMAINING AGGREGATE PRODUCTS LIMITS.—The term ''remaining aggregate products limits'' means aggregate limits that apply to insurance coverage granted under the ''products hazard'', ''completed operations hazard'', or ''Products—Completed Operations Liability'' in any comprehensive general liability policy issued between calendar years 1940 and 1986 to cover injury which occurs in any State, as reduced by—

(i) any existing impairment of such aggregate limits as of the date of enactment of this Act; and

(ii) the resolution of claims for reimbursement or coverage of liability or paid or incurred loss for which notice was provided to the insurer before the date of enactment of this Act.

(E) SCHEDULED PAYMENT AMOUNTS.—The term ''scheduled payment amounts'' means the future payment obligation to the Fund under this Act from a defendant participant in the amount established under sections 203 and 204.

(F) UNEARNED EROSION AMOUNT.—The term ''unearned erosion amount'' means, in the event of any early sunset under section 405(f), the difference between the deemed erosion amount and the earned erosion amount.

(2) QUANTUM AND TIMING OF EROSION.—

(A) EROSION UPON ENACTMENT.—The collective payment obligations to the Fund of the insurer and reinsurer participants as assessed by the Administrator shall be deemed as of the date of enactment of this Act to erode remaining aggregate products limits available to a defendant participant only in an amount of 38.1 percent of each defendant participant's scheduled payment amount.

(B) NO ASSERTION OF CLAIM.—No insurer or reinsurer may assert any claim against a defendant participant or captive insurer for insurance, reinsurance, payment of a deductible, or retrospective premium adjustment arising out of that insurer's or reinsurer's payments to the Fund or the erosion deemed to occur under this section.

(C) POLICIES WITHOUT CERTAIN LIMITS OR WITH EXCLUSION.—Except as provided under subparagraph (E), nothing in this section shall require or permit the erosion of any insurance policy or limit that does not contain an aggregate products limit, or that contains an asbestos exclusion.

(D) TREATMENT OF CONSOLIDATION ELECTION.—If an affiliated group elects consolidation as provided in section 204(f), the total erosion of limits for the affiliated group under paragraph (2)(A) shall not exceed 59.64 percent of the scheduled payment amount of the single payment obligation for the entire affiliated group. The total erosion of limits for any individual defendant participant in the affiliated group shall not exceed its individual share of 59.64 percent of the affiliated group's scheduled payment amount, as measured by the individual defendant participant's percentage share of the affiliated group's prior asbestos expenditures.

(E) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, nothing in this Act shall be deemed to erode remaining aggregate products limits of a defendant participant that can demonstrate by a reponderance of the evidence that 75 percent of its prior asbestos expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury arising exclusively from the exposure to asbestos at premises owned, rented, or controlled by the defendant participant (a ''premises defendant''). In calculating such percentage, where expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant's products and to asbestos at premises owned, rented, or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. If a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by policy period, in ascending order by attachment point.

(B) OTHER EROSION METHODS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the method of erosion of any remaining aggregate products limits which are subject to—

(I) a coverage-in-place or settlement agreement between a defendant participant and 1 or more insurance participants as of the date of enactment; or

(II) a final and nonappealable judgment as of the date of enactment or resulting from a claim for coverage or reimbursement pending as of such date, shall be as specified in such agreement or judgment with regard to erosion applicable to such insurance participants' policies.

(ii) REMAINING LIMITS.—To the extent that a final nonappealable judgment or settlement agreement to which an insurer participant and a defendant participant are parties in effect as of the date of enactment of this Act extinguished a defendant participant's right to seek coverage for asbestos claims under an insurer participant's policies, any

remaining limits in such policies shall not be considered to be remaining aggregate products limits under subsection (a)(1)(A).

(4) RESTORATION OF AGGREGATE PRODUCTS LIMITS UPON EARLY SUNSET.—

(A) RESTORATION.—In the event of an early sunset, any unearned erosion amount will be deemed restored as aggregate products limits available to a defendant participant as of the date of enactment.

(B) METHOD OF RESTORATION.—The unearned erosion amount will be deemed restored to each defendant participant's policies in such a manner that the last limits that were deemed eroded at enactment under this subsection are deemed to be the first limits restored upon early sunset.

(C) TOLLING OF COVERAGE CLAIMS.—In the event of an early sunset, the applicable statute of limitations and contractual provisions for the filing of claims under any insurance policy with restored aggregate products limits shall be deemed tolled after the date of enactment through the date 6 months after the date of early sunset.

(5) PAYMENTS BY DEFENDANT PARTICIPANT.—Payments made by a defendant participant shall be deemed to erode, exhaust, or otherwise satisfy applicable self-insured retentions, deductibles, retrospectively rated premiums, and limits issued by nonparticipating insolvent or captive insurance companies. Reduction of remaining aggregate limits under this subsection shall not limit the right of a defendant participant to collect from any insurer not a participant.

(6) EFFECT ON OTHER INSURANCE CLAIMS.—Other than as specified in this subsection, this Act does not alter, change, modify, or affect insurance for claims other than asbestos claims.

(b) DISPUTE RESOLUTION PROCEDURE.—

(1) ARBITRATION.—The parties to a dispute regarding the erosion of insurance coverage limits under this section may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract.

(2) TITLE 9, UNITED STATES CODE.—Arbitration of such disputes, awards by arbitrators, and confirmation of awards shall be governed by title 9, United States Code, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the erosion principles provided for under this section shall be binding on the arbitrator, unless the parties agree to the contrary.

(3) FINAL AND BINDING AWARD.—An award by an arbitrator shall be final and binding between the parties to the arbitration, but shall have no force or effect on any other person. The parties to an arbitration may agree that in the event a policy which is the subject matter of an award is subsequently determined to be eroded in a manner different from the manner determined by the arbitration in a judgment rendered by a court of competent jurisdiction from which no appeal can or has been taken, such arbitration award may be modified by any court of competent jurisdiction upon application by any party to the arbitration. Any such modification shall govern the rights and obligations between such parties after the date of such modification.

(c) EFFECT ON NONPARTICIPANTS.—

(1) IN GENERAL.—No insurance company or reinsurance company that is not a participant, other than a captive insurer, shall be entitled to claim that payments to the Fund erode, exhaust, or otherwise limit the nonparticipant's insurance or reinsurance obligations.

(2) OTHER CLAIMS.—Nothing in this Act shall preclude a participant from pursuing any claim for insurance or reinsurance from any person that is not a participant other than a captive insurer.

(d) FINITE RISK POLICIES NOT AFFECTED.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, except subject to section 212(a)(1)(D), this Act shall not alter, affect or impair any rights or obligations of—

(A) any party to an insurance contract that expressly provides coverage for governmental charges or assessments imposed to replace insurance or reinsurance liabilities in effect on the date of enactment of this Act; or

(B) subject to paragraph (2), any person with respect to any insurance or reinsurance purchased by a participant after December 31, 1990, that expressly (but not necessarily exclusively) provides coverage for asbestos liabilities, including those policies commonly referred to as ''finite risk'' policies.

(2) LIMITATION.—No person may assert that any amounts paid to the Fund in accordance with this Act are covered by any policy described under paragraph (1)(B) purchased by a defendant participant, unless such policy specifically provides coverage for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims.

(e) EFFECT ON CERTAIN INSURANCE AND REINSURANCE CLAIMS.—

(1) NO COVERAGE FOR FUND ASSESSMENTS.—No participant or captive insurer may pursue an insurance or reinsurance claim against another participant or captive insurer for payments to the Fund required under this Act, except under a contract specifically providing insurance or reinsurance for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims or, where applicable, under finite risk policies under subsection (d).

(2) CERTAIN INSURANCE ASSIGNMENTS VOIDED.—Any assignment of any rights to insurance coverage for asbestos claims to any person who has asserted an asbestos claim before the date of enactment of this Act, or to any trust, person, or other entity not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims which were asserted before such date of enactment, or by any Tier I defendant participant, before any sunset of this Act, shall be null and void. This subsection shall not void or affect in any way any assignments of rights to insurance coverage other than to asbestos claimants or to trusts, persons, or other entities not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims, or by Tier I defendant participants.

(3) INSURANCE CLAIMS PRESERVED.—Notwithstanding any other provision of this Act, this Act shall not alter, affect, or impair any rights or obligations of any person with respect to any insurance or reinsurance for amounts that any person pays, has paid, or becomes legally obligated to pay in respect of asbestos or other claims, except to the extent that—

(A) such person pays or becomes legally obligated to pay claims that are superseded by section 403;

(B) any such rights or obligations of such person with respect to insurance or reinsurance are prohibited by paragraph (1) or (2) of subsection (e); or

(C) the limits of insurance otherwise available to such participant in respect of asbestos claims are deemed to be eroded under subsection (a).

SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR AND SUNSET OF THE ACT.

(a) IN GENERAL.—The Administrator shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the operation of the Asbestos Injury Claims Resolution Fund within 6 months after the close of each fiscal year.

(b) CONTENTS OF REPORT.—The annual report submitted under this subsection shall include an analysis of—

(1) the claims experience of the program during the most recent fiscal year, including—

(A) the number of claims made to the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims;

(B) the number of claims denied by the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims, and a general description of the reasons for their denial;

(C) a summary of the eligibility determinations made by the Office under section 114;

(D) a summary of the awards made from the Fund, including the amount of the awards; and

(E) for each eligible condition, a statement of the percentage of asbestos claimants who filed claims during the prior calendar year and were determined to be eligible to receive compensation under this Act, who have received the compensation to which such claimants are entitled according to section 131;

(2) the administrative performance of the program, including—

(A) the performance of the program in meeting the time limits prescribed by law and an analysis of the reasons for any systemic delays;

(B) any backlogs of claims that may exist and an explanation of the reasons for such backlogs;

(C) the costs to the Fund of administering the program; and

(D) any other significant factors bearing on the efficiency of the program;

(3) the financial condition of the Fund, including—

(A) statements of the Fund's revenues, expenses, assets, and liabilities;

(B) the identity of all participants, the funding allocations of each participant, and the total amounts of all payments to the Fund;

(C) a list of all financial hardship or inequity adjustments applied for during the fiscal year, and the adjustments that were made during the fiscal year;

(D) a statement of the investments of the Fund; and

(E) a statement of the borrowings of the Fund;

(4) the financial prospects of the Fund, including—

(A) an estimate of the number and types of claims, the amount of awards, and the participant payment obligations for the next fiscal year;

(B) an analysis of the financial condition of the Fund, including an estimation of the Fund's ability to pay claims for the subsequent 5 years in full as and when required, an evaluation of the Fund's ability to retire its existing debt and assume additional debt, and an evaluation of the Fund's ability to satisfy other obligations under the program; and

(C) a report on any changes in projections made in earlier annual reports or sunset analyses regarding the Fund's ability to meet its financial obligations;

(5) any recommendations from the Advisory Committee on Asbestos Disease Compensation and the Medical Advisory Committee of the Fund to improve the diagnostic, exposure, and medical criteria so as to pay only those claimants whose injuries are caused by exposure to asbestos;

(6) a summary of the results of audits conducted under section 115; and

(7) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(c) CLAIMS ANALYSIS.—If the Administrator concludes, on the basis of the annual report submitted under this section, that the Fund is compensating claims for injuries that are not caused by exposure to asbestos and compensating such claims may, currently or in the future, undermine the Fund's ability to compensate persons with injuries that are caused by exposure to asbestos, the Administrator shall include in the report an analysis of the reasons for the situation, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report shall include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund from compensating claims not caused by exposure to asbestos.

(d) SHORTFALL ANALYSIS.—

(1) IN GENERAL.—

(A) ANALYSIS.—If the Administrator concludes, on the basis of the information contained in the annual report submitted under this section, that the Fund may not be able to pay claims as such claims become due at any time within the next 5 years, the Administrator shall include in the report an analysis of the reasons for the situation, an estimation of when the Fund will no longer be able to pay claims as such claims become due, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report may include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund.

(B) RANGE OF ALTERNATIVES.—The range of alternatives under subparagraph (A) may include—

(i) triggering the termination of this Act under subsection (f) at any time after the date of enactment of this Act; and

(ii) reform of the program set forth in titles I and II of this Act (including changes in the diagnostic, exposure, or medical criteria, changes in the enforcement or application of those criteria, changes in the timing of payments, changes in contributions by defendant participants, insurer participants (or both such participants), or changes in award values).

(2) CONSIDERATIONS.—In formulating recommendations, the Administrator shall take into account the reasons for any shortfall, actual or projected, which may include—

(A) financial factors, including return on investments, borrowing capacity, interest rates, ability to collect contributions, and other relevant factors;

(B) the operation of the Fund generally, including administration of the claims processing, the ability of the Administrator to collect contributions from participants, potential problems of fraud, the adequacy of the criteria to rule out idiopathic mesothelioma, and inadequate flexibility to extend the timing of payments;

(C) the appropriateness of the diagnostic, exposure, and medical criteria, including the adequacy of the criteria to rule out idiopathic mesothelioma;

(D) the actual incidence of asbestos-related diseases, including mesothelioma, based on epidemiological studies and other relevant data;

(E) compensation of diseases with alternative causes; and

(F) other factors that the Administrator considers relevant.

(3) RECOMMENDATION OF TERMINATION.—Any recommendation of termination should include a plan for winding up the affairs of the Fund (and the program generally) within a defined period, including paying in full all claims resolved at the time the report is prepared. Any plan under this paragraph shall provide for priority in payment to the claimants with the most serious illnesses.

(4) RESOLVED CLAIMS.—For purposes of this section, a claim shall be deemed resolved when the Administrator has determined the amount of the award due the claimant, and either the claimant has waived judicial review or the time for judicial review has expired.

(e) RECOMMENDATIONS OF ADMINISTRATOR AND COMMISSION.—

(1) IN GENERAL.—If the Administrator recommends changes to this Act under subsection (c), the recommendations and accompanying analysis shall be referred to a special commission consisting of the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of the Treasury, and the Secretary of Commerce, or their designees. The Commission shall hold expedited public hearings on the Administrator's alternatives and recommendations and then make its own recommendations for reform of the program set forth in titles I and II of this Act. Within 180 days after receiving the Administrator's recommendations, the Commission shall transmit its own recommendations to the Congress in the same manner as set forth in subsection (a).

(2) REFERRAL.—If the Administrator recommends changes to, or termination of, this Act under subsection (d), the recommendations and accompanying analysis shall be referred to the Commission. The Commission shall hold expedited public hearings on the Administrator's alternatives and recommendations and then make its own recommendations for reform of the program set forth in titles I and II of this Act. Within 180 days after receiving the Administrator's recommendations, the Commission shall transmit its own recommendations to Congress in the same manner as set forth in subsection (a).

(f) SUNSET OF ACT.—

(1) IN GENERAL.—

(A) TERMINATION.—Subject to paragraph (4), titles I (except subtitle A) and II and sections 403 and 404(e)(2) shall terminate as provided under paragraph (2), if the Administrator—

(i) has begun the processing of claims; and

(ii) as part of the review conducted to prepare an annual report under this section, determines that if any additional claims are resolved, the Fund will not have sufficient resources when needed to pay 100 percent of all resolved claims while also meeting all other obligations of the Fund under this Act, including the payment of—

(I) debt repayment obligations; and

(II) remaining obligations to the asbestos trust of a debtor and the class action trust.

(B) REMAINING OBLIGATIONS.—For purposes of subparagraph (A)(ii), the remaining obligations to the asbestos trust of the debtor and the class action trust shall be determined by the Administrator by assuming that, instead of a lump-sum payment, such trust had transferred its assets to the Fund on an annual basis, taking into consideration relevant factors, including the most recent projections made by the trust's actuary before the date of enactment of this Act of the amount and timing of future claim payments and administrative and operating expenses.

(2) EFFECTIVE DATE OF TERMINATION.—A termination under paragraph (1) shall take effect 180 days after the date of a determination of the Administrator under paragraph (1) and shall apply to all asbestos claims that have not been resolved by the Fund as of the date of the determination.

(3) RESOLVED CLAIMS.—If a termination takes effect under this subsection, all resolved claims shall be paid in full by the Fund.

(4) EXTINGUISHED CLAIMS.—A claim that is extinguished under the statute of limitations provisions in section 113(b) is not revived at the time of sunset under this subsection.

(5) CONTINUED FUNDING.—If a termination takes effect under this subsection, participants will still be required to make payments as provided under subtitles A and B of title II. If the full amount of payments required by title II is not necessary for the Fund to pay claims that have been resolved as of the date of termination, pay the Fund's debt and obligations to the asbestos trusts and class action trust, and support the Fund's continued operation as needed to pay such claims, debt, and obligations, the Administrator may reduce such payments. Any such reductions shall be allocated among participants in approximately the same proportion as the liability under subtitles A and B of title II.

(6) SUNSET CLAIMS.—

(A) DEFINITIONS.—In this paragraph—

(i) the term ''sunset claims'' means claims filed with the Fund, but not yet resolved, when this Act has terminated; and

(ii) the term ''sunset claimants'' means persons asserting sunset claims.

(B) IN GENERAL.—If a termination takes effect under this subsection, the applicable statute of limitations for the filing of sunset claims under subsection (g) shall be tolled for any past or pending sunset claimants while such claimants were pursuing claims filed under this Act. For those claimants who decide to pursue a sunset claim in accordance with subsection (g), the applicable statute of limitations shall apply, except that claimants who filed a claim against the Fund under this Act before the date of termination shall have 2 years after the date of termination to file a sunset claim in accordance with subsection (g).

(7) ASBESTOS TRUSTS AND CLASS ACTION TRUST.—On and after the date of termination under this subsection, the trust distribution program of any asbestos trust and the class action trust shall be replaced with the medical criteria requirements of section 121.

(8) PAYMENT TO ASBESTOS TRUSTS AND CLASS ACTION TRUST.—The amounts determined under paragraph (1)(B) for payment to the asbestos trusts and the class action trust shall be transferred to the respective asbestos trusts of the debtor and the class action trust within 90 days.

(g) NATURE OF CLAIM AFTER SUNSET.—

(1) IN GENERAL.—

(A) RELIEF.—On and after the date of termination under subsection (f), any individual with an asbestos claim who has not previously had a claim resolved by the Fund, may in a civil action obtain relief in damages subject to the terms and conditions under this subsection and paragraph (6) of subsection (f).

(B) RESOLVED CLAIMS.—An individual who has had a claim resolved by the Fund may not pursue a court action, except that an individual who received an award for a nonmalignant disease (Levels I through V) from the Fund may assert a claim for a subsequent or progressive disease under this subsection, unless the disease was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such

a diagnosis before the date on which the previous claim against the Fund was disposed.

(C) MESTHELIOMA CLAIM.—An individual who received an award for a nonmalignant or malignant disease (except mesothelioma) (Levels I through VIII) from the Fund may assert a claim for mesothelioma under this subsection, unless the mesothelioma was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the nonmalignant or other malignant claim was disposed.

(2) EXCLUSIVE REMEDY.—As of the effective date of a termination of this Act under subsection (f), an action under paragraph (1) shall be the exclusive remedy for any asbestos claim that might otherwise exist under Federal, State, or other law, regardless of whether such claim arose before or after the date of enactment of this Act or of the termination of this Act, except that claims against the Fund that have been resolved before the date of the termination determination under subsection (f) may be paid by the Fund.

(3) VENUE.—

(A) IN GENERAL.—Actions under paragraph (1) may be brought in—

(i) any Federal district court;

(ii) any State court in the State where the claimant resides; or

(iii) any State court in a State where the asbestos exposure occurred.

(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described in clause (ii) or (iii) of subparagraph (A), the claim may be pursued only against that defendant in the Federal district court or the State court located within any State in which the defendant may be found.

(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than one county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(D) STATE VENUE REQUIREMENTS.—Nothing in this paragraph shall preempt or supersede any State's law relating to venue requirements within that State which are more restrictive.

(4) CLASS ACTION TRUSTS.—Notwithstanding any other provision of this section—

(A) after the assets of any class action trust have been transferred to the Fund in accordance with section 203(b)(5), no asbestos claim may be maintained with respect to asbestos liabilities arising from the operations of a person with respect to whose liabilities for asbestos claims a class action trust has been established, whether such claim names the person or its successors or affiliates as defendants; and

(B) if a termination takes effect under subsection (f), the exclusive remedy for all asbestos claims (including sunset claims and claims first arising or first presented after termination of the Fund) arising from such operations will be a claim against the class action trust to which the Administrator has transferred funds under subsection (f)(8) to pay asbestos claims, if necessary in proportionally reduced amounts.

SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABILITY OF THE UNITED STATES GOVERNMENT.

(a) CAUSES OF ACTIONS.—Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as creating a cause of action against the United States Government, any entity established under this Act, or any officer or employee of the United States Government or such entity.

(b) FUNDING LIABILITY.—Nothing in this Act shall be construed to—

(1) create any obligation of funding from the United States Government, other than the funding for personnel and support as provided under this Act; or

(2) obligate the United States Government to pay any award or part of an award, if amounts in the Fund are inadequate.

SEC. 407. RULES OF CONSTRUCTION.

(a) LIBBY, MONTANA CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of Libby, Montana. The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(b) HEALTHCARE FROM PROVIDER OF CHOICE.—Nothing in this Act shall be construed to preclude any eligible claimant from receiving healthcare from the provider of their choice.

SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENTS.

(a) ASBESTOS IN COMMERCE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), relating to the manufacture, importation, processing, disposal, and distribution in commerce of asbestos-containing products, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible civil or criminal penalties, including those under section 17 of the Toxic Substances Control Act (15 U.S.C. 2616), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(b) ASBESTOS AS AIR POLLUTANT.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.), relating to asbestos as a hazardous air pollutant, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible criminal and civil penalties, including those under section 113 of the Clean Air Act (42 U.S.C. 7413), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(c) OCCUPATIONAL EXPOSURE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator shall refer the matter in writing within 30 days after receiving that information and refer the matter to the Secretary of Labor or the appropriate State agency with authority to enforce occupational safety and health standards, for investigation for possible civil or criminal penalties under section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666).

(d) ENHANCED CRIMINAL PENALTIES FOR WILLFUL VIOLATIONS OF OCCUPATIONAL STANDARDS FOR ASBESTOS.—Section 17(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656(e)) is amended—

(1) by striking ''Any'' and inserting ''(1) Except as provided in paragraph (2), any''; and

(2) by adding at the end the following:

''(2) Any employer who willfully violates any standard issued under section 6 with respect to the control of occupational exposure to asbestos, shall upon conviction be punished by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 5 years, or both, except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 10 years, or both.''.

(e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND BY EPA AND OSHA ASBESTOS VIOLATORS.—

(1) IN GENERAL.—The Administrator shall assess employers or other individuals determined to have violated asbestos statutes, standards, or regulations administered by the Department of Labor, the Environmental Protection Agency, and their State counterparts, for contributions to the Asbestos Injury Claims Resolution Fund (in this section referred to as the ''Fund'').

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall—

(A) in consultation with the Assistant Secretary of Labor for Occupational Safety and Health, identify all employers that, during the previous year, were subject to final orders finding that they violated standards issued by the Occupational Safety and Health Administration for control of occupational exposure to asbestos (29 CFR 1910.1001, 1915.1001, and 1926.1101) or the equivalent asbestos standards issued by any State under section 18 of the Occupational Safety and Health Act (29 U.S.C. 668); and

(B) in consultation with the Administrator of the Environmental Protection Agency, identify all employers or other individuals who, during the previous year, were subject to final orders finding that they violated asbestos regulations administered by the Environmental Protection Agency (including the National Emissions Standard for Asbestos established under the Clean Air Act (42 U.S.C. 7401 et seq.), the asbestos worker protection standards established under part 763 of title 40, Code of Federal Regulations, and the regulations banning asbestos promulgated under section 501 of this Act), or equivalent State asbestos regulations.

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual for a contribution to the Fund for that year in an amount equal to—

(A) 2 times the amount of total penalties assessed for the first violation of occupational health and environmental statutes, standards, or regulations;

(B) 4 times the amount of total penalties for a second violation of such statutes, standards, or regulations; and

(C) 6 times the amount of total penalties for any violations thereafter.

(4) LIABILITY.—Any assessment under this subsection shall be considered a liability under this Act.

(5) PAYMENTS.—Each such employer or other individual assessed for a contribution to the Fund under this subsection shall make the required contribution to the Fund within 90 days of the date of receipt of notice from the Administrator requiring payment.

(6) ENFORCEMENT.—The Administrator is authorized to bring a civil action under section 223(c) against any employer or other individual who fails to make timely payment of contributions assessed under this section.

(f) REVIEW OF FEDERAL SENTENCING GUIDELINES FOR ENVIRONMENTAL CRIMES RELATED TO ASBESTOS.—Under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the United States Sentencing Guidelines and related policy statements to ensure that—

(1) appropriate changes are made within the guidelines to reflect any statutory amendments that have occurred since the time that the current guideline was promulgated;

(2) the base offense level, adjustments, and specific offense characteristics contained in section 2Q1.2 of the United States Sentencing Guidelines (relating to mishandling of hazardous or toxic substances or pesticides; recordkeeping, tampering, and falsification; and unlawfully transporting hazardous materials in commerce) are increased as appropriate to ensure that future asbestos-related offenses reflect the seriousness of the offense, the harm to the community, the need for ongoing reform, and the highly regulated nature of asbestos;

(3) the base offense level, adjustments, and specific offense characteristics are sufficient to deter and punish future activity and are adequate in cases in which the relevant offense conduct—

(A) involves asbestos as a hazardous or toxic substance; and

(B) occurs after the date of enactment of this Act;

(4) the adjustments and specific offense characteristics contained in section 2B1.1 of the United States Sentencing Guidelines related to fraud, deceit, and false statements, adequately take into account that asbestos was involved in the offense, and the possibility of death or serious bodily harm as a result;

(5) the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines are sufficient to deter and punish organizational criminal misconduct that involves the use, handling, purchase, sale, disposal, or storage of asbestos; and

(6) the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines are sufficient to deter and punish organizational criminal misconduct that involves fraud, deceit, or false statements against the Office of Asbestos Disease Compensation.

SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.

(a) DENIAL, TERMINATION, OR ALTERATION OF HEALTH COVERAGE.—No health insurer offering a health plan may deny or terminate coverage, or in any way alter the terms of coverage, of any claimant or the beneficiary of a claimant, on account of the participation of the claimant or beneficiary in a medical monitoring program under this Act, or as a result of any information discovered as a result of such medical monitoring.

(b) DEFINITIONS.—In this section:

(1) HEALTH INSURER.—The term ''health insurer'' means—

(A) an insurance company, healthcare service contractor, fraternal benefit organization, insurance agent, third-party administrator, insurance support organization, or other person subject to regulation under the laws related to health insurance of any State;

(B) a managed care organization; or

(C) an employee welfare benefit plan regulated under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(2) HEALTH PLAN.—The term ''health plan'' means—

(A) a group health plan (as such term is defined in section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167)), and a multiple employer welfare arrangement (as defined in section 3(4) of such Act) that provides health insurance coverage; or

(B) any contractual arrangement for the provision of a payment for healthcare, including any health insurance arrangement or any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organizing subscriber contract.

(c) CONFORMING AMENDMENTS.—

(1) ERISA.—Section 702(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)), is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.''.

(2) PUBLIC SERVICE HEALTH ACT.—Section 2702(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)) is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.''.

(3) INTERNAL REVENUE CODE OF 1986.—Section 9802(a)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.''.

TITLE V—ASBESTOS BAN

SEC. 501. PROHIBITION ON ASBESTOS CONTAINING PRODUCTS.

(a) IN GENERAL.—Title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.) is amended—

(1) by inserting before section 201 (15 U.S.C. 2641) the following:

''Subtitle A—General Provisions'';

and

(2) by adding at the end the following:

''Subtitle B—Ban of Asbestos Containing Products

''SEC. 221. BAN OF ASBESTOS CONTAINING PRODUCTS.

''(a) DEFINITIONS.—In this chapter:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(2) ASBESTOS.—The term 'asbestos' includes—

''(A) chrysotile;

''(B) amosite;

''(C) crocidolite;

''(D) tremolite asbestos;

''(E) winchite asbestos;

''(F) richterite asbestos;

''(G) anthophyllite asbestos;

''(H) actinolite asbestos;

''(I) amphibole asbestos; and

''(J) any of the minerals listed under subparagraphs (A) through (I) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof.

''(3) ASBESTOS CONTAINING PRODUCT.—The term 'asbestos containing product' means any product (including any part) to which asbestos is deliberately or knowingly added or used because the specific properties of asbestos are necessary for product use or function. Under no circumstances shall the term 'asbestos containing product' be construed to include products that contain de minimus levels of naturally occurring asbestos as defined by the Administrator not later than 1 year after the date of enactment of this chapter.

''(4) DISTRIBUTE IN COMMERCE.—The term 'distribute in commerce'—

''(A) has the meaning given the term in section 3 of the Toxic Substances Control Act (15 U.S.C. 2602); and

''(B) shall not include—

''(i) an action taken with respect to an asbestos containing product in connection with the end use of the asbestos containing product by a person that is an end user, or an action taken by a person who purchases or receives a product, directly or indirectly, from an end user; or

''(ii) distribution of an asbestos containing product by a person solely for the purpose of disposal of the asbestos containing product in compliance with applicable Federal, State, and local requirements.

''(b) IN GENERAL.—Subject to subsection (c), the Administrator shall promulgate—

''(1) not later than 1 year after the date of enactment of this chapter, proposed regulations that—

''(A) prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products; and

''(B) provide for implementation of subsections (c) and (d); and

''(2) not later than 2 years after the date of enactment of this chapter, final regulations that, effective 60 days after the date of promulgation, prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products.

''(c) EXEMPTIONS.—

''(1) IN GENERAL.—Any person may petition the Administrator for, and the Administrator may grant, an exemption from the requirements of subsection (b), if the Administrator determines that—

''(A) the exemption would not result in an unreasonable risk of injury to public health or the environment; and

''(B) the person has made good faith efforts to develop, but has been unable to develop, a substance, or identify a mineral that does not present an unreasonable risk of injury to public health or the environment and may be substituted for an asbestos containing product.

''(2) TERMS AND CONDITIONS.—An exemption granted under this subsection shall be in effect for such period (not to exceed 5 years) and subject to such terms and conditions as the Administrator may prescribe.

''(3) GOVERNMENTAL USE.—

''(A) IN GENERAL.—The Administrator of the Environmental Protection Agency shall provide an exemption from the requirements of subsection (b), without review or limit on duration, if such exemption for an asbestos containing product is—

''(i) sought by the Secretary of Defense and the Secretary certifies, and provides a copy of that certification to Congress, that—

''(I) use of the asbestos containing product is necessary to the critical functions of the Department;

''(II) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and

''(III) use of the asbestos containing product will not result in an unreasonable risk to health or the environment; or

''(ii) sought by the Administrator of the National Aeronautics and Space Administration and the Administrator of the National Aeronautics and Space Administration certifies, and provides a copy of that certification to Congress, that—

''(I) the asbestos containing product is necessary to the critical functions of the National Aeronautics and Space Administration;

''(II) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and

''(III) the use of the asbestos containing product will not result in an unreasonable risk to health or the environment.

''(B) ADMINISTRATIVE PROCEDURE ACT.—Any certification required under subparagraph (A) shall not be subject to chapter 5 of title 5, United States Code (commonly referred to as the 'Administrative Procedure Act').

''(4) SPECIFIC EXEMPTIONS.—The following are exempted:

''(A) Asbestos diaphragms for use in the manufacture of chlor-alkali and the products and derivative therefrom.

''(B) Roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt, subject to a determination by the Administrator of the Environmental Protection Agency under paragraph (5).

''(5) ENVIRONMENTAL PROTECTION AGENCY REVIEW.—

''(A) REVIEW IN 18 MONTHS.—Not later than 18 months after the date of enactment of this chapter, the Administrator of the Environmental Protection Agency shall complete a review of the exemption for roofing cements, coatings, and mastics utilizing asbestos that are totally encapsulated with asphalt to determine whether—

''(i) the exemption would result in an unreasonable risk of injury to public health or the environment; and

''(ii) there are reasonable, commercial alternatives to the roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt.

''(B) REVOCATION OF EXEMPTION.—Upon completion of the review, the Administrator of the Environmental Protection Agency shall have the authority to revoke the exemption for the products exempted under paragraph (4)(B), if warranted.

''(d) DISPOSAL.—

''(1) IN GENERAL.—Except as provided in paragraph (2), not later than 3 years after the date of enactment of this chapter, each person that possesses an asbestos containing product that is subject to the prohibition established under this section shall dispose of the asbestos containing product, by a means that is in compliance with applicable Federal, State, and local requirements.

''(2) EXEMPTION.—Nothing in paragraph (1)—

''(A) applies to an asbestos containing product that—

''(i) is no longer in the stream of commerce; or

''(ii) is in the possession of an end user or a person who purchases or receives an asbestos containing product directly or indirectly from an end user; or

''(B) requires that an asbestos containing product described in subparagraph (A) be removed or replaced.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended—

(1) by inserting before the item relating to section 201 the following:

''SUBTITLE A—GENERAL PROVISIONS'';

and

(2) by adding at the end of the items relating to title II the following:

''SUBTITLE B—BAN OF ASBESTOS CONTAINING PRODUCTS

''Sec. 221. Ban of asbestos containing products.''.

Mr. LEAHY. Mr. President, this day has been a long time in coming, and I am pleased to join the Chairman of the Judiciary Committee, Senator FEINSTEIN, and others in sponsoring bipartisan legislation to address the serious problem of asbestos-related disease. It is the product of years of difficult and conscientious craftsmanship and negotiation. Building on the Committee's work under Chairman HATCH, we have striven to bring a fair and efficient plan to the Congress, a plan that will ensure adequate compensation to the thousands of victims of asbestos exposure, but that also will give due consideration to the industries and the insurers that should, and will, provide that compensation. Our bipartisan legislation does that. Asbestos exposure has created a maze of arduous problems, and we have worked hard to produce a balanced bill that offers fair solutions.

Senator SPECTER, with whom I have worked so hard on this legislation, rightly calls this one of the most complex issues we have ever tackled. It is not the bill that I would have written, were I alone responsible for its drafting, nor is it the bill that Senator SPECTER might have produced. Nor should anyone be surprised to hear that the interested groups—the labor organizations, the industrial participants in the trust fund, their insurers, the trial bar—are each less than pleased with some portion of the bill or another. That is the essence of legislative compromise: We have kept the ultimate goal of fair compensation to victims as the lodestar of our efforts, and we have all had to make sacrifices on a variety of subsidiary issues as we worked together to resolve this emergency. What we have achieved is important and a significant step toward a better, more efficient method to compensate asbestos victims.

Asbestos is among the most lethal substances ever to be widely used in the workplace. Between 1940 and 1980, more than 27.5 million workers were exposed to asbestos on the job, and nearly 19 million of them had high levels of exposure over long periods of time. We even know of family members who have suffered asbestos-related disease from washing the clothes of loved ones. The ravages of disease caused by asbestos have affected tens of thousands of American families. We need better health screening and swifter compensation for those affected. In light of the devastating damage it has wreaked, it is hard to believe that asbestos is still being used today, yet it is. This bill will change that as well, protect against yet another generation of victims.

The economic harm caused by asbestos is also real, and the bankruptcies that have resulted are a different kind of tragedy for everyone—for workers and retirees, for shareholders, and for the families that built these companies. In my home State of Vermont, the Rutland Fire and Clay Company is among the more than 70 companies to have declared bankruptcy.

As Chief Justice Rehnquist noted several years ago, ''the elephantine mass of asbestos cases cries out for a legislative solution.'' *Ortiz* v. *Fibreboard Corp.*, 527 U.S. 815, 865 1999). In another Supreme Court opinion, Justice Ginsburg declared that ''a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.'' *Amchem Products* v. *Windsor*, 521 U.S. 591, 628–29, 1997). I agree, the Chairman agrees, Senator FEINSTEIN agrees, and we hope that many others in the Senate will agree.

Weare encouraged by the favorable reception that this bill has already generated from a wide array of interested parties. In the past week, I have received letters of support from the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, the Veterans of Foreign Wars of the United States, VFW, the Asbestos Study Group, and others. The UAW notes in its April 13th letter, ''[The Specter-Leahy Proposal] will provide more equitable, timely and certain compensation to the victims of asbestos-related disease.'' The VFW letter of April 14 declares: ''The national trust fund that you are proposing offers our members who are sick and dying the opportunity to secure timely and fair compensation for the injury they suffered in the course of serving their country.'' The National Association of Manufacturers also released a statement expressing their hope that this legislation will engender broad support.

These statements in many ways tell the story of what we have already accomplished: We have drafted a bill that has garnered a favorable response from labor, manufacturers, and companies with considerable asbestos liabilities. We have worked on this legislation for several years now, and I can assure you that garnering this level of consensus has been no small feat. I ask unanimous consent that the text of these letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UAW,

Washington, DC, April 13, 2005.

DEAR SENATOR: Senators Specter and Leahy recently put forward a compromise asbestos compensation proposal, and have indicated that they intend to introduce legislation incorporating this proposal early next week. The UAW supports the Specter-Leahy asbestos compensation proposal because we believe it will provide more equitable, timely and certain compensation to the victims of asbestos-related diseases.

There is widespread agreement that the current tort system fails miserably in compensating asbestos victims. There are often years of delay before victims receive any compensation. Awards to victims are highly unpredictable, with similarly situated individuals receiving vastly different amounts. Too often compensation goes disproportionately to the less sick at the expense of the most seriously ill victims. The transaction costs, including lawyers' fees, are very high and reduce the amounts received by victims. And even when victims are awarded substantial compensation by the courts, these judgments are often not collectable because the

defendant companies have filed for bankruptcy, leaving the victims with little effective recourse.

The Specter-Leahy proposal would address these serious problems by replacing the current tort system with a national asbestos trust fund to compensate the victims of asbestos-related diseases. By creating a no-fault administrative system for process claims, this approach would provide victims with speedier compensation, while reducing the substantial lawyers' fees and other transaction costs in the current adversarial litigation system. By compensating victims pursuant to a fixed schedule of payments for specified disease levels, this approach would also provide predictable awards to individuals with similar illnesses, and ensure that the most compensation goes to the most seriously ill victims. Perhaps most importantly, by providing compensation through a national asbestos trust fund, this approach would ensure that victims will receive the full amount of their award regardless of whether a particular company had filed for bankruptcy.

The UAW is especially pleased that the Specter-Leahy proposal does not permit any subrogation against worker compensation or health care payments received by asbestos victims. This will ensure that awards are not largely offset by worker compensation or health care payments to which victims are otherwise entitled. In our judgment, the provisions barring any subrogation are essential to ensuring that victims receive adequate compensation.

The UAW also is pleased that the Specter-Leahy proposal establishes a mechanism for defendant companies and insurers to contribute to the national asbestos compensation fund, thereby spreading the costs of compensating victims across a broad section of the business and insurance community. We believe this broad-based, predictable financing mechanism is vastly preferable to the current tort system, which has driven most asbestos manufacturers into bankruptcy and is threatening the economic viability of many other companies that used products containing asbestos, thereby jeopardizing the jobs of tens of thousands of workers.

The Specter-Leahy proposal provides for reversion of asbestos claims to the tort system in the event the national asbestos trust fund does not have sufficient funds to pay all claims, or in the event the compensation system does not become operational quickly enough. Although the UAW hopes that these reversion provisions will never be triggered, we believe these provisions are essential to ensure that victims will always have some effective recourse for receiving compensation, and to give all stakeholders an incentive to help make the compensation system operate properly.

The UAW recognizes that the Specter-Leahy proposal represents a compromise that reflects countless hours of negotiations with the key stakeholders in this issue. We commend Senator Specter and Senator Leahy for their leadership and persistence in moving forward with efforts to fashion this compromise. We also understand that some issues are still under discussion as the Specter-Leahy proposal is translated into legislative language that will be introduced next week. We look forward to reviewing the final details of the legislation when it is available.

It is easy for critics who want to maintain the current tort system to point to flaws or shortcomings in the Specter-Leahy proposal. But the issue before the Senate is not whether this proposal is perfect or solves all problems. Rather, the issue is whether the Specter-Leahy proposal is better than the current tort system. The UAW believes that the answer to this question is clearly yes. In our judgment, the Specter-Leahy proposal will provide the victims of asbestos-related diseases with speedier, more equitable and more certain compensation than the current tort system. For this reason, we urge you to support the Specter-Leahy proposal when it is considered by the Senate.

Thank you for considering our views on this important issue.

Sincerely,

ALAN REUTHER,
Legislative Director.

APRIL 13, 2005.

Hon. PATRICK J. LEAHY,
Ranking Democratic Member, Senate Judiciary Committee, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: We are writing today to implore you not to forget about our Nation's veterans as you continue your important work of fixing the broken asbestos litigation system. A lot has been written on this issue in the media recently. Yesterday, Senator Arlen Specter said he expects to formally introduce an asbestos victims compensation fund bill later this week. Even before Specter's announcement, some had raised questions about whether an asbestos victims compensation fund is the best solution to the asbestos crisis.

But the critics often overlook one crucial element: what is best for asbestos victims?

Clearly, the most important outcome for victims, many of whom are veterans dying as a result of asbestos exposure, is a system that provides timely, fair and certain compensation.

We believe the compensation fund approach is the only solution that will provide veterans suffering from asbestos-related illnesses with fair and certain compensation.

Asbestos has taken a heavy toll on our Nation's veterans. This dangerous substance was widely used by the military during and after World War II, particularly in insulation aboard U.S. Navy ships. Because of the long latency periods of asbestos-related diseases, many veterans are still being diagnosed today with life-threatening diseases that are the result of exposure that occurred during military service decades ago.

Veterans are in a unique situation in that we have virtually no avenue for compensation under the current system. Veterans with asbestos-related illnesses are prevented by law from seeking compensation from the U.S. government through the courts. Since most of the companies that supplied the U.S. military with asbestos are long gone, seeking relief from the suppliers is also a dead end.

Some have suggested that a medical criteria bill might provide a better solution to the asbestos problem. A medical criteria bill, however, will do little, if anything, to provide certainty for victims. And because it leaves asbestos claims in the courts, the medical criteria bill certainly wouldn't benefit veterans who are sick from asbestos. Under a medical criteria bill, the asbestos litigation system will remain unchanged for veterans.

The Senate Judiciary Committee shouldn't let special interests hijack veterans' only chance to receive the just compensation they deserve.

We urge the Senate Judiciary Committee to approve the asbestos victims compensation fund as quickly as possible and bring this critically important legislation to the floor. Our Nation's veterans deserve fair compensation—and nothing less.

Sincerely,

Veterans of Foreign Wars of the United States
Military Order of the Purple Heart
Blinded Veterans Association
Veterans of the Vietnam War, Inc.
Women in Military Service for America
Non Commissioned Officers Association
National Association for Uniformed Services
Paralyzed Veterans of America
Jewish War Veterans of the United States
Fleet Reserve Association
The Retired Enlisted Association
National Association of State Directors of Veterans Affairs
Military Officers Association of America
Marine Corps League
American Ex-Prisoners of War
National Association for Black Veterans, Inc.
Pearl Harbor Survivors Association.

ASBESTOS STUDY GROUP,
April 18, 2005.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR CHAIRMAN SPECTER: The Asbestos Study Group, a group of U.S. companies representing over 1.5 million workers, is greatly appreciative of the Chairman's tireless efforts in working with all interested Senators and private stakeholders to reach a bipartisan consensus that can bring a much needed solution to the Nation's asbestos litigation crisis. We are very pleased and encouraged that the revised April 12th draft has earned bipartisan support. We believe it brings us considerably closer to a long-overdue resolution. While our analysis of the new draft is continuing, we look forward to working with the Chairman and other Senators to obtain final passage of this critically important legislation as soon as possible.

In the last two decades Congress has debated asbestos litigation reform, the opportunity now before us represents our best chance for success. Too much progress has been made and too much is at stake for our Nation to miss this unique opportunity to finally solve the asbestos problem.

Thank you for your continuing leadership and commitment to this critically important issue.

Sincerely,

BARRY B. DIRENFELD,
Counsel, Asbestos Study Group.

[From the National Association of Manufacturers, April 14, 2005]

ENGLER STATEMENT ON SENATOR SPECTER'S LATEST ASBESTOS BILL LANGUAGE DRAFT

WASHINGTON, D.C.—National Association of Manufacturers President John Engler today issued this statement in support of Senator Arlen Specter's (R–PA) ongoing effort to end America's asbestos litigation crisis:

''Manufacturers and the business community more broadly are grateful to Chairman Specter for the energy and determination he has shown in working to craft a legislative solution to our Nation's economy-sapping problem with asbestos litigation.

''The comprehensive Specter draft is now being reviewed by the NAM and the members of the Asbestos Alliance. Since the draft has already earned bipartisan support in the Senate, we are hopeful it will engender similarly broad support in the nationwide business community. When our review and those of our Asbestos Alliance colleagues are complete, we hope a solution will finally be at hand.

''There is much to like in the Chairman's draft, I'm encouraged by the renewed commitment on both sides of the aisle, and I am more hopeful about prospects for consensus than I have been in weeks.

''We look forward to working with Chairman Specter and other Senators toward final

passage of a bill that fairly resolves compensation problems and ends the scandal of asbestos lawsuit abuse once and for all.''

Mr. LEAHY. The bipartisan efforts of the last 2 years have been productive. With the help of Judge Edward Becker, the primary stakeholders have worked diligently and as a result we have reached a compromise agreement on a national trust fund that will fairly compensate victims of asbestos exposure. With the Chairman's leadership, the disparate interests have reached consensus on many issues such as overall funding of $140 billion and a streamlined administrative process within the Department of Labor. Compensation will be awarded and paid outside of the court system through a simplified administrative claims process. There is no need to prove liability or identify a particular defendant. There is, instead, a claims process wherein all those who exhibit certain medical symptoms and evidence of disease are compensated.

Last Congress I was disappointed by the bill reported by the Judiciary Committee and by the partisan bill, S. 2290, that was subsequently introduced as a substitute for that legislation. As compared to those efforts, our bipartisan bill includes significant and necessary improvements: Our bill provides higher compensation awards for victims, with $1.1 million for victims of mesothelioma, $300,000 to $1.1 million for lung cancer victims, $200,000 for victims of other cancers caused by asbestos, $100,000 to $850,000 for asbestosis, and $25,000 for what we call ''mixed disease cases.'' All likely asbestos victims are eligible for medical monitoring, and unlike last year's bills, this bill provides for medical screening for high-risk workers, a relatively low-cost way to help make sure that those most likely to be harmed are diagnosed.

Another essential improvement is the important provision ensuring that victims' awards under the new trust fund will not be subject to subrogation by insurance companies. This means that victims will not have to give up any of their much-deserved compensation just because they received workers' compensation or other insurance benefits in the past. The initial funding of this trust is both more realistic and more substantial than the partisan bill from the last Congress, providing for almost $43 billion of the total $140 billion in the first five years. And unlike the earlier bill, this bill ensures that the contributors into the fund will be a matter of public record, as are their obligations to the fund. Our bill also guarantees that court cases that are well under way, and certainly those that have reached judgment, will not be upset by the new trust fund. Similarly, last year's bill would also have overridden all civil settlements that had any remaining conduct outstanding. Our bipartisan asbestos bill protects those settlements between named defendants and named victims, and also protects settlements that provide for health insurance or health care.

There are other improvements to the trust fund plan over last year's effort. The previous legislation provided no incentive for the fund to start processing claims. The Specter-Leahy-Feinstein bill creates an incentive for the fund to begin processing claims quickly: If it is not operational within 9 months, the sickest victims will be able to return to the tort system. If the fund is not operational within 24 months, all victims can return to the tort system.

In improving the way the asbestos legislation handles exigent claims—those victims who are sickest and may not have long to live—Senator FEINSTEIN was instrumental in developing a creative solution. I thank the senior Senator from California for her tireless efforts on behalf of sick and dying asbestos victims. These victims should not be forced to wait a year while this new trust fund gets organized and ready to process claims. Under Senator FEINSTEIN's approach, which we adopted, exigent cases would receive an immediate lump-sum payment, and, as I noted earlier, if the fund is not operational in nine months, these sickest victims will be able to continue their cases in court.

As part of this compromise legislation, a particular class of lung cancer sufferers, those who have had significant asbestos exposure but no markings of asbestos-related disease, are not treated as compensable victims for purposes of the asbestos trust fund. Because of the absence of markings, it is not possible to establish asbestos as the cause of their disease. If they develop markings, however, they will become eligible for compensation from the asbestos trust fund. As with many other administrative claims processes, this bill sets a limit on attorneys' fee. In connection with this asbestos fund, the limit is set at 5 percent on victims' awards within the fund. In addition, in order to prevent victims of asbestos exposure from retooling their complaints to circumvent the asbestos trust fund, the bill also imposes a higher burden of proof within the tort system for plaintiffs seeking damages resulting from exposure to silica.

The problems we are addressing are complex, this bill necessarily reflects these complexities, and its drafting was not easy. The compromises we had to make were difficult but necessary to ensure that we created a trust fund that would provide adequate compensation to the thousands of workers who have suffered, and continue to suffer, the devastating health effect of asbestos. The history of asbestos use in our country must come to an end. Under a provision authored by Senator MURRAY that we have included, which was accepted during the last Congress by the Judiciary Committee, this bill will ban its use. We must halt the harm asbestos creates, and ameliorate the harm it has already caused. The industrial and insurer participants in the trust fund will gain the benefits of financial certainty and relief from the stresses of litigation in the tort system, and the victims will have a quicker and more efficient path to recovery.

I thank Chairman SPECTER, Senator FEINSTEIN and others for working so hard with me on this bipartisan legislation. I urge Senators to support this compromise legislation to, at long last, help solve the asbestos problem by providing fair compensation to victims of asbestos exposure.

I think of the staffs who have worked so diligently on this. On my staff, I single out Ed Pagano, who was a lead counsel of the Democrats, along with Kristine Lucius on our side. On Senator SPECTER's side, we were helped so much by Seema Singh.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 113—EXPRESSING SUPPORT FOR THE INTERNATIONAL HOME FURNISHINGS MARKET IN HIGH POINT, NORTH CAROLINA

Mrs. DOLE (for herself and Mr. BURR) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 113

Whereas the International Home Furnishings Market in High Point, North Carolina (commonly known as the ''High Point Market'') is the largest home furnishings industry trade show of its kind in the world;

Whereas the High Point Market takes place every April and October, and is the largest event in North Carolina, attended by more people for a longer period of time over a larger area than any other event in the State;

Whereas an average of 70,000 manufacturers, exhibitors, sales representatives, retail buyers, interior designers, architects, support personnel, suppliers, and news media attend the High Point Market each April and October;

Whereas people from all 50 States and more than 100 foreign countries attend the High Point Market;

Whereas the High Point Market attracts an average of 2,500 exhibitors from around the world, with international exhibitors constituting more than 10 percent of the exhibitors at the event;

Whereas the exhibits at the High Point Market encompass a wide variety of finished products, including case goods (wood furniture), upholstery, accessories, lighting, bedding, and rugs;

Whereas the High Point Market has more than 11,500,000 square feet of permanent showroom space in more than 180 separate buildings in High Point and Thomasville, North Carolina;

Whereas the High Point Market brings $1,140,000,000 and more than 13,000 jobs to North Carolina annually, and creates a significant, lasting, and positive economic impact on a State in which the manufacturing economy is declining due to offshore production;

Whereas the Federal Government has invested in the High Point Market by providing funding to help meet critical transportation infrastructure needs; and

Whereas the High Point Market is a vital engine for economic growth for North Carolina, especially for the region commonly