LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2872. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2873. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2874. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2875. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2876. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2877. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S . 852, supra; which was ordered to lie on the table.

SA 2878. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S . 852, supra; which was ordered to lie on the table.

SA 2879. Mr. REID (for Mr. BIDEN) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2880. Mr. MARTINEZ (for himself, Mr. ALLEN, Mr. ROBERTS, and Mr. BURR) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S . 852, supra; which was ordered to lie on the table.

SA 2881. Mr. BURNS (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2882. Mr. SPECTER (for himself, Mr. LIEBERMAN, and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2883. Mr. SPECTER (for himself, Mr. LIEBERMAN, and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2884. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2885. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2886. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2887. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2888. Mr. ISAKSON submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2767. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 98, strike lines 6 through 17, and insert the following:

(4) WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE MINING AND PROCESSING COMMUNITIES.—

(A) IN GENERAL.—Because of the nature of asbestos exposure related to the vermiculite mining operations in Libby, Montana, and the vermiculite processing operations associated with such mining operations, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked—

(i) at the vermiculite mining operations in Libby, Montana, or lived or worked within a 20-mile radius of such mining operations, for at least 12 months before December 31, 2004; and

(ii) at sites processing vermiculite mined from mining operations in Libby, Montana; or

(iii) or lived within a 20 mile radius of a processing site described in clause (ii), for at least 12 months before December 31, 2004.

(B) REQUIRED DOCUMENTATION.—Claimants under this paragraph shall provide such supporting documentation as the Administrator shall require.

On page 118, strike line 6 and all that follows through page 120, line 4, and insert the following:

(8) VERMICULITE MINING AND PROCESSING CLAIMANTS.—

(A) IN GENERAL.—A vermiculite mining and processing claimant, as described under subsection (c)(4), may elect to have the claimant's claim designated as an exceptional medical claim and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by such a claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in vermiculite mining and processing operations, including the nature of the pleural disease related to asbestos exposure from such sites.

(B) CLAIMS.—For all claims for Levels II through IV filed by vermiculite mining and processing claimants, as described under subsection (c)(4), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to such 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, such 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 vermiculite mining and processing claimants, such claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

On page 366, strike lines 2 through 8, and insert the following:

(a) VERMICULITE MINING AND PROCESSING 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 vermiculite mining and processing communities, as described under section 121(c)(4). The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

SA 2768. Mr. KERRY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 123, between lines 2 and 3, insert the following:

SEC. 122. WAIVER FOR VETERANS.

Notwithstanding any other provision of this Act, because of the unique, short-term nature of the asbestos exposure related to service in the United States military, the Administrator shall waive the exposure requirements of this subtitle for individuals who are veterans of any service of the United States military. Claimants under this section shall provide such supporting documentation as the Administrator shall require.

SA 2769. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 109, strike line 13 and all that follows through page 111, line 2.

On page 116, strike lines 1 through 23, and insert the following:

(e) INSTITUTE OF MEDICINE STUDY.—

(1) STUDY ON OTHER CANCERS.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers.

(2) STUDY CRITERIA.—In conducting the study required under paragraph (1), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data

safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(3) REPORT.—

(A) IN GENERAL.—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.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—Any finding of the Institute of Medicine contained in the report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (2) shall be deemed to be insufficient to show causation.

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If the report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (2), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor to other cancers not covered by the Fund.

(ii) RECOMMENDATIONS OF ADDITIONAL TIERS.—If the report required under subparagraph (A) determines that asbestos exposure is a substantial contributing factor to other cancers not covered by the Fund, in accordance with the requirements of clause (i), the Administrator may recommend that Congress create additional tiers, appropriate criteria, and claims values.

SA 2770. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 72, line 14, strike ''(f)(8)'' and insert ''(g)(8)''.

On page 111, strike line 3 and all that follows through page 112, line 14.

On page 115, line 23, strike ''(g)'' and insert ''(h)''.

On page 116, between lines 23 and 24, insert the following:

(f) INSTITUTE OF MEDICINE STUDY ON LUNG CANCER.—

(1) STUDY ON LUNG CANCER.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and lung cancer where there is evidence of bilateral pleural plaques or bilateral pleural thickening or bilateral pleural calcification, but no asbestosis.

(2) STUDY CRITERIA.—In conducting the study required under paragraph (1), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(3) REPORT.—

(A) IN GENERAL.—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.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—Any finding of the Institute of Medicine contained in the report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (2) shall be deemed to be insufficient to show causation.

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If the report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (2), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor to lung cancer not covered by the Fund.

(ii) RECOMMENDATIONS OF ADDITIONAL TIERS.—If the report required under subparagraph (A) determines that asbestos exposure is a substantial contributing factor to lung cancer not covered by the Fund, in accordance with the requirements of clause (i), the Administrator may recommend that Congress create additional tiers, appropriate criteria, and claims values.

On page 116, line 24, strike ''(f)'' and insert ''(g)''.

On page 118, line 7, strike ''(g)'' and insert ''(h)''.

On page 125, line 23, strike ''(h)'' and insert ''(i)''.

SA 2771. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 109, strike line 13 and all that follows through page 112, line 14.

On page 116, strike lines 1 through 23, and insert the following:

(e) INSTITUTE OF MEDICINE STUDIES.—

(1) STUDY ON OTHER CANCERS.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers.

(2) STUDY ON LUNG CANCER.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and lung cancer where there is evidence of bilateral pleural plaques or bilateral pleural thickening or bilateral pleural calcification, but no asbestosis.

(3) STUDY CRITERIA.—In conducting any study required under paragraph (1) or (2), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(4) REPORT.—

(A) IN GENERAL.—The Institute of Medicine shall issue a report on its findings on causation for each study described under paragraph (1) or (2), each such report shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—Any finding of the Institute of Medicine contained in a report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (3) shall be deemed to be insufficient to show causation.

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If a report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (3), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor to cancers not covered by the Fund.

(ii) RECOMMENDATIONS OF ADDITIONAL TIERS.—If the report required under subparagraph (A) determines that asbestos exposure is a substantial contributing factor to cancers not covered by the Fund, in accordance with the requirements of clause (i), the Administrator may recommend that Congress create additional tiers, appropriate criteria, and claims values.

SA 2772. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 126, between lines 6 and 7, insert the following:

(i) GUIDELINES FOR CT SCANS.—

(1) IN GENERAL.—Not later than _____, 2006, the Administrator shall commission the American College of Radiology to develop standard guidelines and a methodology for the use of CT

scans as a diagnostic tool for asbestosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification under the Fund.

(2) LIMITATION ON USE OF CT SCANS.—No CT scans may be used for diagnostic purposes under the Fund unless the standard guidelines and methodology developed by the American College of Radiology under paragraph (1) are followed.

SA 2773. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 105, line 14, strike ''or'' and insert ''and''.

SA 2774. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 106, line 8, strike all after ''pathology'' through line 10 and insert ''with a College of American Pathologists National Institute for Occupational Safety and Health level of 3 or 4;''.

On page 106, line 14, strike all after ''percent'' through ''spirometry'' on line 18.

SA 2775. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 107, line 13, strike all beginning with the comma through ''greater'' on line 15.

SA 2776. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 108, line 13, strike all beginning with the comma through ''greater'' on line 15.

On page 108, line 18, insert ''or'' after the semicolon.

On page 108, strike lines 19 through 21.

On page 108, line 22, strike ''(iii)'' and insert ''(ii)''.

SA 2777. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 109, line 13, strike all through page 111, line 2.

SA 2778. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 111, line 3, strike all through page 112, line 14.

SA 2779. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 109, strike line 13 and all that follows through page 112, line 14.

SA 2780. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 92, strike lines 1 through 6.

On page 108, line 18, insert ''or'' after the semicolon.

On page 108, strike lines 19 through 21.

On page 108, strike ''(iii)'' and insert ''(ii)''.

SA 2781. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 113, line 16, insert ''or'' after the semicolon.

On page 113, line 19, insert ''and'' after the semicolon.

On page 113, line 20, strike all through page 114, line 2.

On page 120, strike lines 10 through 11 and insert the following:

(D) X-RAY.—A claimant may submit an x-ray.

SA 2782. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 113, line 16, insert ''or'' after the semicolon.

On page 113, lines 19 and 20, strike ''; or'' and insert ''; and''.

On page 113, strike line 21 and all that follows through page 114, line 2.

On page 116, strike line 24 and all that follows through page 118, line 6, and insert the following:

(f) INSTITUTE OF MEDICINE STUDY ON CT SCANS.—

(1) STUDY ON THE USE OF CT SCANS.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health on the use of CT scans as a diagnostic tool for asbestosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification.

(2) STUDY CRITERIA.—In conducting the study required under paragraph (1), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(3) REPORT.—

(A) IN GENERAL.—The Institute of Medicine shall issue a report on its findings on the use of CT scans, such report shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—Any finding of the Institute of Medicine contained in a report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (2) shall—

(i) be deemed to be insufficient to show that it is appropriate to use CT scans as a diagnostic tool for asbestosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification; and

(ii) not be used for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If a report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (2), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether a CT scan is an appropriate test to use for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

(ii) DETERMINATION AS AN APPROPRIATE TEST.—If a CT scan is determined to be an appropriate test, the Administrator may acknowledge CT scans as appropriate for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

On page 120, strike lines 10 through 11, and insert the following:

(D) X-RAY.—A claimant may submit an x-ray.

SA 2783. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 111, strike lines 12 through 14 and insert a semicolon.

On page 111, line 17, strike ''and''.

On page 111, line 24, strike the period and insert ''; and''.

On page 111, add after line 24 the following:

(v) evidence of TLC less than 80 percent, and FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent.

On page 114, line 2, strike ''and''.

On page 114, line 11, strike the period and insert ''; and''.

On page 114, between lines 11 and 12 insert the following:

(iv) evidence of TLC less than 80 percent, and FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent.

SA 2784. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 116, strike line 1 and all that follows through page 118, line 6, and insert the following:

(e) INSTITUTE OF MEDICINE STUDY.—

(1) STUDY ON OTHER CANCERS.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers.

(2) STUDY CRITERIA.—In conducting the study required under paragraph (1), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(3) REPORT.—

(A) IN GENERAL.—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.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—Any finding of the Institute of Medicine contained in the report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (2) shall be deemed to be insufficient to show causation.

(ii) AFFECT ON MALIGNANT LEVEL VI .—If the report required under subparagraph (A) is not based on a study conducted in accordance with the requirements described in paragraph (2), subsection (d)(6) shall cease to have force or effect for any purpose under this Act.

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If the report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (2), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor under subsection (d)(6)(B).

(ii) AFFECT ON MALIGNANT LEVEL VI.—If the report required under subparagraph (A) determines that asbestos exposure is not a substantial contributing factor under subsection (d)(6), such subsection shall cease to have force or effect for any purpose under this Act.

(f) INSTITUTE OF MEDICINE STUDY ON CT SCANS.—

(1) STUDY ON THE USE OF CT SCANS.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health on the use of CT scans as a diagnostic tool for asbestosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification.

(2) STUDY CRITERIA.—In conducting the study required under paragraph (1), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(3) REPORT.—

(A) IN GENERAL.—The Institute of Medicine shall issue a report on its findings on the use of CT scans, such report shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—Any finding of the Institute of Medicine contained in a report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (2) shall—

(i) be deemed to be insufficient to show that it is appropriate to use CT scans as a diagnostic tool for asbestosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification; and

(ii) not be used for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If a report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (2), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether a CT scan is an appropriate test to use for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

(ii) DETERMINATION AS AN APPROPRIATE TEST.—If a CT scan is determined to be an appropriate test, the Administrator may acknowledge CT scans as appropriate for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

SA 2785. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 91, line 6, strike ''⅙'' and insert ''¼''.

On page 106, line 4, strike ''⅙'' and insert ''¼''.

On page 112, line 24, strike ''⅙'' and insert ''¼''.

SA 2786. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 87, after line 25, add the following:

(5) Any B-reader who has received compensation before the date of enactment of this Act for assigning an ILO grade level to an x-ray, where the amount of compensation depended on the assigned ILO grade level, is disqualified from inclusion on the Administrator's list.

SA 2787. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 181, between lines 21 and 22, insert the following:

(4) LIMITATION ON PAYMENTS BY DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Under expedited procedures established by the Administrator, any defendant participant may apply for a limitation on its annual payment obligation to the Fund by showing that it qualifies under subparagraph (C). The Administrator shall promptly grant that application if the requirements under subparagraph (C) are satisfied.

(B) STAY OF PAYMENT.—A defendant participant who applies for a limitation on its annual payment obligation to the Fund under subparagraph (A) shall have the payment required under subsection (i)(1)(A)(iv) stayed until the Administrator has made a determination with respect to the application of that defendant participant.

(C) APPLICATION FOR LIMITATION.—A defendant participant may apply under subparagraph (A) for a limit on its annual payment obligation to the Fund if that defendant participant—

(i) is included in Tiers II, III, IV, V, or VI under section 202; and

(ii) has prior asbestos expenditures less than $200,000,000 and has revenues as determined under section 203 that are less than $10,000,000,000.

(D) LIMITATION.—

(i) IN GENERAL.—A defendant participant that qualifies for a limitation under this paragraph may apply for only 1 of the limits under subclause (I), (II), or (III) of clause (ii). A defendant participant may not change its application once the application has been approved by the Administrator.

(ii) APPLICATION FOR 1 LIMITATION.—Subject to clause (i), a defendant participant may apply for a limit of an amount equal to—

(I) 125 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant;

(II) 150 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant, excluding—

(aa) the amount of any payments by insurance carriers for the benefit of that defendant participant or on behalf of that defendant participant; and

(bb) any reimbursements of the amounts actually paid by that defendant participant with respect to prior asbestos expenditures for fiscal years 1998 through 2002, regardless of when such reimbursements were actually paid; or

(III) 1.67024 percent of the revenues for the most recent fiscal year ending on or prior to December 31, 2002, of the affiliated group to which that defendant participant belongs.

(E) JUDICIAL REVIEW.—A defendant participant is entitled to judicial review under section 303 of a denial of an application under this paragraph. During the pendency of that review, section 223(a) shall not apply to that defendant participant. Without regard to section 305(a), the reviewing court may, in its discretion, provide such interlocutory relief to the defendant participant as may be just.

(F) APPLICABILITY OF THE GUARANTEE SURCHARGE.—A defendant participant whose application under this paragraph is approved by the Administrator, shall not be exempt from the guaranteed payment surcharge established under subsection (l), unless otherwise provided in this Act.

(G) MINIMUM PAYMENT.—Notwithstanding any other provision of this paragraph, a defendant participant that is granted a limitation by the Administrator shall pay not less than 5 percent of the amount the participant is scheduled to pay under section 202.

On page 182, line 15, strike ''(5)'' and insert ''(6)''.

On page 184, line 9, strike ''(6)'' and insert ''(7)''.

SA 2788. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after ''**SECTION 1. SHORT TITLE;**'' in the bill and insert the following: This Act may be cited as the ''Asbestos and Silica Claims Priorities Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Asbestos is a mineral that was widely used before the mid-1970s for insulation, fireproofing, and other purposes.

(2) Many American workers were exposed to asbestos, especially during the Second World War.

(3) Long-term exposure to asbestos has been associated with mesothelioma and lung cancer, as well as with such non-malignant conditions as asbestosis, pleural plaques, and diffuse pleural thickening.

(4) Although the use of asbestos has dramatically declined since 1980 and workplace exposures have been regulated since 1971 by the Occupational Safety and Health Administration, the diseases caused by asbestos often have long latency periods and past exposures will continue to result in significant claims well into the future.

(5) Asbestos related claims, driven largely by unimpaired claimants, have flooded our courts such that the United States Supreme Court has characterized the situation as ''an elephantine mass'' that ''calls for national legislation'' (Ortiz v. Fibreboard Corporation, 119 S. Ct. 2295, 2302 (1999).

(6) The American Bar Association supports enactment of Federal legislation that would allow persons alleging non-malignant asbestos-related disease claims to file a cause of action in Federal or State court only if those persons meet the medical criteria in the ''ABA Standard for Non-Malignant Asbestos-Related Disease Claims'' and toll all applicable statutes of limitations until such time as the medical criteria in such standard are met.

(7) Reports indicate that up to 90 percent of asbestos claims are filed by individuals who allege that they have been exposed to asbestos, but who suffer no demonstrable asbestos-related impairment. Lawyer-sponsored x-ray screenings of workers at occupational locations are used to amass large numbers of claimants, the vast majority of whom are unimpaired.

(8) The costs of compensating unimpaired claimants and litigating their claims jeopardizes the ability of defendants to compensate people with cancer and other serious diseases, threatens the savings, retirement benefits, and jobs of current and retired employees, and adversely affects the communities in which the defendants operate.

(9) More than 73 companies have declared bankruptcy due to the burden of asbestos litigation. The rate of asbestos-driven bankruptcies is accelerating. Between 2000 and 2004, there were more asbestos-related bankruptcy filings than in either of the prior 2 decades.

(10) Bankruptcies have led plaintiffs and their lawyers to expand their search for solvent peripheral defendants. The number of asbestos defendants now includes over 8,500 companies, affecting many small and medium size companies and industries that span 85 percent of the United States economy.

(11) Efforts to address asbestos litigation may augment silica-related filings.

(12) Silica is a naturally occurring mineral and is the second most common constituent of the earth's crust. Crystalline silica in the form of quartz is present in sand, gravel, soil, and rocks.

(13) Silica-related illness, including silicosis can develop from the inhalation of respirable silica dust. Silicosis was widely recognized as an occupational disease many years ago.

(14) Silica claims, like asbestos claims, often involve individuals with no demonstrable impairment. Claimants frequently are identified through the use of interstate, for-profit, screening companies.

(15) Silica screening processes have been found subject to substantial abuse and potential fraud in Federal silica litigation (In re Silica Prods. Liab. Litig. (MDL No. 1553), 398 F. Supp. 2d 563 (S.D. Tex. 2005)) and it therefore is necessary to address silica legislation to preempt an asbestos-like litigation crisis.

(16) Concerns about statutes of limitations may prompt unimpaired asbestos and silica claimants to bring lawsuits prematurely to protect against losing their ability to assert a claim in the future should they develop an impairing condition.

(17) Sound public policy requires that the claims of persons with no present physical impairment from asbestos or silica exposure, be deferred to give priority to physically impaired claimants, and to safeguard the jobs, benefits, and savings of workers in affected companies.

(18) Claimant consolidations, joinders, and similar procedures used by some courts to deal with the mass of asbestos and silica cases can—

(A) undermine the appropriate functioning of the court system;

(B) deny due process to plaintiffs and defendants; and

(C) further encourage the filing of thousands of cases by exposed persons who are not sick and likely will never develop an impairing condition caused by exposure to asbestos or silica.

(19) Several states have enacted legislation to prioritize asbestos and silica claims that serve as a model for national reform including Texas, Ohio, Florida, and Georgia.

(20) Asbestos litigation, if left unchecked by reasonable congressional intervention, will—

(A) continue to inhibit the national economy and run counter to plans to stimulate economic growth and the creation of jobs;

(B) threaten the savings, retirement benefits, and employment of defendant's current and retired employees;

(C) affect adversely the communities in which these defendants operate; and

(D) impair interstate commerce and national initiatives.

(21) The public interest and the interest of interstate commerce requires deferring the claims of exposed persons who are not sick in order to—

(A) preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related injuries; and

(B) safeguard the jobs, benefits, and savings of American workers and the well-being of the national economy.

(b) PURPOSES.—The purposes of this Act are to—

(1) give priority to current claimants who can demonstrate an asbestos-related or silica-related impairment based on reasonable, objective medical criteria;

(2) toll the running of statutes of limitations for persons who have been exposed to asbestos or to silica, but who have no present asbestos-related or silica-related impairment; and

(3) enhance the ability of the courts to supervise and control asbestos and silica litigation.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.—The term ''AMA Guides to the Evaluation of Permanent Impairment'' means the most current version of the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required by this Act.

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

(A) chrysotile;

(B) amosite;

(C) crocidolite

(D) tremolite asbestos;

(E) anthophyllite asbestos;

(F) actinolite asbestos;

(G) winchite;

(H) richterite;

(I) asbestiform amphibole minerals; and

(J) any of the minerals described in subparagraphs (A) through (I) that have been chemically treated or altered, including all minerals defined as asbestos under section 1910 of title 29, Code of Federal Regulations in effect at the time an asbestos claim is filed.

(3) ASBESTOS CLAIM.—The term ''asbestos claim''—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or related to the alleged health effects associated with the inhalation or ingestion of asbestos, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to a workers' compensation law or a veterans' benefits program.

(4) ASBESTOSIS.—The term ''asbestosis'' means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos.

(5) BOARD-CERTIFIED INTERNIST.—The term ''Board-certified internist'' means a qualified physician—

(A) who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(6) BOARD-CERTIFIED OCCUPATIONAL MEDICINE SPECIALIST.—The term ''Board-certified occupational medicine specialist'' means a physician—

(A) who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(7) BOARD-CERTIFIED PATHOLOGIST.—The term ''Board-certified pathologist'' means a qualified physician—

(A) who holds primary certification in anatomic pathology or combined anatomic or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Internal Medicine;

(B) whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or post mortem specimens; and

(C) whose certification was current at the time of—

(i) any tissue or slide examination; or

(ii) rendition of any report required under this Act.

(8) BOARD-CERTIFIED PULMONOLOGIST.—The term ''Board-certified pulmonologist'' means a qualified physician—

(A) who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(9) CERTIFIED B-READER.—The term ''Certified B-reader'' means a person—

(A) who has successfully passed the B-reader certification examination for x-ray interpretation sponsored by the National Institute for Occupational Safety and Health; and

(B) whose certification was current at the time of any readings required under this Act.

(10) CHEST X-RAYS.—The term ''chest x-rays'' means radiographic films taken in accordance with all applicable Federal and State standards and in the posterior-anterior view.

(11) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any party asserting an asbestos or silica claim, including a—

(i) plaintiff;

(ii) counterclaimant;

(iii) cross-claimant; or

(iv) third-party plaintiff.

(B) CLAIMS ON BEHALF OF AN ESTATE.—If any claim described in subparagraph (A) is brought through, or on behalf of, an estate, the term claimant includes the executor, surviving spouse, or any other descendant of the decedent.

(C) CLAIMS ON BEHALF OF A MINOR.—If any claim described in subparagraph (A) is brought through, or on behalf of, a minor or incompetent person, the term claimant includes the parent or guardian of such minor.

(12) DLCO.—The term ''DLCO'' means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

(13) EXPOSED PERSON.—

(A) IN GENERAL.—The term ''exposed person'' means a person whose claimed exposure to asbestos or silica is the basis for an asbestos or silica claim.

(B) SILICA CLAIMS.—With respect to any claim for exposure to silica, the term ''exposed person'' means a person whose claimed exposure to silica is by means of the alleged inhalation of respirable silica.

(14) FEV–1.—The term ''FEV–1'' means forced expiratory volume in the first second, which is the maximal volume of air expelled in 1 second during performance of simple spirometric tests.

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

(16) ILO SCALE.—The term ''ILO scale'' means the system for the classification of chest x-rays set forth in the most current version of the International Labor Office's Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect at the time of the performance of any examination or test on the exposed person required by this Act.

(17) PREDICTED LOWER LIMIT OF NORMAL.—The term ''predicted lower limit of normal'' means the calculated standard convention lying at the fifth percentile, below the upper 95 percent of the reference population, based on age, height, and gender, according to the recommendations of the American Thoracic Society as referenced in the AMA's Guides to the Evaluation of Permanent Impairment.

(18) QUALIFIED PHYSICIAN.—The term ''qualified physician'' means a board-certified internist, occupational medicine specialist, pathologist, or pulmonologist—

(A) who is licensed to practice in any State;

(B) who has personally conducted a physical examination of the exposed person, or in the case of a board-certified pathologist, has examined tissue samples or pathological slides of the exposed person, or if the exposed person is deceased, based upon a detailed review of the medical records and existing tissue samples and pathological slides of the deceased person;

(C) who is treating or has treated the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination or, in the case of a board–certified pathologist, has examined tissue samples or pathological slides of the exposed person at the request of such treating physician; and

(D) whose diagnosing, examining, testing, screening or treating of the exposed person was not, directly or indirectly, premised upon, and did not require, the exposed person or claimant to retain the legal services of any attorney or law firm.

(19) SILICA.—The term ''silica'' a respirable crystalline form of the naturally occurring mineral form of silicon dioxide, including quartz, cristobalite, and tridymite.

(20) SILICA CLAIM.—The term ''silica claim''—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or in any way related to the alleged health effects associated with the inhalation of silica, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to silica dust, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to the workers' compensation law or a veterans' benefits program.

(21) SILICOSIS.—The term ''silicosis'' means fibrosis of the lung produced by inhalation of silica, including—

(A) acute silicosis;

(B) accelerated silicosis; and

(C) chronic silicosis.

(22) STATE.—The term ''State''—

(A) means any State of the United States; and

(B) includes—

(i) the District of Columbia;

(ii) Commonwealth of Puerto Rico;

(iii) the Northern Mariana Islands;

(iv) the Virgin Islands;

(v) Guam;

(vi) American Samoa; and

(vii) any other territory or possession of the United States, or any political subdivision of any of the locales described under this paragraph.

(23) SUBSTANTIAL CONTRIBUTING FACTOR.—The term ''substantial contributing factor''—

(A) in the context of an asbestos claim, means that—

(i) a claimant shall identify—

(I) the specific asbestos product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable asbestos fibers in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific asbestos exposure; and

(B) in the context of a silica claim, means that—

(i) a claimant shall identify—

(I) the specific silica product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable silica particles in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific silica exposure.

(24) TOTAL LUNG CAPACITY.—The term ''total lung capacity'' means the volume of gas contained in the lungs at the end of a maximal inspiration.

(25) 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.

(26) 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—

(i) 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; or

(ii) any claim for exemplary or punitive damages by an employee, estate, heir, representative, or any other person or entity against the employer of an exposed person arising out of, or related to, an asbestos-related injury or silica-related injury.

SEC. 4. ELEMENTS OF PROOF FOR ASBESTOS OR SILICA CLAIMS.

(a) IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM.—

(1) IN GENERAL.—It shall be an essential element to bring or maintain an asbestos or silica claim, that an exposed person suffer a physical impairment, of which asbestos or silica was a substantial contributing factor to such impairment.

(2) EVIDENCE AS TO EACH DEFENDANT.—Any requirement of a prima facie showing under this section shall be made as to each defendant against whom a claimant alleges an asbestos or silica claim.

(b) PRELIMINARY PROCEEDINGS; SERVICE OF PRIMA FACIE EVIDENCE OF IMPAIRMENT.—

(1) FILING OF REPORT.—A claimant in any civil action alleging an asbestos or silica claim shall file, together with the complaint or other initial pleading, a written report and supporting test results constituting prima facie evidence of the exposed person's asbestos-related or silica-related impairment meeting the requirements of this section as to each defendant.

(2) TIMING.—For any asbestos or silica claim pending on the date of enactment of this Act, a claimant shall file the written report and supporting test results described in paragraph (1) not later than 180 days after such date or not later than 60 days prior to the commencement of trial, whichever occurs first.

(3) DEFENDANTS RIGHT TO CHALLENGE.—A defendant shall be afforded a reasonable opportunity to challenge the adequacy of any proffered prima facie evidence of impairment.

(4) DISMISSAL.—A claim shall be dismissed without prejudice upon a finding of failure to make the prima facie showing required under this section.

(c) NEW CLAIM REQUIRED INFORMATION.—

(1) IN GENERAL.—Any asbestos claim or silica claim filed in a Federal or State court, on or after on the date of enactment of this Act shall include a sworn information form containing the following information:

(A) The name, address, date of birth, social security number, and marital status of the claimant.

(B) The name, last address, date of birth, social security number, and marital status of the exposed person.

(C) If the claimant alleges exposure to asbestos or silica through the testimony of another person or other than by direct or bystander exposure to a product or products, the name, address, date of birth, social security number, and marital status, for each person by which claimant alleges exposure (hereafter in this subsection referred to as the ''index person'') and the relationship of the claimant to each such person.

(D) For each alleged exposure of the exposed person and for each index person—

(i) the specific location and manner of each such exposure;

(ii) the beginning and ending dates of each such exposure; and

(iii) the identity of the manufacturer of the specific asbestos or silica to which the exposed person or index person was exposed.

(E) The occupation and name of the employer of the exposed person at the time of each alleged exposure.

(F) If the asbestos claim or silica claim involves more than 1 claimant, the identity of the defendant or defendants against whom each claimant asserts a claim.

(G) The specific disease related to asbestos or silica claimed to exist.

(H) Any—

(i) supporting documentation of the condition claimed to exist; and

(ii) documentation to support the claimant or index person's identification of the asbestos or silica product that such person was exposed to.

(2) INDIVIDUAL REQUIREMENT.—

(A) IN GENERAL.—All asbestos claims and silica claims along with any sworn information required under paragraph (1) shall be individually filed.

(B) CLASS CLAIMS NOT PERMITTED.—No claims on behalf of a group or class of persons shall be permitted.

(d) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR NONMALIGNANT ASBESTOS CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged nonmalignant asbestos–related condition in the absence of a prima facie showing of physical impairment of the exposed person for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis.

(D) A determination by the diagnosing, qualified physician, on the basis of a medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, that the claimant had a permanent respiratory impairment rating of at least Class 2 as defined by, and evaluated under, the AMA's Guides to the Evaluation of Permanent Impairment.

(E) Evidence verifying that the exposed person has an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale—

(i) bilateral small irregular opacities (s, t, or u) graded 1/0 or higher on the ILO scale;

(ii) bilateral pleural thickening graded b2 or higher on the ILO scale including blunting of the costophrenic angle; or

(iii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(F) A determination by the diagnosing, qualified physician that asbestosis or diffuse pleural thickening is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the claimant has—

(i) either—

(I) forced vital capacity below the predicted lower limit of normal and FEV–1/FVC ratio (using actual values) at or above the predicted lower limit of normal; or

(II) forced vital capacity below the predicted lower limit of normal and total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; and

(ii) diffusing capacity of carbon monoxide below the lower limit of normal or below 80 percent of predicted.

(G) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or silica-related disease does not meet the requirements of this subsection.

(H) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume

loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(e) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged asbestos-related cancer, other than mesothelioma, in the absence of a prima facie showing of a primary cancer for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis of the cancer.

(D) Evidence verifying that the exposed person has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral small irregular opacities (s, t, or u) graded 1/0 or higher on the ILO scale; or

(ii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or asbestos-related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(f) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED MESOTHELIOMA.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to alleged mesothelioma in the absence of a prima facie showing of an asbestos-related malignant tumor with a primary site of origin in the pleura, the peritoneum, or pericardium.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a report by a qualified Board-certified pathologist certifying the diagnosis of mesothelioma and a report by a qualified physician certifying that the mesothelioma was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person.

(g) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related condition, other than a silica-related cancer, in the absence of a prima facie showing of physical impairment as a result of a medical condition to which exposure to silica was a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of such history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/0 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis);

(iii) pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988);

(iv) progressive massive fibrosis radiologically established by large opacities greater than 1 centimeter in diameter; or

(v) acute silicosis.

(D) If the claimant is asserting a claim for silicosis, evidence verifying there has been a sufficient latency period for the applicable type of silicosis.

(E) A determination by the diagnosing, qualified physician, on the basis of a personal medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment.

(F) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related disease does not meet the requirements of this subsection.

(G) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(h) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related cancer in the absence of a prima facie showing of a primary cancer for which exposure to the defendant's silica is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including silica and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing,

medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of that history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/0 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis); or

(iii) a pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988).

(D) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to silica; and

(ii) the date of any such diagnosis of the cancer.

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(i) COMPLIANCE WITH TECHNICAL STANDARDS.—Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies—

(1) shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment in the AMA's Guides to the Evaluation of Permanent Impairment, the most current version of the Official Statements of the American Thoracic Society regarding lung function testing, including general considerations for lung function testing, standardization of spirometry, standardization of the measurement of lung volumes, standardization of the single-breath determination of carbon monoxide uptake in the lung, and interpretative strategies for lung testing in effect at the time of the performance of any examination or test on the exposed person required by this Act;

(2) may not be based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of any State in which the examination, test, or screening was conducted; and

(3) may not be obtained under the condition that a claimant retains the legal services of an attorney or law firm sponsoring the examination, test, or screening.

SEC. 5. PROCEDURES.

(a) NO PRESUMPTION AT TRIAL.—Evidence relating to the prima facie showings required under section 4 shall not—

(1) create any presumption that a claimant has an asbestos or silica-related injury or impairment; and

(2) be conclusive as to the liability of any defendant.

(b) ADMISSIBILITY OF EVIDENCE.—No evidence shall be offered at a trial, and a jury shall not be informed of—

(1) the granting or denial of a motion to dismiss an asbestos or silica claim under the provisions of this Act; or

(2) the provisions of section 4 with respect to what constitutes a prima facie showing of asbestos or silica-related impairment.

(c) DISCOVERY.—Until such time as a trial court enters an order determining that a claimant has established prima facie evidence of impairment, no asbestos or silica claim shall be subject to discovery, except discovery—

(1) related to establishing or challenging such prima facie evidence; or

(2) by order of the trial court upon—

(A) motion of 1 of the parties; and

(B) for good cause shown.

(d) CONSOLIDATION.—

(1) AT TRIAL.—

(A) IN GENERAL.—A court may consolidate for trial any number and type of asbestos or silica claims with the consent of all the parties.

(B) ABSENCE OF CONSENT.—In the absence of any consent under subparagraph (A), a court may consolidate for trial only asbestos claims or silica claims relating to the same exposed person and members of the household of such exposed person.

(2) CLASS ACTIONS.—No class action or any other form of mass aggregation claim filing relating to more than 1 exposed person, except claims relating to the exposed person and members of the household of such exposed person, shall be permitted for asbestos or silica claims.

(3) AT DISCOVERY.—Any decision by a court to consolidate claims under paragraph (1) shall not preclude consolidation of asbestos or silica claim cases by a court order for pretrial or discovery purposes.

(e) FORUM NON CONVENIENS.—

(1) IN GENERAL.—Any asbestos or silica claim filed on or after the date of enactment of this Act, if the court in which such claim is pending, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this Act applies would be more properly heard in a forum outside the State, district, or division in which such claim was filed, the court shall—

(A) decline to exercise jurisdiction under the doctrine of forum non conveniens; and

(B) shall stay or dismiss such claim.

(2) CONSIDERATIONS.—In determining whether to grant a motion to stay or dismiss a claim under paragraph (1), a court shall consider whether—

(A) an alternate forum exists in which such claim or action may be tried;

(B) the alternate forum provides an adequate remedy;

(C) maintenance of such claim in the court of the State in which the claim was filed would work a substantial injustice to the moving party;

(D) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to such claim;

(E) the balance of the private interests of the parties and the public interest of the State in which such claim was filed predominate in favor of such claim being brought in an alternate forum; and

(F) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(3) WAIVER OF STATUTE OF LIMITATIONS DEFENSE.—A trial court may not abate or dismiss a claim under this subsection until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff, the defendant waives the right to assert a statute of limitations defense in all other States, districts, or divisions in which such claim was not barred by limitations at the time such claim was filed in the State where such claim was originally filed as necessary to effect a tolling of the limitations periods in those States —

(A) beginning on the date such claim was originally filed; and

(B) ending on the date—

(i) such claim is dismissed; or

(ii) an abatement period of 1 year ends.

(4) COURT DUTIES.—A court may not abate or dismiss a claim under paragraph (3) until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff in another State, district, or division, that the claimant and the defendant may—

(A) rely on responses to discovery already provided under the rules of civil procedure of the State, district, or division in which such claim was originally filed; and

(B) rely on any additional discovery that may be conducted under the rules of civil procedure in another State, district, or division.

(f) VENUE.—

(1) IN GENERAL.—An asbestos or silica claim filed after the date of enactment of this Act may be filed only in the county of the State or the district or division of the United States where—

(A) the claimant resided for a period of at least 180 consecutive days immediately prior to filing suit; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which such claim is based.

(2) IMPROPER VENUE.—With respect to asbestos or silica claims pending as of the date of enactment of this Act, and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, has not commenced with presentation of evidence to the trier of fact as of the date of enactment of this Act, any claim as to which venue would not have been proper if the claim originally had been brought in accordance with paragraph (1) shall, not later than 90 days after the date of enactment of this Act, be transferred to the court of general civil jurisdiction in the county, district, or division of the State in which the action is pending in which either—

(A) the claimant was domiciled at the time the asbestos or silica claim originally was filed; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or

silica related impairment on which the claim is based.

(3) REMOVAL.—

(A) IN GENERAL.—If a State court refuses or fails to apply the provisions of this Act, any party in a civil action for an asbestos claim may remove such action to a district court of the United States in accordance with chapter 89 of title 28, United States Code.

(B) JURISDICTION OVER REMOVED ACTIONS.—The district courts of the United States shall have jurisdiction of all civil actions removed under this paragraph, without regard to the amount in controversy and without regard to the citizenship or residence of the parties.

(C) REMOVAL BY ANY DEFENDANT.—A civil action may be removed to the district court of the United States under this paragraph by any defendant without the consent of all defendants.

(D) REMAND.—A district court of the United States shall remand any civil action removed solely under this paragraph, unless the court finds that—

(i) the State court failed to comply with procedures prescribed by law; or

(ii) the failure to dismiss by the State court lacked substantial support in the record before the State court.

(E) LIMITATION.—Civil actions in State court subject to this Act may not be removed to any district court of the United States unless such removal is otherwise proper without regard to the provisions of this Act or is removed under this paragraph.

(g) PREEMPTION.—

(1) IN GENERAL.—This Act shall govern all asbestos and silica claims filed in Federal or State courts on or after the effective date of this Act, or which are pending in Federal or State courts on the effective date of this Act and in which the trial, or any new trial or retrial following motion, appeal or otherwise, has not commenced with presentation of evidence to the trier of fact as of the effective date of this Act, except for enforcement of claims for which a final judgment has been duly entered by a court and that is no longer subject to any appeal or judicial review on the effective date of this Act.

(2) GREATER LIMITATIONS BY STATES.—Nothing in this Act shall limit or preempt any State law or precedent having the effect of imposing additional or greater limits or restrictions on the assertion or prosecution of an asbestos or silica claim.

SEC. 6. STATUTE OF LIMITATIONS; 2–DISEASE RULE.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—An asbestos or silica claim not barred in a State as of the date of enactment of this Act, a claimant's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date—

(A) on which an exposed person received a medical diagnosis of an asbestos-related impairment or silica-related impairment;

(B) on which an exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment or silica-related impairment; or

(C) of death of the exposed person having an asbestos-related or silica-related impairment.

(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise timebarred as a matter of applicable State law as of the date of enactment of this Act.

(3) NO EFFECT ON SETTLEMENT AGREEMENTS.—Nothing in this section shall be construed so as to adversely affect, impair, limit, modify, or nullify any settlement agreement with respect to an asbestos or silica claim entered into before the date of enactment of this Act.

(b) 2–DISEASE RULE; DISTINCT CLAIMS.—

(1) IN GENERAL.—An asbestos or silica claim arising out of a non-malignant condition shall be a distinct cause of action, wholly separate from a claim for an asbestos-related or silica-related cancer.

(2) NO DAMAGES FOR FEAR.—No damages shall be awarded for fear or increased risk of future disease in any civil action asserting an asbestos or silica claim.

SEC. 7. EXPERTS.

(a) IN GENERAL.—A person who holds a valid medical license in good standing in a State, but who is not licensed to practice medicine in that State, and who testifies, whether by deposition, affidavit, live, or otherwise, as a medical expert witness on behalf of any party in an asbestos or silica claim is deemed to have a temporary license to practice medicine in the State in which the claim is pending solely for the purpose of providing such testimony and is subject to that extent to the authority of the medical licensing board or agency of that State.

(b) PENALTY FOR FALSE TESTIMONY.—If a physician renders expert medical testimony that is false, intentionally misleading or deceptive, or that intentionally misstates the relevant applicable standard of care, the medical licensing board or agency of the State in which the claim is pending may take such action as is permitted under the laws and regulations of that State governing the conduct of physicians.

(c) RULE OF CONSTRUCTION.—This section shall not be construed to permit an out of State physician to practice medicine in any other State other than as provided in this section.

SEC. 8. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) CONSTRUCTION WITH OTHER LAWS.—This Act shall not be construed to—

(1) affect the scope or operation of any workers' compensation law or veterans' benefit program;

(2) affect the exclusive remedy or subrogation provisions of any such law; or

(3) authorize any lawsuit which is barred by any such provision of law.

(b) CONSTITUTIONAL AUTHORITY.—The constitutional authority for this Act is contained in Article I, section 8, clause 3 and Article III, section 1 of the Constitution of the United States.

SEC. 10. EFFECTIVE DATE.

(a) IN GENERAL.—This Act applies to all asbestos or silica claims filed on or after the date of enactment of this Act.

(b) PENDING PROCEEDINGS.—This Act also applies to any pending asbestos or silica claims in which a trial has not commenced as of the date of enactment of this Act.

SA 2789. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 171, between lines 17 and 18, insert the following and re-number accordingly:

(4) LIMITATION ON PAYMENTS BY DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Under expedited procedures established by the Administrator, any defendant participant may apply for a limitation on its annual payment obligation to the Fund by showing that it qualifies under subparagraph (C). The Administrator shall promptly grant that application if the requirements under subparagraph (C) are satisfied.

(B) STAY OF PAYMENT.—A defendant participant who applies for a limitation on its annual payment obligation to the Fund under subparagraph (A) shall have the payment required under subsection (i)(1)(A)(iv) stayed until the Administrator has made a determination with respect to the application of that defendant participant.

(C) APPLICATION FOR LIMITATION.—A defendant participant may apply under subparagraph (A) for a limit on its annual payment obligation to the Fund if that defendant participant—

(i) is included in Tiers II, III, IV, V, or VI under section 202; and

(ii) has prior asbestos expenditures less than $200,000,000 and has revenues as determined under section 203 that are less than $10,000,000,000.

(D) LIMITATION.—

(i) IN GENERAL.—A defendant participant that qualifies for a limitation under this paragraph may apply for only 1 of the limits under subclause (I), (II), or (III) of clause (ii). A defendant participant may not change its application once the application has been approved by the Administrator.

(ii) APPLICATION FOR 1 LIMITATION.—Subject to clause (i), a defendant participant may apply for a limit of an amount equal to—

(I) 125 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant;

(II) 150 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant, excluding—

(aa) the amount of any payments by insurance carriers for the benefit of that defendant participant or on behalf of that defendant participant; and

(bb) any reimbursements of the amounts actually paid by that defendant participant with respect to prior asbestos expenditures for fiscal years 1998 through 2002, regardless of when such reimbursements were actually paid; or

(III) 1.67024 percent of the revenues for the most recent fiscal year ending on or prior to December 31, 2002, of the affiliated group to which that defendant participant belongs.

(E) JUDICIAL REVIEW.—A defendant participant is entitled to judicial review under section 303 of a denial of an application under this paragraph. During the pendency of that review, section 223(a) shall not apply to that defendant participant. Without regard to section 305(a), the reviewing court may, in its discretion, provide such interlocutory relief to the defendant participant as may be just.

(F) APPLICABILITY OF THE GUARANTEE SURCHARGE.—A defendant participant whose application under this paragraph is approved by the Administrator, shall not be exempt from the guaranteed payment surcharge established under subsection (l), unless otherwise provided in this Act.

(G) MINIMUM PAYMENT.—Notwithstanding any other provision of this paragraph, a defendant participant that is granted a limitation by the Administrator shall pay not less than 5 percent of the amount the participant is scheduled to pay under section 202.

On page 182, line 15, strike ''(5)'' and insert ''(6)''.

On page 184, line 9, strike ''(6)'' and insert ''(7)''.

SA 2790. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 171, strike all after line 5 until ''(5) Bankruptcy Relief'' and insert the following and renumber accordingly:

(c) LIMITATION.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, any defendant participant may apply for a limitation on its annual payment obligation to the Fund by showing that it qualifies under subparagraph (3), and the Administrator shall promptly grant such application if the standards in subparagraph (3) are satisfied.

(2) STAY OF PAYMENT.—A defendant participant who applies for a limitation on its annual payment obligation to the Fund under subparagraph (1) shall have the payment required under subsection (i)(l)(A)(iv) stayed until the Administrator has made a determination with respect to the application of such defendant participant.

(3) APPLICATION FOR LIMITATION.—A defendant participant may apply under subparagraph (A) for a limit on its annual payment obligation to the Fund if:

(A) it is included in Tiers II, Ill, IV, V, or VI under section 202; and

(B) its prior asbestos expenditures are less than $200 million and its revenues as defined in this section are less than $10 Billion.

(4) LIMITATION.—Such qualifying defendant participant may apply for the limit set forth in either clause (A), (B) or (C), provided that it may apply only under one such clause and may not change its application once the application has been approved by the Administrator. A defendant participant qualifying under this subparagraph may apply for a limit on its annual payment obligation to the Fund to an amount equal to—

(A) 125 percent of the arithmetical average for fiscal years 1998 through 2002 of such defendant participant's annual prior asbestos expenditures; or

(B) 150 percent of the arithmetical average for fiscal years 1998 through 2002 of such defendant participant's annual prior asbestos expenditures, excluding (I) the amount of any payments by insurance carriers for the benefit of such defendant participant or on behalf of such defendant participant, and (II) any reimbursements of the amounts actually paid by such defendant participant with respect to prior asbestos expenditures for fiscal years 1998 through 2002, regardless of when such reimbursements were actually paid; or

(C) 1.67024 percent of the revenues for the most recent fiscal year ending on or prior to December 31, 2002, of the affiliated group to which such defendant participant belongs.

(5) JUDICIAL REVIEW.—A defendant participant who is aggrieved by the denial by the Administrator of its application under this paragraph is entitled to judicial review under section 303, and during the pendency of such review, section 223(a) shall not apply to that defendant participant. Without regard to section 305(a), the reviewing court may, in its discretion, provide such interlocutory relief to the defendant participant as may be just.

(6) APPLICABILITY OF THE GUARANTEE SURCHARGE.—A defendant participant whose application for a limitation on its annual payment obligation to the Fund under subparagraph (A) is approved by the Administrator, shall not be exempt from the guaranteed payment surcharge established under subsection (1) unless otherwise provided in this Act.

(7) MINIMUM PAYMENT.—Notwithstanding the limitations provided in this subsection, a defendant participant that is granted a limitation by the Administrator shall pay no less than 5 percent of the amount the participant is scheduled to pay under section 202.

(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, 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) GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such an adjustment by demonstrating to the satisfaction of the Administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the Administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.-In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected financial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately preceding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101(31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments of extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the Administrator considers relevant.

(C) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the Administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the Administrator determines at the time of the renewed adjustment that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(E) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its 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.). Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this sub-paragraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and analyses submitted to the Administrator were made in good faith and are reasonable and attainable.''

(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 exception 25 ally 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 measured against the likely cost of past and potential future claims in the absence of this Act;

(III) when compared to the median payment rate for all defendant participants in the same tier; or

(IV) 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;

(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; and

(iv) may, subject to the discretion of the Administrator, be exempt from any payment obligation if such defendant participant establishes with the Administrator that—

(I) such participant has satisfied all past claims; and

(II) there is no reasonable likelihood in the absence of this Act of any future claims with costs for which the defendant participant might be responsible.

(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 16 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 10 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 be limited.

SA 2791. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after ''SECTION 1. SHORT TITLE;'' in the amendment and insert the following:

This Act may be cited as the ''Asbestos and Silica Claims Priorities Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Asbestos is a mineral that was widely used before the mid-1970s for insulation, fireproofing, and other purposes.

(2) Many American workers were exposed to asbestos, especially during the Second World War.

(3) Long-term exposure to asbestos has been associated with mesothelioma and lung cancer, as well as with such non-malignant conditions as asbestosis, pleural plaques, and diffuse pleural thickening.

(4) Although the use of asbestos has dramatically declined since 1980 and workplace exposures have been regulated since 1971 by the Occupational Safety and Health Administration, the diseases caused by asbestos often have long latency periods and past exposures will continue to result in significant claims well into the future.

(5) Asbestos related claims, driven largely by unimpaired claimants, have flooded our courts such that the United States Supreme Court has characterized the situation as ''an elephantine mass'' that ''calls for national legislation'' (Ortiz v. Fibreboard Corporation, 119 S. Ct. 2295, 2302 (1999).

(6) The American Bar Association supports enactment of Federal legislation that would allow persons alleging non-malignant asbestos-related disease claims to file a cause of action in Federal or State court only if those persons meet the medical criteria in the ''ABA Standard for Non-Malignant Asbestos-Related Disease Claims'' and toll all applicable statutes of limitations until such time as the medical criteria in such standard are met.

(7) Reports indicate that up to 90 percent of asbestos claims are filed by individuals who allege that they have been exposed to asbestos, but who suffer no demonstrable asbestos-related impairment. Lawyer-sponsored x-ray screenings of workers at occupational locations are used to amass large numbers of claimants, the vast majority of whom are unimpaired.

(8) The costs of compensating unimpaired claimants and litigating their claims jeopardizes the ability of defendants to compensate people with cancer and other serious diseases, threatens the savings, retirement benefits, and jobs of current and retired employees, and adversely affects the communities in which the defendants operate.

(9) More than 73 companies have declared bankruptcy due to the burden of asbestos litigation. The rate of asbestos-driven bankruptcies is accelerating. Between 2000 and 2004, there were more asbestos-related bankruptcy filings than in either of the prior 2 decades.

(10) Bankruptcies have led plaintiffs and their lawyers to expand their search for solvent peripheral defendants. The number of asbestos defendants now includes over 8,500 companies, affecting many small and medium size companies and industries that span 85 percent of the United States economy.

(11) Efforts to address asbestos litigation may augment silica-related filings.

(12) Silica is a naturally occurring mineral and is the second most common constituent of the earth's crust. Crystalline silica in the form of quartz is present in sand, gravel, soil, and rocks.

(13) Silica-related illness, including silicosis can develop from the inhalation of respirable silica dust. Silicosis was widely recognized as an occupational disease many years ago.

(14) Silica claims, like asbestos claims, often involve individuals with no demonstrable impairment. Claimants frequently are identified through the use of interstate, for-profit, screening companies.

(15) Silica screening processes have been found subject to substantial abuse and potential fraud in Federal silica litigation (In re Silica Prods. Liab. Litig. (MDL No. 1553), 398 F. Supp. 2d 563 (S.D. Tex. 2005)) and it therefore is necessary to address silica legislation to preempt an asbestos-like litigation crisis.

(16) Concerns about statutes of limitations may prompt unimpaired asbestos and silica claimants to bring lawsuits prematurely to protect against losing their ability to assert a claim in the future should they develop an impairing condition.

(17) Sound public policy requires that the claims of persons with no present physical impairment from asbestos or silica exposure, be deferred to give priority to physically impaired claimants, and to safeguard the jobs, benefits, and savings of workers in affected companies.

(18) Claimant consolidations, joinders, and similar procedures used by some courts to deal with the mass of asbestos and silica cases can—

(A) undermine the appropriate functioning of the court system;

(B) deny due process to plaintiffs and defendants; and

(C) further encourage the filing of thousands of cases by exposed persons who are not sick and likely will never develop an impairing condition caused by exposure to asbestos or silica.

(19) Several states have enacted legislation to prioritize asbestos and silica claims that serve as a model for national reform including Texas, Ohio, Florida, and Georgia.

(20) Asbestos litigation, if left unchecked by reasonable congressional intervention, will—

(A) continue to inhibit the national economy and run counter to plans to stimulate economic growth and the creation of jobs;

(B) threaten the savings, retirement benefits, and employment of defendant's current and retired employees;

(C) affect adversely the communities in which these defendants operate; and

(D) impair interstate commerce and national initiatives.

(21) The public interest and the interest of interstate commerce requires deferring the claims of exposed persons who are not sick in order to—

(A) preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related injuries; and

(B) safeguard the jobs, benefits, and savings of American workers and the well-being of the national economy.

(b) PURPOSES.—The purposes of this Act are to—

(1) give priority to current claimants who can demonstrate an asbestos-related or silica-related impairment based on reasonable, objective medical criteria;

(2) toll the running of statutes of limitations for persons who have been exposed to asbestos or to silica, but who have no present asbestos-related or silica-related impairment; and

(3) enhance the ability of the courts to supervise and control asbestos and silica litigation.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.—The term ''AMA Guides to the Evaluation of Permanent Impairment'' means the most current version of the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required by this Act.

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

(A) chrysotile;

(B) amosite;

(C) crocidolite

(D) tremolite asbestos;

(E) anthophyllite asbestos;

(F) actinolite asbestos;

(G) winchite;

(H) richterite;

(I) asbestiform amphibole minerals; and

(J) any of the minerals described in subparagraphs (A) through (I) that have been chemically treated or altered, including all minerals defined as asbestos under section 1910 of title 29, Code of Federal Regulations in effect at the time an asbestos claim is filed.

(3) ASBESTOS CLAIM.—The term ''asbestos claim''—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or related to the alleged health effects associated with the inhalation or ingestion of asbestos, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to a workers' compensation law or a veterans' benefits program.

(4) ASBESTOSIS.—The term ''asbestosis'' means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos.

(5) BOARD-CERTIFIED INTERNIST.—The term ''Board-certified internist'' means a qualified physician—

(A) who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(6) BOARD-CERTIFIED OCCUPATIONAL MEDICINE SPECIALIST.—The term ''Board-certified occupational medicine specialist'' means a physician—

(A) who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(7) BOARD-CERTIFIED PATHOLOGIST.—The term ''Board-certified pathologist'' means a qualified physician—

(A) who holds primary certification in anatomic pathology or combined anatomic or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Internal Medicine;

(B) whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or post mortem specimens; and

(C) whose certification was current at the time of—

(i) any tissue or slide examination; or

(ii) rendition of any report required under this Act.

(8) BOARD-CERTIFIED PULMONOLOGIST.—The term ''Board-certified pulmonologist'' means a qualified physician—

(A) who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(9) CERTIFIED B-READER.—The term ''Certified B-reader'' means a person—

(A) who has successfully passed the B-reader certification examination for x-ray interpretation sponsored by the National Institute for Occupational Safety and Health; and

(B) whose certification was current at the time of any readings required under this Act.

(10) CHEST X-RAYS.—The term ''chest x-rays'' means radiographic films taken in accordance with all applicable Federal and State standards and in the posterior-anterior view.

(11) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any party asserting an asbestos or silica claim, including a—

(i) plaintiff;

(ii) counterclaimant;

(iii) cross-claimant; or

(iv) third-party plaintiff.

(B) CLAIMS ON BEHALF OF AN ESTATE.—If any claim described in subparagraph (A) is brought through, or on behalf of, an estate, the term claimant includes the executor, surviving spouse, or any other descendant of the decedent.

(C) CLAIMS ON BEHALF OF A MINOR.—If any claim described in subparagraph (A) is brought through, or on behalf of, a minor or incompetent person, the term claimant includes the parent or guardian of such minor.

(12) DLCO.—The term ''DLCO'' means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

(13) EXPOSED PERSON.—

(A) IN GENERAL.—The term ''exposed person'' means a person whose claimed exposure to asbestos or silica is the basis for an asbestos or silica claim.

(B) SILICA CLAIMS.—With respect to any claim for exposure to silica, the term ''exposed person'' means a person whose claimed exposure to silica is by means of the alleged inhalation of respirable silica.

(14) FEV–1.—The term ''FEV–1'' means forced expiratory volume in the first second, which is the maximal volume of air expelled in 1 second during performance of simple spirometric tests.

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

(16) ILO SCALE.—The term ''ILO scale'' means the system for the classification of chest x-rays set forth in the most current version of the International Labor Office's Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect at the time of the performance of any examination or test on the exposed person required by this Act.

(17) PREDICTED LOWER LIMIT OF NORMAL.—The term ''predicted lower limit of normal'' means the calculated standard convention lying at the fifth percentile, below the upper 95 percent of the reference population, based on age, height, and gender, according to the recommendations of the American Thoracic Society as referenced in the AMA's Guides to the Evaluation of Permanent Impairment.

(18) QUALIFIED PHYSICIAN.—The term ''qualified physician'' means a board-certified internist, occupational medicine specialist, pathologist, or pulmonologist—

(A) who is licensed to practice in any State;

(B) who has personally conducted a physical examination of the exposed person, or in the case of a board-certified pathologist, has examined tissue samples or pathological slides of the exposed person, or if the exposed person is deceased, based upon a detailed review of the medical records and existing tissue samples and pathological slides of the deceased person;

(C) who is treating or has treated the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination or, in the case of a board–certified pathologist, has examined tissue samples or pathological slides of the exposed person at the request of such treating physician; and

(D) whose diagnosing, examining, testing, screening or treating of the exposed person was not, directly or indirectly, premised upon, and did not require, the exposed person or claimant to retain the legal services of any attorney or law firm.

(19) SILICA.—The term ''silica'' a respirable crystalline form of the naturally occurring mineral form of silicon dioxide, including quartz, cristobalite, and tridymite.

(20) SILICA CLAIM.—The term ''silica claim''—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or in any way related to the alleged health effects associated with the inhalation of silica, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to silica dust, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to the workers' compensation law or a veterans' benefits program.

(21) SILICOSIS.—The term ''silicosis'' means fibrosis of the lung produced by inhalation of silica, including—

(A) acute silicosis;

(B) accelerated silicosis; and

(C) chronic silicosis.

(22) STATE.—The term ''State''—

(A) means any State of the United States; and

(B) includes—

(i) the District of Columbia;

(ii) Commonwealth of Puerto Rico;

(iii) the Northern Mariana Islands;

(iv) the Virgin Islands;

(v) Guam;

(vi) American Samoa; and

(vii) any other territory or possession of the United States, or any political subdivision of any of the locales described under this paragraph.

(23) SUBSTANTIAL CONTRIBUTING FACTOR.—The term ''substantial contributing factor''—

(A) in the context of an asbestos claim, means that—

(i) a claimant shall identify—

(I) the specific asbestos product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable asbestos fibers in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific asbestos exposure; and

(B) in the context of a silica claim, means that—

(i) a claimant shall identify—

(I) the specific silica product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable silica particles in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific silica exposure.

(24) TOTAL LUNG CAPACITY.—The term ''total lung capacity'' means the volume of gas contained in the lungs at the end of a maximal inspiration.

(25) 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.

(26) 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—

(i) 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; or

(ii) any claim for exemplary or punitive damages by an employee, estate, heir, representative, or any other person or entity against the employer of an exposed person arising out of, or related to, an asbestos-related injury or silica-related injury.

SEC. 4. ELEMENTS OF PROOF FOR ASBESTOS OR SILICA CLAIMS.

(a) IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM.—

(1) IN GENERAL.—It shall be an essential element to bring or maintain an asbestos or silica claim, that an exposed person suffer a physical impairment, of which asbestos or silica was a substantial contributing factor to such impairment.

(2) EVIDENCE AS TO EACH DEFENDANT.—Any requirement of a prima facie showing under this section shall be made as to each defendant against whom a claimant alleges an asbestos or silica claim.

(b) PRELIMINARY PROCEEDINGS; SERVICE OF PRIMA FACIE EVIDENCE OF IMPAIRMENT.—

(1) FILING OF REPORT.—A claimant in any civil action alleging an asbestos or silica claim shall file, together with the complaint or other initial pleading, a written report and supporting test results constituting prima facie evidence of the exposed person's asbestos-related or silica-related impairment meeting the requirements of this section as to each defendant.

(2) TIMING.—For any asbestos or silica claim pending on the date of enactment of this Act, a claimant shall file the written report and supporting test results described in paragraph (1) not later than 180 days after such date or not later than 60 days prior to the commencement of trial, whichever occurs first.

(3) DEFENDANTS RIGHT TO CHALLENGE.—A defendant shall be afforded a reasonable opportunity to challenge the adequacy of any proffered prima facie evidence of impairment.

(4) DISMISSAL.—A claim shall be dismissed without prejudice upon a finding of failure to make the prima facie showing required under this section.

(c) NEW CLAIM REQUIRED INFORMATION.—

(1) IN GENERAL.—Any asbestos claim or silica claim filed in a Federal or State court, on or after on the date of enactment of this Act shall include a sworn information form containing the following information:

(A) The name, address, date of birth, social security number, and marital status of the claimant.

(B) The name, last address, date of birth, social security number, and marital status of the exposed person.

(C) If the claimant alleges exposure to asbestos or silica through the testimony of another person or other than by direct or bystander exposure to a product or products, the name, address, date of birth, social security number, and marital status, for each person by which claimant alleges exposure (hereafter in this subsection referred to as the ''index person'') and the relationship of the claimant to each such person.

(D) For each alleged exposure of the exposed person and for each index person—

(i) the specific location and manner of each such exposure;

(ii) the beginning and ending dates of each such exposure; and

(iii) the identity of the manufacturer of the specific asbestos or silica to which the exposed person or index person was exposed.

(E) The occupation and name of the employer of the exposed person at the time of each alleged exposure.

(F) If the asbestos claim or silica claim involves more than 1 claimant, the identity of the defendant or defendants against whom each claimant asserts a claim.

(G) The specific disease related to asbestos or silica claimed to exist.

(H) Any—

(i) supporting documentation of the condition claimed to exist; and

(ii) documentation to support the claimant or index person's identification of the asbestos or silica product that such person was exposed to.

(2) INDIVIDUAL REQUIREMENT.—

(A) IN GENERAL.—All asbestos claims and silica claims along with any sworn information required under paragraph (1) shall be individually filed.

(B) CLASS CLAIMS NOT PERMITTED.—No claims on behalf of a group or class of persons shall be permitted.

(d) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR NONMALIGNANT ASBESTOS CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged nonmalignant asbestos–related condition in the absence of a prima facie showing of physical impairment of the exposed person for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis.

(D) A determination by the diagnosing, qualified physician, on the basis of a medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, that the claimant had a permanent respiratory impairment rating of at least Class 2 as defined by, and evaluated under, the AMA's Guides to the Evaluation of Permanent Impairment.

(E) Evidence verifying that the exposed person has an ILO quality 1 chest x-ray (or a

quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale—

(i) bilateral small irregular opacities (s, t, or u) graded 1/0 or higher on the ILO scale;

(ii) bilateral pleural thickening graded b2 or higher on the ILO scale including blunting of the costophrenic angle; or

(iii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(F) A determination by the diagnosing, qualified physician that asbestosis or diffuse pleural thickening is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the claimant has—

(i) either—

(I) forced vital capacity below the predicted lower limit of normal and FEV–1/FVC ratio (using actual values) at or above the predicted lower limit of normal; or

(II) forced vital capacity below the predicted lower limit of normal and total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; and

(ii) diffusing capacity of carbon monoxide below the lower limit of normal or below 80 percent of predicted.

(G) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or silica-related disease does not meet the requirements of this subsection.

(H) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(e) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged asbestos-related cancer, other than mesothelioma, in the absence of a prima facie showing of a primary cancer for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis of the cancer.

(D) Evidence verifying that the exposed person has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral small irregular opacities (s, t, or u) graded 1/0 or higher on the ILO scale; or

(ii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or asbestos-related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(f) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED MESOTHELIOMA.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to alleged mesothelioma in the absence of a prima facie showing of an asbestos-related malignant tumor with a primary site of origin in the pleura, the peritoneum, or pericardium.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a report by a qualified Board-certified pathologist certifying the diagnosis of mesothelioma and a report by a qualified physician certifying that the mesothelioma was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person.

(g) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related condition, other than a silica-related cancer, in the absence of a prima facie showing of physical impairment as a result of a medical condition to which exposure to silica was a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of such history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/0 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis);

(iii) pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988);

(iv) progressive massive fibrosis radiologically established by large opacities greater than 1 centimeter in diameter; or

(v) acute silicosis.

(D) If the claimant is asserting a claim for silicosis, evidence verifying there has been a sufficient latency period for the applicable type of silicosis.

(E) A determination by the diagnosing, qualified physician, on the basis of a personal medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment.

(F) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related

disease does not meet the requirements of this subsection.

(G) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(h) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related cancer in the absence of a prima facie showing of a primary cancer for which exposure to the defendant's silica is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including silica and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of that history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/0 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis); or

(iii) a pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988).

(D) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to silica; and

(ii) the date of any such diagnosis of the cancer.

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(i) COMPLIANCE WITH TECHNICAL STANDARDS.—Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies—

(1) shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment in the AMA's Guides to the Evaluation of Permanent Impairment, the most current version of the Official Statements of the American Thoracic Society regarding lung function testing, including general considerations for lung function testing, standardization of spirometry, standardization of the measurement of lung volumes, standardization of the single-breath determination of carbon monoxide uptake in the lung, and interpretative strategies for lung testing in effect at the time of the performance of any examination or test on the exposed person required by this Act;

(2) may not be based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of any State in which the examination, test, or screening was conducted; and

(3) may not be obtained under the condition that a claimant retains the legal services of an attorney or law firm sponsoring the examination, test, or screening.

SEC. 5. PROCEDURES.

(a) NO PRESUMPTION AT TRIAL.—Evidence relating to the prima facie showings required under section 4 shall not—

(1) create any presumption that a claimant has an asbestos or silica-related injury or impairment; and

(2) be conclusive as to the liability of any defendant.

(b) ADMISSIBILITY OF EVIDENCE.—No evidence shall be offered at a trial, and a jury shall not be informed of—

(1) the granting or denial of a motion to dismiss an asbestos or silica claim under the provisions of this Act; or

(2) the provisions of section 4 with respect to what constitutes a prima facie showing of asbestos or silica-related impairment.

(c) DISCOVERY.—Until such time as a trial court enters an order determining that a claimant has established prima facie evidence of impairment, no asbestos or silica claim shall be subject to discovery, except discovery—

(1) related to establishing or challenging such prima facie evidence; or

(2) by order of the trial court upon—

(A) motion of 1 of the parties; and

(B) for good cause shown.

(d) CONSOLIDATION.—

(1) AT TRIAL.—

(A) IN GENERAL.—A court may consolidate for trial any number and type of asbestos or silica claims with the consent of all the parties.

(B) ABSENCE OF CONSENT.—In the absence of any consent under subparagraph (A), a court may consolidate for trial only asbestos claims or silica claims relating to the same exposed person and members of the household of such exposed person.

(2) CLASS ACTIONS.—No class action or any other form of mass aggregation claim filing relating to more than 1 exposed person, except claims relating to the exposed person and members of the household of such exposed person, shall be permitted for asbestos or silica claims.

(3) AT DISCOVERY.—Any decision by a court to consolidate claims under paragraph (1) shall not preclude consolidation of asbestos or silica claim cases by a court order for pretrial or discovery purposes.

(e) FORUM NON CONVENIENS.—

(1) IN GENERAL.—Any asbestos or silica claim filed on or after the date of enactment of this Act, if the court in which such claim is pending, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this Act applies would be more properly heard in a forum outside the State, district, or division in which such claim was filed, the court shall—

(A) decline to exercise jurisdiction under the doctrine of forum non conveniens; and

(B) shall stay or dismiss such claim.

(2) CONSIDERATIONS.—In determining whether to grant a motion to stay or dismiss a claim under paragraph (1), a court shall consider whether—

(A) an alternate forum exists in which such claim or action may be tried;

(B) the alternate forum provides an adequate remedy;

(C) maintenance of such claim in the court of the State in which the claim was filed would work a substantial injustice to the moving party;

(D) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to such claim;

(E) the balance of the private interests of the parties and the public interest of the State in which such claim was filed predominate in favor of such claim being brought in an alternate forum; and

(F) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(3) WAIVER OF STATUTE OF LIMITATIONS DEFENSE.—A trial court may not abate or dismiss a claim under this subsection until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff, the defendant waives the right to assert a statute of limitations defense in all other States, districts, or divisions in which such claim was not barred by limitations at the time such claim was filed in the State where such claim was originally filed as necessary to effect a tolling of the limitations periods in those States —

(A) beginning on the date such claim was originally filed; and

(B) ending on the date—

(i) such claim is dismissed; or

(ii) an abatement period of 1 year ends.

(4) COURT DUTIES.—A court may not abate or dismiss a claim under paragraph (3) until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff in another State, district, or division, that the claimant and the defendant may—

(A) rely on responses to discovery already provided under the rules of civil procedure of

the State, district, or division in which such claim was originally filed; and

(B) rely on any additional discovery that may be conducted under the rules of civil procedure in another State, district, or division.

(f) VENUE.—

(1) IN GENERAL.—An asbestos or silica claim filed after the date of enactment of this Act may be filed only in the county of the State or the district or division of the United States where—

(A) the claimant resided for a period of at least 180 consecutive days immediately prior to filing suit; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which such claim is based.

(2) IMPROPER VENUE.—With respect to asbestos or silica claims pending as of the date of enactment of this Act, and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, has not commenced with presentation of evidence to the trier of fact as of the date of enactment of this Act, any claim as to which venue would not have been proper if the claim originally had been brought in accordance with paragraph (1) shall, not later than 90 days after the date of enactment of this Act, be transferred to the court of general civil jurisdiction in the county, district, or division of the State in which the action is pending in which either—

(A) the claimant was domiciled at the time the asbestos or silica claim originally was filed; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which the claim is based.

(3) REMOVAL.—

(A) IN GENERAL.—If a State court refuses or fails to apply the provisions of this Act, any party in a civil action for an asbestos claim may remove such action to a district court of the United States in accordance with chapter 89 of title 28, United States Code.

(B) JURISDICTION OVER REMOVED ACTIONS.—The district courts of the United States shall have jurisdiction of all civil actions removed under this paragraph, without regard to the amount in controversy and without regard to the citizenship or residence of the parties.

(C) REMOVAL BY ANY DEFENDANT.—A civil action may be removed to the district court of the United States under this paragraph by any defendant without the consent of all defendants.

(D) REMAND.—A district court of the United States shall remand any civil action removed solely under this paragraph, unless the court finds that—

(i) the State court failed to comply with procedures prescribed by law; or

(ii) the failure to dismiss by the State court lacked substantial support in the record before the State court.

(E) LIMITATION.—Civil actions in State court subject to this Act may not be removed to any district court of the United States unless such removal is otherwise proper without regard to the provisions of this Act or is removed under this paragraph.

(g) PREEMPTION.—

(1) IN GENERAL.—This Act shall govern all asbestos and silica claims filed in Federal or State courts on or after the effective date of this Act, or which are pending in Federal or State courts on the effective date of this Act and in which the trial, or any new trial or retrial following motion, appeal or otherwise, has not commenced with presentation of evidence to the trier of fact as of the effective date of this Act, except for enforcement of claims for which a final judgment has been duly entered by a court and that is no longer subject to any appeal or judicial review on the effective date of this Act.

(2) GREATER LIMITATIONS BY STATES.—Nothing in this Act shall limit or preempt any State law or precedent having the effect of imposing additional or greater limits or restrictions on the assertion or prosecution of an asbestos or silica claim.

SEC. 6. STATUTE OF LIMITATIONS; 2–DISEASE RULE.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—An asbestos or silica claim not barred in a State as of the date of enactment of this Act, a claimant's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date—

(A) on which an exposed person received a medical diagnosis of an asbestos-related impairment or silica-related impairment;

(B) on which an exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment or silica-related impairment; or

(C) of death of the exposed person having an asbestos-related or silica-related impairment.

(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise time-barred as a matter of applicable State law as of the date of enactment of this Act.

(3) NO EFFECT ON SETTLEMENT AGREEMENTS.—Nothing in this section shall be construed so as to adversely affect, impair, limit, modify, or nullify any settlement agreement with respect to an asbestos or silica claim entered into before the date of enactment of this Act.

(b) 2–DISEASE RULE; DISTINCT CLAIMS.—

(1) IN GENERAL.—An asbestos or silica claim arising out of a non-malignant condition shall be a distinct cause of action, wholly separate from a claim for an asbestos-related or silica-related cancer.

(2) NO DAMAGES FOR FEAR.—No damages shall be awarded for fear or increased risk of future disease in any civil action asserting an asbestos or silica claim.

SEC. 7. EXPERTS.

(a) IN GENERAL.—A person who holds a valid medical license in good standing in a State, but who is not licensed to practice medicine in that State, and who testifies, whether by deposition, affidavit, live, or otherwise, as a medical expert witness on behalf of any party in an asbestos or silica claim is deemed to have a temporary license to practice medicine in the State in which the claim is pending solely for the purpose of providing such testimony and is subject to that extent to the authority of the medical licensing board or agency of that State.

(b) PENALTY FOR FALSE TESTIMONY.—If a physician renders expert medical testimony that is false, intentionally misleading or deceptive, or that intentionally misstates the relevant applicable standard of care, the medical licensing board or agency of the State in which the claim is pending may take such action as is permitted under the laws and regulations of that State governing the conduct of physicians.

(c) RULE OF CONSTRUCTION.—This section shall not be construed to permit an out of State physician to practice medicine in any other State other than as provided in this section.

SEC. 8. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) CONSTRUCTION WITH OTHER LAWS.—This Act shall not be construed to—

(1) affect the scope or operation of any workers' compensation law or veterans' benefit program;

(2) affect the exclusive remedy or subrogation provisions of any such law; or

(3) authorize any lawsuit which is barred by any such provision of law.

(b) CONSTITUTIONAL AUTHORITY.—The constitutional authority for this Act is contained in Article I, section 8, clause 3 and Article III, section 1 of the Constitution of the United States.

SEC. 10. EFFECTIVE DATE.

(a) IN GENERAL.—This Act applies to all asbestos or silica claims filed on or after the date of enactment of this Act.

(b) PENDING PROCEEDINGS.—This Act also applies to any pending asbestos or silica claims in which a trial has not commenced as of the date of enactment of this Act.

SA 2792. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 121, lines 25 through page 122, line 1, strike ''substantially equivalent to those of Libby, Montana'' and insert ''greater than the standard non-occupationally exposed population''.

SA 2793. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 37, between lines 22 and 23, insert the following:

(B) EXCEPTION.—The Administrator may by rule adopt a lower percentage limitation for particular classes of cases, if the Administrator finds that—

(i) the percentage limitation otherwise applicable under this subsection would result in unreasonably high compensation to representatives of claimants in such cases; and

(ii) such limitation would not unduly limit the availability of representatives to claimants.

(c) REASONABLE FEE FOR WORK ACTUALLY PERFORMED.—In addition to paragraph (A), a representative of an individual may not receive a fee, unless—

(A) the representative submits to the Administrator appropriately detailed billing documentation for the work actually performed in the course of representation of the claimant; and

(B) the Administrator finds, based on the amount of the award made to a claimant under this Act and on billing documentation submitted by such claimant's representative, that the fee to be awarded for the work actually performed on behalf of the claimant

does not exceed 200 percent of a reasonable hourly fee for such work.

On page 37, line 23, strike ''(3)'' and insert ''(D)''.

SA 2794. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 277, line 6, strike ''$600,000,000'' and insert ''$150,000,000''.

SA 2795. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, line 22, strike ''5 years'' and insert ''2 years, and in no case shall such total borrowing at any 1 time exceed $10,000,000,000.''.

SA 2796. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, line 11, strike ''(A) IN GENERAL.—''

On page 69, line 19, strike all through page 70, line 22.

On page 118, line 6, strike all through page 120, line 4.

SA 2797. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, line 16, strike all through page 243, line 22, and insert the following:

(2) FEDERAL SOURCES OF BORROWING.—The Administrator may not borrow from the Federal Financing Bank or any other financing source of the Federal Government.

SA 2798. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, line 22, strike ''monetary''.

On page 316, line 4, strike ''substantial contributing factor'' and insert ''contributing factor, in whole or in part,''.

SA 2799. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 365, between lines 8 and 9, insert the following:

(i) INJUNCTION AFTER CONFIRMATION OF BANKRUPTCY PLAN OF REORGANIZATION.—

(1) IN GENERAL.—Section 524(g)(2)(B)(ii)(IV)(bb) of title 11, United States Code, is amended by inserting after ''plan'' the following: '', or, if such a vote is not obtained with respect to any such class of claimants so established, the plan satisfies the requirements for confirmation of a plan under section 1129(b) that would apply to such class if the class did not accept the plan for purposes of section 1129(a)(8) (whether or not the class has accepted the plan)''.

(2) EFFECTIVE DATE; APPLICATION.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act, and shall apply with respect to cases under title 11 of the United States Code, which were commenced before, on, or after such date.

SA 2800. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 298, strike lines 16 and 17, and insert the following:

''(A) the trust qualifies as a trust under section 201 of that Act; and

''(B) the trust does not file an election under section 410 of that Act.

On page 375, after line 23, insert the following:

SEC. 410. OPT-OUT RIGHTS OF CERTAIN TRUSTS AND EFFECT OF OPT-OUT.

(a) OPT-OUT RIGHTS.—Any trust defined under section 201(8) that has been established or formed under a plan of reorganization under chapter 11 of title 11, United States Code, confirmed by a duly entered order or judgment of a court, which order or judgment is no longer subject to any appeal or judicial review on the date of enactment of this Act, may elect not to be covered by this Act by filing written notice of such election to the Administrator not later than 90 days after the date of enactment of this Act.

(b) EFFECT OF OPT-OUT.—

(1) IN GENERAL.—This Act nor any amendment made by this Act shall apply to—

(A) any trust that makes an election under subsection (a); or

(B) any claim or future demand that has been channeled to that trust.

(2) ASSETS AND OTHER RIGHTS AND CLAIMS.—A trust that makes an election under subsection (a) shall retain all of its assets. The contractual and other rights of a trust making an election under subsection (a) and claims against other persons (whether held directly or indirectly by others for the benefit of the trust), including the rights and claims of the trust against insurers, shall be preserved and not abrogated by this Act.

SA 2801. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 271, line 4, strike ''SCREENING,''.

On page 271, line 7, strike all beginning with ''medical'' through the comma on page 271, line 8.

On page 272, line 10, strike all through page 277, line 6.

On page 277, line 7, strike ''(e)'' and insert ''(c)''.

On page 279, line 7, strike ''(f)'' and insert ''(d)''.

On page 279, lines 9 and 10, strike ''medical screening''.

On page 279, line 13, strike ''(g)'' and insert ''(e)''.

SA 2802. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Fairness in Asbestos Injury Resolution Act of 2006'' or the ''FAIR Act of 2006''.

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

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 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.

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

(1) create a privately funded administrative scheme 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 worsen;

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

(J) 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.

(2) 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 claims alleging damage or injury to tangible property, or claims for benefits under a workers' compensation law or veterans' benefits program.

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

(4) CHIEF EXECUTIVE OFFICER.—The term ''Chief Executive Officer'' means the Chief Executive Officer for the Asbestos Injury Claims Resolution Corporation appointed under sections 101(b) and 109(b).

(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, to the extent that the illness meets the medical criteria requirements established under subtitle C of title I, asbestosis, severe asbestosis disease, disabling asbestosis disease, mesothelioma, and lung cancer.

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

(9) 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.

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

(11) 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).

(12) 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.

(13) 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.

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

(15) SUCCESSOR IN INTEREST.—The term ''successor in interest'' means any person that in 1 or a series of transactions, acquires all or substantially all of the assets and properties (including, without limitation, under section 363(b) or 1123(b)(4) of title II, United States Code), 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.

(16) 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.

(17) 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—Asbestos Injury Claims Resolution Corporation

SEC. 101. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION CORPORATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—There is established an Asbestos Injury Claims Resolution Corporation (referred to in this Act as the ''Corporation'') to undertake a program on compensation for injuries suffered by exposure to asbestos. The Corporation shall undertake the performance of the duties in this Act.

(2) PURPOSE.—The purpose of the Corporation 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 nonadversarial manner, to individuals whose health has been adversely affected by exposure to asbestos. Compensation amounts provided by the Corporation shall be subject to the availability of funds in the Asbestos Injury Claims Resolution Fund.

(3) EXPENSES.—There shall be available from the Asbestos Injury Claims Resolution Fund to the Chief Executive Officer sums reasonably necessary for the administrative and legal expenses of the Corporation, not to exceed $100,000,000 for the first 6 years, $50,000,000 for the following 10 years, and $25,000,000 thereafter.

(b) APPOINTMENT OF THE CHIEF EXECUTIVE OFFICER.—

(1) IN GENERAL.—The Chief Executive Officer shall be appointed by the Board of Directors of the Asbestos Injury Claims Resolution Corporation, to serve for a term of 5 years.

(2) REMOVAL.—The Chief Executive Officer may be removed at any time by the Board of Directors for any reason the Board determines sufficient.

(c) DUTIES OF CHIEF EXECUTIVE OFFICER.—

(1) IN GENERAL.—The Chief Executive Officer 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 Corporation, including entering into cooperative agreements with other Federal agencies or State agencies and entering into contracts with non-governmental 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) adopting such written 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 Chief Executive Officer 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 Corporation.

(2) CERTAIN ENFORCEMENTS.—For each infraction relating to paragraph (1)(H), the Chief Executive Officer also refers such matters to the Attorney General who 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 Attorney General shall prescribe appropriate regulations to implement paragraph (1)(H).

(3) SELECTION OF DEPUTY CHIEF EXECUTIVE OFFICERS.—The Chief Executive Officer shall select a Deputy Chief Executive Officer for Claims Administration to carry out the Chief Executive Officer's responsibilities under this title and a Deputy Chief Executive Officer for Fund Management to carry out the Chief Executive Officer's responsibilities under title II of this Act. The Deputy Chief Executive Officers shall report directly to the Chief Executive Officer.

(d) EXPEDITIOUS DETERMINATIONS.—The Chief Executive Officer shall prescribe rules to expedite claims for asbestos claimants with exigent circumstances.

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

(f) PRIVACY OF RECORDS.—

(1) IN GENERAL.—The Corporation shall adopt written procedures that are at least as protective of the privacy of records under section 522a of title 5, United States Code (commonly referred to as the Privacy Act of 1974), that shall govern the availability of records to claimants, participants, and the public of the Corporation, including the Asbestos Insurers Committee within 180 days after the date of enactment of this Act.

(g) PUBLICATION OF WRITTEN PROCEDURES.—The Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet any written procedures or rules promulgated or adopted under this Act.

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 Chief Executive Officer 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 2 members. Of the 2—

(i) 1 shall be selected to represent the interests of claimants; and

(ii) 1 shall be selected to represent the interests of participants.

(B) The Chief Executive Officer shall appoint 16 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 each year thereafter.

(5) The Chief Executive Officer shall provide to the Committee such information as is necessary and appropriate for the Committee to carry out its responsibilities under this section. The Chief Executive Officer 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.

(6) The Chief Executive Officer 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 Chief Executive Officer, 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 Chief Executive Officer 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 Chief Executive Officer 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) 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.

(c) LEGAL ASSISTANCE.—

(1) IN GENERAL.—As part of the program established under subsection (a), the Chief Executive Officer 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 Chief Executive Officer shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Chief Executive Officer. The claimants shall not be required to use the attorneys listed on such roster.

(3) NOTICE.—

(A) IN GENERAL.—The Chief Executive Officer 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.

(d) ATTORNEY'S FEES.—

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

(2) EXCEPTION.—The Chief Executive Officer may by rule adopt a lower percentage limitation for particular classes of cases if the Chief Executive Officer finds that—

(A) the percentage limitation otherwise applicable under this paragraph would result in unreasonably high compensation to claimants' representatives in such cases; and

(B) such limitation would not unduly limit the availability of representatives to claimants.

(3) REASONABLE FEE FOR WORK ACTUALLY AND REASONABLY PERFORMED.—In addition to the provisions specified in paragraphs (1) and (2), a representative of an individual may not receive a fee unless—

(A) the representative submits to the Chief Executive Officer appropriately detailed billing documentation for the work actually and reasonably performed in the course of representation of the claimant; and

(B) the Chief Executive Officer finds that the fee to be awarded is for work actually and reasonably performed on behalf of the claimant and does not exceed 200 percent of a reasonable hourly fee for such work.

(4) 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. PROGRAM STARTUP.

(a) INTERIM WRITTEN PROCEDURES.—Not later than 90 days after the date of enactment of this Act, the Chief Executive Officer shall adopt interim written procedures for the processing of claims under this title and the operation of the Fund under title II, including procedures for the expediting of exigent claims.

(b) EXIGENT HEALTH CLAIMS.—

(1) IN GENERAL.—The Chief Executive Officer shall develop procedures to provide for an expedited process to categorize, evaluate, and pay exigent health claims. Such procedures shall include, pending adoption of final written procedures, adoption of interim written procedures as needed for the processing of exigent 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) documentation that a physician has diagnosed the claimant as having mesothelioma; 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) SPECIAL EXPEDITED PROCEDURES FOR PENDING MALIGNANT MESOTHELIOMA ASBESTOS CLAIMS.—

(A) IN GENERAL.—An individual who has an asbestos claim pending in any Federal or State court on the enactment date of this Act and who has documentation from a board certified pathologist that the pathologist has diagnosed the claimant with malignant mesothelioma may file a claim for compensation under the special expedited provisions of subparagraph (B).

(B) EXPEDITED CLAIMS.—An exigent claim filed under subparagraph (A) shall be processed for expedited decision if the individual—

(i) provides the documentation required by subparagraph (A);

(ii) attests that he has not received an award from any source for malignant mesothelioma or, if he has, the specifics of that award; and

(iii) attests that he had an asbestos claim for malignant mesothelioma pending in a Federal or State court on the date of enactment of this Act and provides documentation of that pending asbestos claim, including any response to that claim by a defendant and any court orders.

(C) DECISION.—Within 90 days after the receipt of the information required by subparagraphs (A) and (B), the Chief Executive Officer shall determine if that information is sufficient to meet the medical criteria of section 121(d)(10), ''Malignant Level 10'', and shall issue a decision to the claimant. If the information is insufficient, the Chief Executive Officer shall state the reasons with particularity and offer assistance to the claimant of the type provided under section 104, ''Claimant Assistance'', to cure the insufficiency in an expeditious manner.

(D) AVAILABILITY OF PROCEDURE.—The expedited procedures of this paragraph shall be available for malignant mesothelioma claims filed within 1 year of the date of enactment of this Act.

(4) ADDITIONAL EXIGENT HEALTH CLAIMS.—The Chief Executive Officer may, in final written procedures issued under section 101(c), designate additional categories of claims that qualify as exigent health claims under this subsection.

(c) EXTREME FINANCIAL HARDSHIP CLAIMS.—The Chief Executive Officer shall, in final written procedures issued under section 101(c), designate categories of claims to be handled on an expedited basis as a result of extreme financial hardship.

(d) INTERIM CHIEF EXECUTIVE OFFICER.—Until a Chief Executive Officer is appointed by the Board of Directors, the President shall appoint an Interim Chief Executive Officer who shall have all the authority conferred by this Act on the Chief Executive Officer and who shall be deemed to be the Chief Executive Officer for the purposes of this Act. Before final written procedures are promulgated relating to claims processing, the Interim Chief Executive Officer may prioritize claims processing, without regard to the time requirements under subtitle B, based on severity of illness and likelihood that the illness in question was exposed by exposure to asbestos.

(e)TRANSFER OF JURISDICTION OF CLAIMS.—

(1) IN GENERAL.—

(A) TRANSFER OF JURISDICTION.—Notwithstanding any other provision of this Act, exclusive jurisdiction for the resolution of any asbestos claim pending as of the date of enactment of this Act or of any subsequently filed asbestos claim, shall be transferred to the Asbestos Claims Resolution Corporation, other than a claim for which a verdict or final order or judgment has been entered by a court before the date of enactment of this Act. The procedures under section 113 shall be followed in order to effectuate the transfer.

(B) PENDING COURT PROCEEDINGS.—In order to effectuate the transfer of jurisdiction, any Federal or State court with a pending or subsequently filed asbestos claim is required to enter a judgment of dismissal on 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 such action on its own motion.

(2) PURSUAL OF MESOTHELIOMA CLAIMS IN FEDERAL COURT.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, if, not later than 1 year after the date of enactment of this Act, the Chief Executive Officer cannot certify to Congress that the Fund is operational and procedures are in place to review and pay mesothelioma claims at a reasonable rate, each person that has filed a mesothelioma claim stayed under paragraph (1)(A), or with such a claim arising after the date of enactment of this Act, may pursue that claim under the conditions described in paragraph (3) in a Federal district court located within—

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

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

(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 only against that defendant in the Federal district 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 Federal district the trial court shall determine which 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) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL FUND.—If an asbestos claim is pursued in Federal court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134. If the Chief Executive Officer subsequently certifies to Congress that the Fund has become operational and the procedures are in place to review and pay asbestos claims at a reasonable rate, any claim in a civil action in Federal 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, shall be deemed a reinstated claim against the Fund and the civil action before the Federal or State court shall be null and void. If the Chief Executive Officer tenders an award to a claimant, any claim in a civil action in Federal court that has not yet resulted in a final judgment and award for the plaintiff shall be deemed a reinstated claim and the civil action before the Federal court shall be null and void.

(3) LIMITS ON CASES.—In any action permitted under paragraph (2), the following restrictions shall apply:

(A) AWARD VALUES.—Relief awarded in an action permitted under paragraph (2) shall not exceed the amount of compensation authorized to be awarded under this Fund to a claimant under Malignant Level VII.

(B) ATTORNEYS' FEES.—

(i) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with an action permitted under paragraph (2), more than 20 percent of a final award made as a result of such action.

(ii) REASONABLE FEE FOR WORK ACTUALLY PERFORMED.—In addition to the limitation specified in clause (i), a representative of an individual may not receive a fee unless—

(I) the representative submits to the Chief Executive Officer appropriately detailed billing documentation for the work actually and reasonably performed in the course of representation of the claimant; and

(II) the Chief Executive Officer finds that the fee to be awarded is for work actually and reasonably performed on behalf of the claimant and does not exceed 200 percent of a reasonable hourly fee for such work.

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

(i) $5,000; or

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

(4) OFFSET.—

(A) DEFINITION.—In this paragraph, the term ''asbestos expenditure'' has the same meaning given the term ''prior asbestos expenditure'' in paragraph (7) of section 201, but without regard to the limit on the date of payment expressed in that paragraph.

(B) OFFSET ON OBLIGATION.—Asbestos expenditures incurred by a participant as a result of this subsection shall be offset from the participant's obligations to the Fund and from defendant or insurance participants' total obligations to the Fund.

SEC. 106. AUTHORITY OF THE CHIEF EXECUTIVE OFFICER.

The Chief Executive Officer on any matter within the jurisdiction of the Chief Executive Officer under this Act may subpoena persons to compel testimony, records, and other information relevant to the responsibilities of the Chief Executive Officer under this section. The subpoena may be enforced 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.

SEC. 107. ESTABLISHMENT OF CORPORATION.

(a) FEDERAL CHARTER.—There is established a corporation to be known as the Asbestos Injury Claims Resolution Corporation (''Corporation'').

(b) NATURE OF CORPORATION.—The Corporation is a nonprofit corporation and shall have no capital stock. The Corporation is not an agency or establishment of the United States Government.

(c) TERMINATION OF CORPORATION.—The Corporation shall dissolve 40 years after the date of enactment of this Act, unless dissolved sooner by the Board. All remaining funds held by the Corporation shall be distributed to the defendant participants and insurer participants in proportion to the percentage of assessments paid into the Corporation.

SEC. 108. BOARD OF DIRECTORS; OFFICERS AND EMPLOYEES; CONFLICTS.

(a) BOARD OF DIRECTORS.—There shall be in the Corporation a Board of Directors. The Board shall appoint the Chief Executive Officer and formulate the policies of the Corporation.

(b) APPOINTMENT.—The Corporation shall have a Board of Directors (''Board''), consisting of 7 members. The Board shall be appointed as follows:

(1) DESIGNATED MEMBERS.—The Secretary of the Treasury, the Attorney General, and the Secretary of Labor shall serve as members of the Board.

(2) APPOINTED MEMBERS.—The remaining 4 members of the Board shall be appointed by the President. The members of the Board shall not, by reason of such membership, be deemed to be officers or employees of the United States.

(3) INELIGIBILITY.—None of the Directors 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.

(c) OPERATION OF THE BOARD.—

(1) CHAIR.—The Board shall be chaired by a member elected by the Board, but the Chairperson may not be a full-time Federal employee.

(2) MEETINGS.—Meetings of the Board may be convened by the Chairperson upon reasonable notice, but the Board shall meet at least once per year.

(3) QUORUM.—A quorum shall consist of all of the Directors or their representatives.

(4) COMPENSATION.—The compensation of each member of the Board shall be paid by the Corporation as current expenses. Each member other than members serving by virtue of their Federal office shall be compensated at the daily equivalent of the highest rate payable under section 5332 of title 1, for each day (including travel time) during which the member is engaged in the actual performance of duties as a member of the Board. Members of the Board shall be reimbursed by the Corporation for actual, reasonable, and necessary expenses (including traveling and subsistence expenses) incurred by them in the performance of the duties vested in the Board by this Act.

(e) OFFICERS AND EMPLOYEES.—

(1) STATUS.—Officers and employees of the Corporation are not employees of the Federal Government as a result of their service with the Corporation.

(2) CHIEF EXECUTIVE OFFICER.—There shall be in the Corporation a Chief Executive Officer who shall be responsible for carrying out the functions of the Corporation as described in section 101(c) and in accordance with policies established by the Board. The Chief Executive Officer shall be appointed by the Board of Directors under section 101(b) and on such additional terms as the Board may determine and may be removed by the Board of Directors in accordance with section 101(b)(2). The Chief Executive Officer shall receive compensation at the rate provided by law for the Vice President of the United States.

(3) APPOINTMENT.—The Chief Executive Officer shall appoint, remove, and fix compensation for all subordinate officers and employees of the Corporation as determined necessary.

(4) COMPENSATION.—No officer or employee of the Corporation, other than the Chief Executive Officer, may be compensated by the Corporation at an annual rate of pay which exceeds the rate of basic pay in effect for level I of the Executive Schedule under section 5312 of title 5, United States Code.

(f) CONFLICTS OF INTEREST.—No part of the Corporation's revenue, income, or property shall inure to the benefit of its directors, officers, and employees, and such revenue, earnings, or other income, or property shall be used for the carrying out of the corporate purposes set forth in this Act. No director, officer, or employee of the corporation shall in any manner directly or indirectly participate in the deliberation upon or the determination of any question affecting his or her personal interests or the interests of any corporation, partnership, or organization in which he or she is directly or indirectly interested.

(g) REGULATIONS.—

(1) AUTHORITY.—The Attorney General, after consultation with the Secretaries of the Treasury and of Labor, shall issue regulations imposing on the Chief Executive Officer, the Deputy Chief Executive Officers, and the Board a fiduciary duty to manage the affairs of the Corporation with prudence in order to provide timely compensation to eligible claimants, giving appropriate priority to those most ill, while also preserving the funds available to the Corporation in order to compensate all eligible claimants.

(2) SUNSET.—Effective 2 years after the enactment of this Act, all authority to issue and revise regulations under this section shall terminate.

(h) PERSONAL LIABILITY.—The Chief Executive Officer, Deputy Chief Executive Officers, and members of the Board shall be exempt from civil liability for any act or omission committed within the scope of their employment with the Corporation, except for acts that constitute gross negligence or intentional wrongdoing.

(i) CORPORATE COMPLIANCE OFFICER.—

(1) IN GENERAL.—The Board of Directors shall establish within the Corporation a Corporate Compliance Office headed by a Chief Compliance Officer selected by the President on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

(2) INDEPENDENCE.—Neither the Board nor the Chief Executive Officer shall prevent or prohibit the Chief Compliance Officer from initiating, carrying out, or completing any audit or investigation during the course of any audit or investigation.

(3) STAFF.—The Board shall authorize the Chief Compliance Officer to obtain sufficient staff and other resources to carry out the function of the position.

(4) DUTIES.—It shall be the duty and responsibility of the Chief Compliance Officer to—

(A) provide policy direction for, and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the Corporation;

(B) recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Corporation for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(C) recommend policies for promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Corporation, or the identification and prosecution of participants in such fraud or abuse;

(D) keep the Chief Executive Officer, the Board, and Congress fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Corporation; and

(E) recommend corrective action concerning such problems, abuses, and deficiencies, and report on the progress made in implementing such corrective action.

(5) CRIMINAL VIOLATIONS.—In carrying out the duties and responsibilities established under this section, the Chief Compliance Officer shall file a criminal complaint with the Attorney General whenever the Chief Compliance Officer has reasonable grounds to believe there has been a violation of Federal criminal law.

SEC. 109. POWERS; OFFICES; TAX LAWS; AUDIT; ANNUAL REPORT.

(a) POWERS.—In furtherance of the purposes of the Corporation, the Corporation may—

(1) adopt bylaws consistent with law;

(2) adopt, alter, use, and destroy a corporate seal;

(3) sue and be sued, complain and defend, in its corporate name and through its own counsel, in courts of competent jurisdiction;

(4) enter into contracts and modify, or consent to the modification of, any contract or agreement to which the Corporation is a party or in which the Corporation has an interest;

(5) make advance, progress, or other payments;

(6) own and dispose of property;

(7) issue written policies and statements; and

(8) exercise any and all powers established under this Act and such incidental powers as are necessary to carry out its powers, duties, and functions under section 101 and other provisions of this Act.

(b) PRINCIPAL AND BRANCH OFFICES.—The Corporation shall maintain its principal office in the metropolitan Washington, DC, area. The Corporation may establish offices in any place or places in which the Corporation may carry on all or any of its operations and business.

(c) TAX LAWS.—The Corporation, including its franchise and income, shall be exempt from the tax laws and from taxation now or hereafter imposed by the United States, or any territory or possession thereof, or by any State, county, municipality, or local taxing authority.

(d) AUDIT.—The programs, activities, receipts, expenditures, and financial transactions of the Corporation shall be subject to audit by an independent certified public accounting firm under generally accepted accounting principles that would apply to a private not-for-profit corporation. The auditing firm shall have access to such books, accounts, financial records, reports, files, and such other papers, things, or property belonging to or in use by the corporation and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. A report on each such audit shall be made by the auditing firm to the Board of Directors, to the Secretary of the Treasury, and to Congress.

(e) ANNUAL REPORT.—Within 6 months after the close of each fiscal year, the Corporation shall submit to the President and to the Committees on the Judiciary of the Senate and the House of Representatives the report on the activities of the Corporation during the prior fiscal year required under section 405 of this Act.

(f) ANNUAL REPORT CERTIFICATION.—Before submission of the annual report required under section 405 of this Act, the Chief Executive Officer and the Deputy Chief Executive Officers, in regard to their particular areas of responsibility, shall certify that—

(1) the signing officer has reviewed the report;

(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the Corporation as of, and for, the periods presented in the report;

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the Corporation is made known to such officers by others within the Corporation, particularly during the period in which the periodic reports are being prepared;

(C) have evaluated the effectiveness of the Corporation's internal controls as of a date within 90 days before the report; and

(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

(5) the signing officers have disclosed to the Comptroller General and to the independent auditing firm—

(A) all significant deficiencies in the design or operation of internal controls which could adversely affect the Corporation's ability to record, process, summarize, and report financial data and have identified any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Corporation's internal controls; and

(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

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 estate of that individual, if the individual is deceased or incompetent) may file a claim with the Corporation 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 Corporation under this section within 2 years after the date on which—

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

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

(C) the Chief Executive Officer certifies the Fund is operational, 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 non-malignant 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 pending—

(i) in a Federal or State court; or

(ii) with a trust established under title 11, United States Code,

such claimant shall file a claim under this section within 2 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.—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) REQUIRED INFORMATION.—A claim filed under subsection (a) shall be in such form, and contain such information in such detail, as the Chief Executive Officer shall by written procedures prescribe. At a minimum, a claim shall include—

(1) the name, social security number, sex, 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) a complete employment history sufficient to establish required asbestos exposure, accompanied by Social Security records;

(4) a complete 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, including any claim under a workers' compensation law, brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal, or pleural reaction, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise;

(8) for any claimant who has made a claim for asbestos-related injury or any other pulmonary, parenchymal, or pleural reaction under a workers' compensation law, a certification that the claimant has notified the workers' compensation insurer or self-insured employer of the claim made under this Act; and

(9) 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, evidence to support the assertion of nonsmoking or exsmoking, 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 Chief Executive Officer 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 Chief Executive Officer shall, in accordance with this section, determine whether each claim filed under this Act satisfies the requirements for eligibility for an award under this Act and, if so, the value of the award. In making such determinations, the Chief Executive Officer shall consider the claim presented by the claimant, the factual and medical evidence submitted by the claimant in support of the claim, and the results of such investigation as the Chief Executive Officer may deem necessary to determine whether the claim satisfies the criteria for eligibility established by this Act.

(2) ADDITIONAL EVIDENCE.—The Chief Executive Officer 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 paid by the Corporation in accordance with CPT codes at medicare rates by region, at the time of provision of services.

(b) PROPOSED DECISIONS.—Not later than 90 days after the filing of a claim, the Chief Executive Officer 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) REVIEW OF PROPOSED DECISIONS.—

(1) RIGHT TO HEARING.—

(A) IN GENERAL.—Any claimant not satisfied with a proposed decision of the Chief Executive Officer 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 Chief Executive Officer. 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 Chief Executive Officer 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.

(2) REVIEW OF WRITTEN RECORD.—In lieu of a hearing under paragraph (1), any claimant not satisfied with a proposed decision of the Chief Executive Officer 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 Chief Executive Officer. If such review is requested, the claimant shall be afforded an opportunity to submit any written evidence or argument which he or she believes relevant.

(d) 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 Chief Executive Officer 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 (c).

(2) TIME AND CONTENT.—If the claimant requests review of all or part of the proposed decision the Chief Executive Officer 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.

(e) 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 Chief Executive Officer shall develop methods for auditing and evaluating the medical evidence submitted as part of a claim. The Chief Executive Officer may develop additional methods for auditing and evaluating other types of evidence or information received by the Chief Executive Officer.

(2) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

(A) IN GENERAL.—If the Chief Executive Officer 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 Chief Executive Officer under subparagraph (A), the Chief Executive Officer 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 Chief Executive Officer.

(b) REVIEW OF CERTIFIED B-READERS.—

(1) EVALUATION.—At a minimum, the Chief Executive Officer shall prescribe procedures to randomly assign a statistically significant sample of claims for evaluation by independent certified B-readers of x-rays submitted in support of a claim, the cost of which shall be paid by the Corporation.

(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 Chief Executive Officer 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 Chief Executive Officer shall take into account the findings of the 2 independent B readers in making the determination on such claim.

(4) CERTIFIED B-READERS.—The Chief Executive Officer 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 Chief Executive Officer 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, the Chief Executive Officer shall have the authority, notwithstanding any other provision of law, 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 Chief Executive Officer 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 Chief Executive Officer, but shall address at least 5 percent of the claimants asserting status as nonsmokers or ex-smokers.

(3) CONSENT.—

(A) IN GENERAL.—The Chief Executive Officer may require the performance of blood tests or any other appropriate medical test, where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, the cost of which shall be paid by the Corporation.

(B) SERUM COTININE SCREENING.—The Chief Executive Officer shall require the performance of serum cotinine screening of all claimants who assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, the cost of which shall be paid by the Corporation.

(4) PENALTY FOR FALSE STATEMENTS.—

(A) IN GENERAL.—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).

(B) NO COMPENSATION.—Any claimant penalized as described under subparagraph (A) shall not be entitled to compensation under the Fund.

(d) PULMONARY FUNCTION TESTING.—The Chief Executive Officer shall develop auditing procedures for pulmonary function test results submitted as part of a claim, to ensure that tests are conducted in accordance with American Thoracic Society Criteria, as defined under section 121(a)(13).

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 REACTION.—The term ''bilateral asbestos-related nonmalignant reaction'' means a diagnosis of bilateral asbestos-related nonmalignant reaction based on—

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

(B) bilateral pleural plaques;

(C) bilateral pleural thickening; or

(D) bilateral pleural calcification.

(3) BILATERAL PLEURAL REACTION OF B2.—The term ''bilateral pleural reaction 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) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

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

(12) 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.

(13) 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 significant amounts of 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 significant amounts of asbestos fibers.

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

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

(15) 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 significant amounts 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 significant amounts of 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 significant amounts of 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.

(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 non-malignant asbestos-related disease; or

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

(C) for disease Levels VI through VIII, 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 VIII, 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) GENERAL EXPOSURE REQUIREMENTS.—In order to establish exposure to asbestos, a claimant shall present meaningful and credible evidence—

(A) by an affidavit of the claimant;

(B) by an affidavit of a coworker or family member, if the claimant is deceased and such evidence is found in proceedings under this title to be reasonably reliable;

(C) by invoices, construction, or similar records; or

(D) any other credible evidence.

(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;

(B) evidence of TLC less than 80 percent and 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 1/1 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 with a college of American Pathologists National Institution for Occupational Safety and Health level of 3 or 4;

(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;

(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 reaction 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;

(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;

(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; or

(ii) 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.—To receive Level VI compensation, a claimant shall provide—

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

(B)(i) a diagnosis by a board-certified pathologist of 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 evidence of 10 or more weighted years of substantial occupational exposure to asbestos;

(ii) a diagnosis by a board-certified pathologist of 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 evidence of 8 or more weighted years of substantial occupational exposure to asbestos; or

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

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

(7) MALIGNANT LEVEL VII.—To receive Level VII 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; or

(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.

(e) SMOKING HISTORY.—In considering a claim with respect to Level VI, the Corporation 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.

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 Reaction A.	Medical Monitoring
II	Mixed Disease With Impairment.	$20,000
III	Asbestosis/Pleural Reaction B.	$100,000
IV	Severe Asbestosis.	$400,000
V	Disabling Asbestosis.	$850,000
VI	Lung Cancer With Asbestosis.	mokers, $575,000; ex-smokers, $950,000; nonsmokers, $1,100,000
VII	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) 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. REIMBURSABLE MEDICAL MONITORING.

(a) RECIPIENTS.—Reimbursable Medical Monitoring is only available to persons who have been approved for Level I compensation under section 131.

(b) 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).

(c) PROVIDER CHARGES.—All medical monitoring costs shall be reimbursed in accordance with CPT codes at medicare rates by region, at the time of the provision of services.

(d) PROCEDURES.—The Chief Executive Officer shall issue written procedures applicable to asbestos claimants under this section.

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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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, and veterans' benefits programs be deemed as collateral source compensation for purposes of this section.

SEC. 135. STATE LIEN LAWS.

(a) IN GENERAL.—Any award of compensation under this Act shall be deemed a third-

party judgment or settlement for purposes of any Federal or State workers' compensation lien law.

(b) WORKERS' COMPENSATION.—

(1) BENEFITS BEFORE ENACTMENT.—To the extent any workers' compensation insurer, self-insured employer, or Federal workers' compensation Chief Executive Officer elects to assert any State statutory lien rights against any award of compensation under this Act, it may not seek recovery from any awards made to a claimant by the Fund for any workers' compensation benefits paid before the date of enactment of this Act.

(2) BENEFITS ON OR AFTER ENACTMENT.—

(A) IN GENERAL.—Upon acceptance or compromise of a workers' compensation claim first made after the date of enactment of this Act, or for any claim accepted or compromised before the date of enactment of this Act where future workers' compensation payments are due to be paid on or after such date, a workers' compensation insurer or self-insured employer's obligation to make any further payments shall not arise until such amount further due and owing exceeds the total amount of the award paid to the claimant.

(B) ANNUAL AMOUNTS.—In the event the annual workers' compensation benefits further due and owing exceed the annual amount of the award paid to the claimant from the Fund, then the workers' compensation insurer or self-insured employer shall be obligated to pay the claimant the difference between such annual workers' compensation benefit and the annual Fund payment.

(C) OTHER RULES.—No workers' compensation insurer or self-insured employer shall seek recovery from any such award paid to the claimant by the Fund. This subsection explicitly preempts any Federal or State workers' compensation lien law that is inconsistent with this subsection.

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(d). The Chief Executive Officer 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 such confirmation is required to avoid the liquidation or the need for further financial reorganization of that entity; 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.—

(i) IN GENERAL.—Each debtor included in Subtier 1 shall pay on an annual basis 1.67024 percent of the debtor's 2002 revenues.

(ii) EXCEPTION TO PAYMENT PERCENTAGE.—Notwithstanding clause (i), a debtor in Subtier 1 shall pay, on an annual basis, $500,000 if—

(I) such debtor, including its direct or indirect majority-owned subsidiaries, has less than $10,000,000 in prior asbestos expenditures;

(II) at least 95 percent of such debtors revenues derive from the provision of engineering and construction services; and

(III) such debtor, including its direct or indirect majority-owned subsidiaries, never manufactured, sold, or distributed asbestos-containing products in the stream of commerce.

(C) OTHER ASSETS.—The Chief Executive Officer, at the sole discretion of the Chief Executive Officer, may allow a Subtier 1 debtor to satisfy its funding obligation under this paragraph with assets other than cash if the Chief Executive Officer 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 Chief Executive Officer 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(c), 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, other than class action trusts under paragraph (6), 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 unencumbered 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.

(5) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, jointly held, in trust or otherwise, with a defendant participant, less—

(A) all allowable administrative expenses;

(B) allowable priority claims under section 507 of title 11, United States Code; and

(C) allowable secured claims.

(6) 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 60 days 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.

(3) OTHER PAYMENT FOR CERTAIN PERSONS AND AFFILIATED GROUPS.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, and if an adjustment authorized by this subsection does not impair the overall solvency of the Fund, any person or affiliated group within Tier VI whose required subtier payment in any given year would exceed such person's or group's average annual expenditure on settlements, and judgments of asbestos disease-related claims over the 8 years before the date of enactment of this Act shall make the payment required of the immediately lower subtier or, if the person's or group's average annual expenditures on settlements and judgments over the 8 years before the date of enactment of this Act is less than $100,000, shall not be required to make a payment under this Act.

(B) NO FURTHER ADJUSTMENT.—Any person or affiliated group that receives an adjustment under this paragraph shall not be eligible to receive any further adjustment under section 204(d).

(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 subsections (d) and (m), 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 Chief Executive Officer shall prescribe procedures on how amounts payable under this subtitle are to be paid, including, to the extent the Chief Executive Officer determines appropriate, procedures relating to payment in installments.

(d) ADJUSTMENTS.—

(1) IN GENERAL.—Under expedited procedures established by the Chief Executive Officer, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Chief Executive Officer 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 Chief Executive Officer's determination under this subsection under the procedures prescribed in subsection (i)(10). The Chief Executive Officer 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 Chief Executive Officer.

(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 Chief Executive Officer shall annually determine whether there has been a material change in the financial condition of the defendant participant such that the Chief Executive Officer may, consistent with the policies and legislative intent underlying this Act, reinstate under terms and conditions established by the Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer.

(4) LIMITATION ON PAYMENTS BY DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Under expedited procedures established by the Chief Executive Officer, any defendant participant may apply for a limitation on its annual payment obligation to the Fund by showing that it qualifies under subparagraph (C). The Chief Executive Officer shall promptly grant that application if the requirements under subparagraph (C) are satisfied.

(B) STAY OF PAYMENT.—A defendant participant who applies for a limitation on its annual payment obligation to the Fund under subparagraph (A) shall have the payment required under subsection (i)(1)(A)(iv) stayed until the Chief Executive Officer has made a determination with respect to the application of that defendant participant.

(C) APPLICATION FOR LIMITATION.—A defendant participant may apply under subparagraph (A) for a limit on its annual payment obligation to the Fund if that defendant participant—

(i) is included in Tiers II, III, IV, V, or VI under section 202; and

(ii) has prior asbestos expenditures less than $200,000,000 or has revenues as determined under section 203 that are less than $15,000,000,000.

(D) LIMITATION.—

(i) IN GENERAL.—A defendant participant that qualifies for a limitation under this paragraph may apply for only 1 of the limits under subclause (I), (II), or (III) of clause (ii). A defendant participant may not change its application once the application has been approved by the Chief Executive Officer.

(ii) APPLICATION FOR 1 LIMITATION.—Subject to clause (i), a defendant participant may apply for a limit of an amount equal to—

(I) 125 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant;

(II) 150 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant, excluding—

(aa) the amount of any payments by insurance carriers for the benefit of that defendant participant or on behalf of that defendant participant; and

(bb) any reimbursements of the amounts actually paid by that defendant participant with respect to prior asbestos expenditures for fiscal years 1998 through 2002, regardless of when such reimbursements were actually paid; or

(III) 1.67024 percent of the revenues for the most recent fiscal year ending on or prior to December 31, 2002, of the affiliated group to which that defendant participant belongs.

(E) JUDICIAL REVIEW.—A defendant participant is entitled to judicial review under section 303 of a denial of an application under this paragraph. During the pendency of that review, section 223(a) shall not apply to that defendant participant. Without regard to section 305(a), the reviewing court may, in its discretion, provide such interlocutory relief to the defendant participant as may be just.

(F) APPLICABILITY OF THE GUARANTEE SURCHARGE.—A defendant participant whose application under this paragraph is approved by the Chief Executive Officer, shall not be exempt from the guaranteed payment surcharge established under subsection (l), unless otherwise provided in this Act.

(G) MINIMUM PAYMENT.—Notwithstanding any other provision of this paragraph, a defendant participant that is granted a limitation by the Chief Executive Officer shall pay not less than 10 percent of the amount the participant is scheduled to pay under section 202.

(5) 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 that—

(A) 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); or

(B) the Chief Executive Officer determines that the $300,000,000 is insufficient and additional adjustments as provided under paragraph (5) are needed to address situations in which a defendant participant would otherwise be rendered insolvent by its payment obligations without such adjustment.

(6) BANKRUPTCY RELIEF.—

(A) IN GENERAL.—Any defendant participant may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such adjustment by demonstrating, to a reasonable degree of certainty, evidence that the amount of its payment obligation would render the defendant participant insolvent, as defined under section 101 of title 11, United States Code, and unable to pay its debts as they become due.

(B) INFORMATION REQUIRED.—Any defendant participant seeking an adjustment or renewal of an adjustment under this paragraph shall provide the Chief Executive Officer with the information required under section 521(1) of title 11 of the United States Code.

(C) LIMITATION.—Any adjustment granted by the Chief Executive Officer under subparagraph (A) shall be limited to the extent reasonably necessary to prevent insolvency of a defendant participant.

(D) TERM.—To the extent the Chief Executive Officer grants any relief under this paragraph, such adjustments shall have a term of 1 year. An adjustment may be renewed or modified on an annual basis upon the defendant participant demonstrating that the adjustment or modification remains justified under this paragraph.

(E) REINSTATEMENT.—During the funding period prescribed under subparagraph (A), the Chief Executive Officer shall annually determine whether there has been a material change in the financial condition of any defendant participant granted an adjustment under this paragraph such that the Chief Executive Officer may, consistent with the policies and legislative intent underlying this Act, reinstate under terms and conditions established by the Chief Executive Officer any part or all of the defendant participant's payment obligation under the statutory allocation that was not paid during the adjustment term.

(7) ADVISORY PANELS.—

(A) APPOINTMENT.—The Chief Executive Officer shall appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer'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 Chief Executive Officer 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), (g), and (m) of this section) fail in any year to raise at least $3,000,000,000, after applicable reductions or adjustments have been taken according to subsections (d) and (m), 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, after applicable reductions or adjustments have been taken according to subsections (d) and (m), the Chief Executive Officer shall unless the Chief Executive Officer implements a funding holiday under section 205(b), 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 90 days after enactment of this Act, each defendant participant that is included in Tiers II, III, IV, V, or VI shall file with the Chief Executive Officer—

(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);

(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; and

(v) a signature page personally verifying the truth of the statements and estimates described under this subparagraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(B) RELIEF.—

(i) IN GENERAL.—The Chief Executive Officer 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 Chief Executive Officer'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 Chief Executive Officer—

(A) a statement identifying all bankruptcy cases 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—

(i) a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2);

(ii) for those debtors subject to the payment requirement of section 203(b)(2)(B)(ii), a statement whether its prior asbestos expenditures do not exceed $10,000,000, and a description of its business operations sufficient to show the requirements of that section are met; and

(iii) 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; and

(G) a signature page personally verifying the truth of the statements and estimates described under this paragraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(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 Chief Executive Officer—

(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 Chief Executive Officer 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 a newspaper with a circulation of at least 500,000 and on the Internet a notice—

(i) setting forth the criteria in this Act, and as prescribed by the Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer with an address to send any notice from the Chief Executive Officer in accordance with this Act and all the information required by the Chief Executive Officer 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 in a newspaper with a circulation of at least 500,000 and on the Internet.

(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 Chief Executive Officer'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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet 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 Chief Executive Officer.

(C) PAYMENTS.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer'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 non-debtor defendant participant may consent to be assigned to Subtier 1 of the defendant participant's applicable tier.

(8) NEW INFORMATION.—

(A) EXISTING PARTICIPANT.—The Chief Executive Officer shall adopt procedures for requiring additional payment, or refunding amounts already paid, based on new information received.

(B) ADDITIONAL PARTICIPANT.—If the Chief Executive Officer, at any time, receives information that an additional person may qualify as a defendant participant, the Chief Executive Officer 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 Chief Executive Officer with respect to such person.

(9) SUBPOENAS.—The Chief Executive Officer 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 Chief Executive Officer's determination under this subsection of the applicable tier or subtier, of the Chief Executive Officer's determination under subsection (d) of a financial hardship or inequity adjustment, and of the Chief Executive Officer's determination under subsection (m) of a distributor's adjustment, if the request for rehearing is filed within 30 days after the defendant participant's receipt of notice from the Chief Executive Officer 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 Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice 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 required 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 Chief Executive Officer.

(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 Chief Executive Officer 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 Chief Executive Officer 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(d), such monies—

(A) at the discretion of the Chief Executive Officer, 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 Chief Executive Officer.

(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 required under subsection (h), after applicable reductions or adjustments have been taken according to subsections (d) and (m) 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 required under subsection (h) in any given year, the Chief Executive Officer shall, unless the Chief Executive Officer implements a funding holiday under section 205(b), impose on each defendant participant a surcharge as necessary to raise the balance required to attain the minimum aggregate annual payment required under subsection (h) 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), (g), and (m) of this section).

(2) LIMITATION.—

(A) IN GENERAL.—In no case shall the Chief Executive Officer impose a surcharge under this subsection on any defendant participant included in Subtier 3 of Tiers V or VI as described under section 203.

(B) REALLOCATION.—Any amount not imposed under subparagraph (A) shall be reallocated on a pro-rata basis, in accordance with each defendant participant's (other than a defendant participant described under subparagraph (A)) relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), and (g) of this section).

(3) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a guaranteed payment surcharge under this subsection, the Chief Executive Officer 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 Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice of a proposed certification and provide in such notice for a public comment period of 30 days.

(C) FINAL CERTIFICATION.—

(i) IN GENERAL.—The Chief Executive Officer shall publish a notice of the final certification in a newspaper with a circulation of at least 500,000 and on the Internet 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 Chief Executive Officer shall provide each defendant participant with written notice of that defendant participant's payment, including the amount of any surcharge.

(m) ADJUSTMENTS FOR DISTRIBUTORS.—

(1) DEFINITION.—In this subsection, the term ''distributor'' means a person—

(A) whose prior asbestos expenditures arise exclusively from the sale of products manufactured by others;

(B) who did not prior to December 31, 2002, sell raw asbestos or a product containing more than 95 percent asbestos by weight;

(C) whose prior asbestos expenditures did not arise out of—

(i) the manufacture, installation, repair, reconditioning, maintaining, servicing, constructing, or remanufacturing of any product;

(ii) the control of the design, specification, or manufacture of any product; or

(iii) the sale or resale of any product under, as part of, or under the auspices of, its own brand, trademark, or service mark; and

(D) who is not subject to assignment under section 202 to Tier I, II, III or VII.

(2) TIER REASSIGNMENT FOR DISTRIBUTORS.—

(A) IN GENERAL.—Notwithstanding section 202, the Chief Executive Officer shall assign a distributor to a Tier for purposes of this title under the procedures set forth in this paragraph.

(B) DESIGNATION.—After a final determination by the Chief Executive Officer under section 204(i), any person who is, or any affiliated group in which every member is, a distributor may apply to the Chief Executive Officer for adjustment of its Tier assignment under this subsection. Such application shall be prepared in accordance with such procedures as the Chief Executive Officer shall promulgate by rule. Once the Chief Executive Officer designates a person or affiliated group as a distributor under this subsection, such designation and the adjustment of tier assignment under this subsection are final.

(C) PAYMENTS.—Any person or affiliated group that seeks adjustment of its Tier assignment under this subsection shall pay all amounts required of it under this title until a final determination by the Chief Executive Officer is made under this subsection. Such payments may not be stayed pending any appeal. The Chief Executive Officer shall grant any person or affiliated group a refund or credit of any payments made if such adjustment results in a lower payment obligation.

(D) ADJUSTMENT.—Subject to paragraph (3), any person or affiliated group that the Chief Executive Officer has designated as a distributor under this subsection shall be given an adjustment of Tier assignment as follows:

(i) A distributor that but for this subsection would be assigned to Tier IV shall be deemed assigned to Tier V.

(ii) A distributor that but for this subsection would be assigned to Tier V shall be deemed assigned to Tier VI.

(iii) A distributor that but for this subsection would be assigned to Tier VI shall be deemed assigned to no Tier and shall have no obligation to make any payment to the Fund under this Act.

(E) EXCLUSIVE TO INEQUITY ADJUSTMENT.—Any person or affiliated group designated by the Chief Executive Officer as a distributor under this subsection shall not be eligible for an inequity adjustment under subsection 204(d).

(3) LIMITATION ON ADJUSTMENTS.—The aggregate total of distributor adjustments under this subsection in effect in any given year shall not exceed $50,000,000. If the aggregate total of distributors adjustments under this subsection would otherwise exceed $50,000,000, then each distributor's adjustment shall be reduced pro rata until the aggregate of all adjustments equals $50,000,000.

(4) REHEARING.—A defendant participant has a right to obtain a rehearing of the Chief Executive Officer's determination on an adjustment under this subsection under the procedures prescribed in subsection (i)(10).

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 Chief Executive Officer shall suspend, cancel, reduce, or delay any reduction under paragraph (1) if at any time the Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer shall reduce or waive all or any part of the payments required from defendant participants for that year.

(2) ANNUAL REVIEW.—The Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer shall certify that the requirements of this section are satisfied.

(2) NOTICE AND COMMENT.—Before making a final certification under this subsection, the Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet 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 Chief Executive Officer shall publish a notice of the final certification in a newspaper with a circulation of at least 500,000 and on the Internet 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 Chief Executive Officer shall provide each defendant participant with written notice of that defendant's funding obligation for that year.

SEC. 206. ACCOUNTING TREATMENT.

Defendant participants payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each defendant participant. This section shall in no way reduce the amount of monetary payments to the Fund by defendant participants as required under section 202(a)(2).

Subtitle B—Asbestos Insurers Committee

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 COMMITTEE.

(a) ESTABLISHMENT.—There is established the Asbestos Insurers Committee (referred to in this subtitle as the ''Committee'') to carry out the duties described in section 212.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Committee 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 Committee shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST.—

(i) IN GENERAL.—No member of the Committee appointed under paragraph (1) may be an employee or immediate family member of an employee of an insurer participant. No member of the Committee shall be a shareholder of any insurer participant. No member of the Committee 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 Committee.

(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 Committee may not be an officer or employee of the Federal Government, except by reason of membership on the Committee.

(3) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Committee.

(4) VACANCIES.—Any vacancy in the Committee 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 Committee.

(c) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Committee have been appointed, the Committee shall hold its first meeting.

(2) SUBSEQUENT MEETINGS.—The Committee 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 Committee.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMITTEE.

(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 Committee shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Committee 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 Committee's rule shall include a methodology for adjusting payments by insurer participants to make up, during the first 5 years of the life of the Fund and any subsequent years as provided in section 405(e) for any reduction in an insurer participant's annual allocated amount caused by the granting of a financial hardship or exceptional circumstance adjustment under this section, and any amount by which aggregate insurer payments fall below the level required under paragraph (3)(C) by reason of the failure or refusal of any insurer participant to make a required payment, or for any other reason that causes such payments to fall below the level required under paragraph (3)(C). The Committee 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 Committee or any State regulatory agency. Under this procedure, not later than 120 days after the initial meeting of the Committee, the Committee 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 Committee may consult with such actuaries and other experts as it deems appropriate. After hearings and public comment on the proposed allocation methodology, the Committee shall as promptly as possible promulgate a final rule establishing such methodology. After promulgation of the final rule, the Committee 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 Committee's and Chief Executive Officer'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 Committee's and Chief Executive Officer'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 Chief Executive Officer. 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 retrospective reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a risk or loss transfer to insure for 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, less any bankruptcy trust credits under section 222(d).

(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 Committee 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 this section 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 Committee 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 Committee may determine is relevant and appropriate.

(ii) DETERMINATION OF RESERVES.—The Committee 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.—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 Committee'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 Committee'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 Committee may determine whether to grant an adjustment and the size of any such adjustment, but except as provided under paragraph (1)(B), subsection (f)(3), and section 405(e), any such adjustment shall not affect 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 Chief Executive Officer that it remains justified.

(F) FUNDING HOLIDAYS.—

(i) IN GENERAL.—If the Chief Executive Officer 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 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 Chief Executive Officer shall reduce or waive all or any part of the payments required from insurer participants for that year.

(ii) ANNUAL REVIEW.—The Chief Executive Officer shall undertake the review required by this subsection and make the necessary determination under clause (i) every year.

(iii) LIMITATIONS OF FUNDING HOLIDAYS.—Any reduction or waiver of the insurer participants' funding obligations shall—

(I) be made only to the extent the Chief Executive Officer determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(II) be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(iv) NEW INFORMATION.—If at any time the Chief Executive Officer 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 Chief Executive Officer 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 insurer participants for that year.

(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 Committee 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 a newspaper with a circulation of at least 500,000 and on the Internet 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 Committee 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 Committee with all the information requested in the notice under a schedule or by a date established by the Committee.

(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 Committee 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 Committee'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 Committee shall publish in a newspaper with a circulation of at least 500,000 and on the Internet 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 Committee.

(4) COMMITTEE 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 Committee, an insurer participant may provide the Committee 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 Committee, the Committee receives information that an additional person may qualify as an insurer participant, the Committee 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 Committee 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 Committee 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 Committee for purposes of determining participant payments.

(B) SUBPOENAS.—The Committee 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 Committee 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 Committee 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 Committee.

(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 Committee 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 Committee under this subtitle shall, with respect to participants who are parties to a certified allocation agreement, terminate on the day after the Committee certifies such agreement. Under subsection (f), the Chief Executive Officer shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) COMMITTEE REPORT.—

(1) RECIPIENTS.—Until the work of the Committee has been completed and the Committee terminated, the Committee 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 Chief Executive Officer.

(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) AMOUNT OF INTERIM PAYMENT.—Within 90 days after the date of enactment of this Act, insurer participants shall make an aggregate payment to the Fund not to exceed 50 percent of the aggregate funding obligation specified under subsection (a)(3)(C) for year 1.

(2) RESERVE INFORMATION.—Within 30 days after the date of enactment of this Act, each insurer participant shall submit to the Chief Executive Officer a certified statement of its net held reserves for asbestos liabilities as of December 31, 2004.

(3) ALLOCATION OF INTERIM PAYMENT.—The Chief Executive Officer shall allocate the interim payment among the individual insurer participants on an equitable basis using the net held asbestos reserve information provided by insurer participants under subsection (a)(3)(B). Within 60 days after the date of enactment of this Act, the Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet the name of each insurer participant, and the amount of the insurer participant's allocated share of the interim payment. The use of net held asbestos reserves as the basis to determine an interim allocation shall not be binding on the Chief Executive Officer in the determination of an appropriate final allocation methodology under this section. All payments required under this paragraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Committee. 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 Chief Executive Officer. 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 under subsection (a)(3)(E).

(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Chief Executive Officer 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 COMMITTEE TO THE CHIEF EXECUTIVE OFFICER.—

(1) IN GENERAL.—Upon termination of the Committee under section 215, the Chief Executive Officer shall assume all the responsibilities and authority of the Committee, except that the Chief Executive Officer shall not have the power to modify the allocation methodology established by the Committee or by certified agreement or to promulgate a rule establishing any such methodology.

(2) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—Upon termination of the Committee under section 215, the Chief Executive Officer 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 Chief Executive Officer

shall increase the payments, consistent with subsection (a)(1)(B), 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) CREDITS FOR SHORTFALL ASSESSMENTS.—If insurer participants are required during the first 5 years of the life of the Fund to make up any shortfall in required insurer payments under subsection (a)(1)(B), then, beginning in year 6, the Chief Executive Officer shall grant each insurer participant a credit against its annual required payments during the applicable years that in the aggregate equal the amount of shortfall assessments paid by such insurer participant during the first 5 years of the life of the Fund. The credit shall be prorated over the same number of years as the number of years during which the insurer participant paid a shortfall assessment. Insurer participants which did not pay all required payments to the Fund during the first 5 years of the life of the Fund shall not be eligible for a credit. The Chief Executive Officer shall not grant a credit for shortfall assessments imposed under section 405(e).

(4) 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 Chief Executive Officer 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 Chief Executive Officer; 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) ACCOUNTING TREATMENT.—Insurer participants' payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each insurer participant. This subsection shall in no way reduce the amount of monetary payments to the Fund by insurer participants as required under subsection (a).

(h) JUDICIAL REVIEW.—The Committee'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 COMMITTEE.

(a) RULEMAKING.—The Committee 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 Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Committee considers advisable to carry out this Act. The Committee shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Committee's adoption of a final regulation.

(c) INFORMATION FROM FEDERAL AND STATE AGENCIES.—The Committee may secure directly from any Federal or State department or agency such information as the Committee considers necessary to carry out this Act. Upon request of the Chairman of the Committee, the head of such department or agency shall furnish such information to the Committee.

(d) POSTAL SERVICES.—The Committee 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 Committee may not accept, use, or dispose of gifts or donations of services or property.

(f) EXPERT ADVICE.—In carrying out its responsibilities, the Committee may enter into such contracts and agreements as the Committee determines necessary to obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Committee 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 Committee.

(b) TRAVEL EXPENSES.—The members of the Committee 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 Committee.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Committee 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 Committee to perform its duties. The employment of an executive director shall be subject to confirmation by the Committee.

(2) COMPENSATION.—The Chairman of the Committee 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 Committee 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 Committee 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 COMMITTEE.

The Committee shall terminate 90 days after the last date on which the Committee makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Committee is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMITTEE.

All expenses of the Committee 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer'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 Chief Executive Officer under this subsection shall be repaid in full by the Fund contributors and is limited solely to amounts available, present or future, in the Fund.

(c) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY CLAIMANTS.—

(1) IN GENERAL.—Within the Fund, the Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer may determine proper, to appear before the Chief Executive Officer 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 Chief Executive Officer determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by persons submitting information to the Chief Executive Officer or to the Asbestos Insurers Committee or any other person who provides evidence in support of such submissions for purposes of determining payment obligations under this Act, the Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer—

(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 Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet 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 Chief Executive Officer 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 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 Chief Executive Officer 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 Chief Executive Officer 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) BANKRUPTCY TRUST GUARANTEE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, the Chief Executive Officer 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 the relative aggregate funding obligations under sections 202(a)(2) and 212(a)(2)(A).

(3) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a surcharge under this subsection, the Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice 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 Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a final notice 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 Chief Executive Officer publishes the final notice in a newspaper with a circulation of at least 500,000 and on the Internet 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer may rely on any information reasonably available, and may request, and use subpoena authority of the Chief Executive Officer if necessary to obtain, relevant information from any such trust or its trustees.

(d) BANKRUPTCY TRUST CREDITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, but subject to paragraph (2) of this subsection, the Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer, 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 Chief Executive Officer may bring a civil action in any appropriate United States District Court, 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer's reasonable requests for assistance in any such proceeding. The positions taken or statements made by the Chief Executive Officer 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 Chief Executive Officer 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 pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Chief Executive Officer shall 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 unless and until it complies. If any direct insurer or reinsurer refuses to furnish any information requested by the Chief Executive Officer, the Chief Executive Officer 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 unless and until it complies. 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 Chief Executive Officer 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 Chief Executive Officer may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer after the date of the Chief Executive Officer's determination of default. 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 Chief Executive Officer or the Asbestos Insurers Committee 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 2006.''.

(j) PROPOSED TRANSACTIONS.—

(1) NOTICE OF PROPOSED TRANSACTION.—Any participant that has taken any action to effectuate a proposed transaction or a proposed series of transactions under which a significant portion of such participant's assets, properties or business will, if consummated as proposed, be, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Chief Executive Officer of such proposed transaction (or proposed series of transactions). Upon the request of such participant, and for so long as the participant shall not publicly disclose the transaction or series of transactions and the Chief Executive Officer shall not commence any action under paragraph (6), the Chief Executive Officer shall treat any such notice as confidential commercial information under section 552 of title 5, United States Code.

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days before the date of consummation of the proposed transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Chief Executive Officer a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Chief Executive Officer shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Chief Executive Officer shall not consider any notice given under paragraph (1) as given until such time as the Chief Executive Officer receives

substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Chief Executive Officer shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Chief Executive Officer to determine whether—

(i) the person or persons to whom the assets, properties or business are being transferred in the proposed transaction (or proposed series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act, or

(ii) the proposed transaction (or proposed series of transactions) would, if consummated, be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person will or has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it will or has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term ''significant portion of the assets, properties or business of a participant'' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) CONSUMMATION OF TRANSACTION.—Any proposed transaction (or proposed series of transactions) with respect to which a participant is required to provide notice under paragraph (1) may not be consummated until at least 30 days after delivery to the Chief Executive Officer of such notice, unless the Chief Executive Officer shall earlier terminate the notice period. The Chief Executive Officer shall endeavor whenever possible to terminate a notice period at the earliest practicable time.

(6) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Chief Executive Officer or any participant believes that a participant proposes to engage or has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status or potential status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Chief Executive Officer or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property, or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Chief Executive Officer or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person will or has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A)—

(I) a temporary restraining order or a preliminary or permanent injunction against such transaction (or series of transactions); or

(II) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Chief Executive Officer or a participant wishes to challenge a statement made by a participant that a person will not or has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person will or has become a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(7) RULES AND REGULATIONS.—The Chief Executive Officer may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing, and content of notices.

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, AND MONITORING.

(a) IN GENERAL.—The Chief Executive Officer shall establish a program for the education, consultation, 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 Chief Executive Officer 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.

(c) MEDICAL MONITORING PROGRAM AND PROTOCOLS.—

(1) IN GENERAL.—The Chief Executive Officer 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.

(d) CONTRACTS.—The Chief Executive Officer may enter into contracts with qualified program providers that would permit the program providers to undertake medical monitoring programs by means of subcontracts with a network of medical providers, or other health providers.

(e) REVIEW.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Chief Executive Officer shall review, and if necessary update, the protocols and procedures established under this section.

SEC. 226. OVERSIGHT BY THE SECRETARY OF THE TREASURY.

The Secretary of the Treasury shall have authority to serve as the Federal Government's safety and soundness regulator for the Corporation, and may promulgate such regulations and exercise such authority as necessary to ensure the fiscal safety and soundness of the Corporation.

SEC. 227. ADMINISTRATIVE FUNDING.

The Corporation and Asbestos Insurers Committee shall each establish a budget for

each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 6 months before the commencement of the fiscal year to which the budget pertains. The budgets shall be subject to approval by the Secretary of the Treasury.

TITLE III—JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF PROCEDURES.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction over any action to review written procedures issued by the Chief Executive Officer or by the Asbestos Insurers Committee or under this Act.

(b) REVIEW.—Any party adversely affected or aggrieved by any provision of the written procedures issued by the Chief Executive Officer or by the Asbestos Insurers Committee or under this Act shall file a petition for review not later than 60 days after the date of issuance of such procedures.

(c) STANDARD OF REVIEW.—The court shall uphold the provision of the written procedures being challenged unless the court determines that issuance of such procedure is arbitrary and capricious or contrary to law.

(d) EXPEDITED TREATMENT.—The United States Court of Appeals for the Federal Circuit shall provide expedited treatment for actions filed 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 Chief Executive Officer 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 Chief Executive Officer.

(b) EXCLUSIVE JURISDICTION.—A petition for review may only be filed in the United States Court of Appeals for the Federal Circuit.

(c) STANDARD OF REVIEW.—The court shall uphold the decision of the Chief Executive Officer 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 Federal Circuit shall have exclusive jurisdiction over any action to review a final determination by the Chief Executive Officer or the Asbestos Insurers Committee 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 Chief Executive Officer or the Asbestos Insurers Committee 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 Chief Executive Officer or the Asbestos Insurers Committee 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 Chief Executive Officer or the Asbestos Insurers Committee 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.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action challenging the constitutionality of any provision or application of this Act. The following rules shall apply:

(A) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened under section 2284 of title 28, United States Code.

(B) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, after the entry of the final decision.

(C) 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.

(2) 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.

SEC. 306. REPRESENTATIONS TO COURT.

(a) REPRESENTATIONS TO THE REVIEWING JUDICIAL BODY.—By presenting a request for judicial review under this title, a participant in the Fund, or a person acting on behalf of a participant in the Fund, certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support; and

(4) the denials of factual contentions are warranted on the evidence.

(b) SANCTIONS.—

(1) IN GENERAL.—If, after notice and a reasonable opportunity to respond, the reviewing judicial body determines that subsection (a) has been violated, the reviewing judicial body may, subject to the provisions of this subsection, impose an appropriate sanction upon the requesting participant, or parties that have violated subsection (a) or are responsible for the violation.

(2) SHOW CAUSE ORDER.—The reviewing judicial body may enter an order describing the specific conduct that appears to violate subsection (a) and directing a party to show cause why it has not violated subsection (a) with respect thereto.

(3) SANCTIONS.—

(A) IN GENERAL.—A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to subparagraph (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty of up to $500,000, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable expenses incurred as a direct result of the violation.

(B) MONETARY SANCTIONS.—Monetary sanctions may not be awarded unless the reviewing judicial body issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is to be sanctioned.

(4) ORDER.—When imposing sanctions, the reviewing judicial body shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FALSE INFORMATION.

(a) CRIMINAL LIABILITY.—

(1) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1351. 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 Committee under title II of the Fairness in Asbestos Injury Resolution Act of 2006 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.—

''(1) IN GENERAL.—It shall be unlawful for any person, in any matter involving the Office of Asbestos Disease Compensation or the Asbestos Insurers Committee, to knowingly and willfully—

''(A) falsify, conceal, or cover up by any trick, scheme, or device a material fact;

''(B) make any materially false, fictitious, or fraudulent statement or representation; or

''(C) make or use 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 2006.

''(2) PENALTY.—A person who violates this subsection shall be fined under this title or imprisoned not more than 10 years, or both.''.

(2) 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.''.

(b) FURTHER LIABILITY.—

(1) DEFINITION.—In this section, the term ''knowingly'' means that a person, with respect to information—

(A) has actual knowledge of the information;

(B) acts in deliberate ignorance of the truth or falsity of the information; or

(C) acts in reckless disregard of the truth or falsity of the information.

(2) LIABILITY.—Any defendant participant or insurer participant that knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Corporation shall be liable under the standards of section 3729 of title 31, United States Code.

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 2006, 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 2006), 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 Chief Executive Officer (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) 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 2006.''.

(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 2006) 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 2006); 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 2006; 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 2006, 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 2006 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 2006—

''(A) the trust qualifies as a trust under section 201 of that Act; and

''(B) the trust does not file an election under section 410 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 2006) shall be transferred to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006 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 Chief Executive Officer 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 Chief Executive Officer of the Fund may refuse to accept any asset that the Chief Executive Officer 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 Chief Executive Officer, 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 2006 shall not be construed to require the Chief Executive Officer 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 2006, 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 2006, 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 2006, 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 Chief Executive Officer 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 2006. 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 2006), 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 2006), 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 Chief Executive Officer shall have standing in any bankruptcy case involving a debtor participant. No bankruptcy court may require the Chief Executive Officer 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 NON-ASBESTOS 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 airborne minerals, dusts, or fibers other than asbestos 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 award under this Act; or

(II)(aa) the exposed person suffers or has suffered a functional impairment that was caused by exposure to 1 or more airborne minerals, dusts, or fibers other than asbestos;

(bb) asbestos exposure was not a significant contributing factor to such functional impairment; and

(cc) the functional impairment is materially different than that for which the exposed person (or another claiming on behalf of or through the exposed person) has obtained or is eligible to obtain an award under this Act; and

(ii) satisfies the requirements of paragraph (2).

(B) PREEMPTION.—Claims attributable to exposure to airborne minerals, dusts, or fibers other than asbestos that fail to meet the requirements of subparagraph (a) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—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 30 days after such date), shall plead with particularity the elements of subparagraph (A)(i) (I) or (II) of paragraph (1) and shall be accompanied by the information described in subparagraphs (A) through (D) of this paragraph if the claim pleads the elements of subparagraph (A)(i)(II) of paragraph (1) and by the information described in subparagraphs (B) through (D) of this paragraph if the claim pleads the elements of subparagraph (A)(i)(I) of paragraph (1)—

(A) admissible evidence, including at a minimum, a certified B-reader's report, the underlying x-ray film, and such other evidence sufficient to establish a prima facie showing that the claim may be maintained and is not preempted under paragraph (1);

(B) 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;

(C) the history of the exposed person's exposure, if any, to asbestos; and

(D) 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 Chief Executive Officer, 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, including any required court approval of the settlement, 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.

(d) EXCLUSIVE REMEDY.—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.

(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 for enforcement of claims for which an unappealable verdict or final order or final judgment has been entered by a court before the date of enactment of this Act.

(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 for any action for which an unappealable verdict or final order or final judgment has been entered by a court before the date of enactment of this Act.

(4) DISMISSAL.—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—

(i) as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act; and

(ii) orders to remand removed actions shall be immediately appealable.

(D) 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.—If, notwithstanding the express intent of Congress stated in this section, any court finally determines for any reason that an asbestos claim, including a claim described under paragraph (2), for which, as of the date of enactment of this Act, there had been no verdict or final order or final judgment entered by a court, 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. The Chief Executive Officer shall require participants seeking credit under this section to demonstrate that the participant timely pursued all available remedies, including remedies available under this section to obtain dismissal of the claim, and that the participant notified the Chief Executive Officer 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. The Chief Executive Officer may require such participant to furnish such further information as is necessary and appropriate to establish eligibility for and the amount of the credits. The Chief Executive Officer may intervene in any action in which a credit may be due under this section.

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) 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:
10	70.78
11	68.75
12	67.06
13	65.63
14	64.40
15	63.33
16	62.40
17	61.58
18	60.39
19	59.33
20	58.38
21	57.51
22	56.36
23	55.31
24	56.71
25	58.11
26	59.51

(C) 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.

(D) 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.

(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 Chief Executive Officer 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 59.64 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 preponderance 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) 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.

(5) 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, 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, 1996, 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 effective date, 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 the effective date, or by any Tier I defendant participant 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. ADDITIONAL FUNDING OR RETURN TO COURT.

(a) VERIFICATION OF UNANTICIPATED CLAIMS.—

(1) IN GENERAL.—If the number of claims that qualify for compensation under a claim level exceed 115 percent of the number of claims expected to qualify for compensation under that claim level or designation in the 2004 Congressional Budget Office estimate of asbestos-injury claims, or the Fund otherwise is projected to be unable to pay all qualified claims in any year in the future, the Chief Executive Officer shall conduct a review of a statistically significant sample of claims qualifying for compensation under the appropriate claim level or designation.

(2) DETERMINATIONS.—

(A) IN GENERAL.—The Chief Executive Officer's review shall examine the best available medical evidence in order to determine which one of the following is true:

(i) Without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation suffer from an injury or disease that was caused by occupational exposure to asbestos.

(ii) A significant number of claimants who qualified for compensation under the claim level or designation do not suffer from an injury or disease that was caused by occupational exposure to asbestos.

(B) FUTURE CLAIMS.—If the Chief Executive Officer projects that the Fund will be unable to pay all qualified claims in any year in the future, the Chief Executive Officer shall also determine whether the Fund lacks the resources to pay all qualified claimants over the life of the Fund.

(C) FINAL DETERMINATION.—The final determination of the Chief Executive Officer under this paragraph shall be made in accordance with notice and comment under subchapter II of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedure Act).

(b) JUDICIAL REVIEW OF CHIEF EXECUTIVE OFFICER VERIFICATION OF CLAIMS.—The Chief Executive Officer's determination that either subparagraph (A) or (B) in paragraph (2) of subsection (a) is true shall be subject to judicial review in the United States Court of Appeals for the District of Columbia Circuit. Review may be sought by any interested party. The review shall be conducted in accordance with the standards and procedures of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedure Act), except that all findings based on medical science shall be reviewed de novo.

(c) ADDITIONAL TRUST-FUND ASSESSMENTS OR RETURN TO COURT.—

(1) ADDITIONAL ASSESSMENTS AGAINST DEFENDANT PARTICIPANTS.—

(A) DEFINITION.—In this paragraph the term ''nonbankruptcy defendant participant'' means a defendant participant that has not entered into a final confirmed plan

of reorganization under section 524(g) of title 11, United States Code.

(B) ADDITIONAL ASSESSMENTS.—

(i) IN GENERAL.—The Chief Executive Officer shall make a recommendation under clause (ii), if the United States Court of Appeals finds as a result of its review under subsection (b) that—

(I) without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation under review suffer from an injury or disease that is caused by occupational exposure to asbestos; or

(II) the Fund lacks the resources necessary to pay all qualified claimants at the present time, and the Chief Executive Officer projects that the Fund will remain unable to pay all qualified claimants over the life of the Fund.

(ii) RECOMMENDATIONS.—If the United States Court of Appeals makes a finding under subclause (I) or (II) of clause (i), the Chief Executive Officer shall recommend to Congress that it enact—

(I) additional assessments against all nonbankruptcy defendant participants, in accordance with each nonbankruptcy defendant participant's relative prior assessments (taking into account hardship and inequity reductions), in an amount necessary to allow the Fund to compensate all qualified claimants; or

(II) an expansion of the Fund's borrowing authority, by an amount necessary to allow the Fund to compensate all qualified claimants.

(2) EXPEDITED CONGRESSIONAL ACTION ON LIMITED ADDITIONAL ASSESSMENTS OR BORROWING.—Either of the following shall constitute a modification of the Fund that shall be submitted by the Chief Executive Officer to Congress in the appropriate form for expedited action under title V:

(A) A recommendation of additional assessments that does not exceed a defendant participant's original assessment obligation by more than 10 percent, if no additional assessment has been imposed by Congress within the previous 5 years.

(B) A recommendation to expand borrowing authority by no more than $5,000,000,000.

(3) RETURN TO COURT.—

(A) IN GENERAL.—If Congress declines to enact within 1 year after the date of the recommendation made by the Chief Executive Officer under paragraph (1)(B), and the Chief Executive Officer again determines that the Fund lacks the resources necessary to pay all qualified claimants at the present time, and the Chief Executive Officer continues to project that the Fund will remain unable to pay all qualified claimants over the life of the Fund, any individual who qualifies for compensation under the Fund may file a civil action in United States District Court against any defendant participant to obtain relief for injuries suffered as a result of exposure to asbestos.

(B) EXCLUSIVE REMEDY AND LIMITATIONS.—

(i) IN GENERAL.—As of the effective date of a return to court authorized by this paragraph, an action under this paragraph 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 effective date of this Act or of the return to court, except that claims against the Fund that have qualified for compensation and remain eligible for compensation under subparagraph (F) may be paid by the Fund. The applicable statute of limitations for a claim brought under this paragraph is 2 years after the asbestos injury or disease was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis, except that claimants who filed a claim against the Fund under this Act before the return to court shall have 2 years after the date of the return to court to file an action under this paragraph, whichever is longer.

(ii) LIMITATION.—An individual who has received or is entitled to receive an award from the Fund may not bring an action under this paragraph, except—

(I) an individual who received an award for a nonmalignant disease (Levels I through V) from the Fund may assert a claim for a malignant disease under this paragraph, unless the malignancy 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 claim was settled; and

(II) an individual who received an award for a nonmalignant or malignant disease (except mesothelioma) (Levels I through VI) from the Fund may assert a claim for mesothelioma under this paragraph, 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 settled.

(C) LIMITS ON ATTORNEYS' FEES.—

(i) IN GENERAL.—In any action permitted under subparagraph (B), notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with an action permitted under subparagraph (A), more than 20 percent of a final award made as a result of such action.

(ii) REASONABLE FEE FOR WORK ACTUALLY AND REASONABLY PERFORMED.—In addition to the limitation specified in clause (i), a representative of an individual may not receive a fee unless—

(I) the representative submits to the court appropriately detailed billing documentation for the work actually performed in the course of representation of the individual; and

(II) the court finds that the fee to be awarded is for work actually and reasonably performed on behalf of the claimant does not exceed 200 percent of a reasonable hourly fee for such work.

(D) CONTINUED FUNDING.—If asbestos claims are returned to court under subparagraph (A), participants shall remain required to make payments as provided under subtitles A and B of title II. The Fund shall pay all claims under Levels VI, and VII, that were found to qualify for compensation before the date of a return to court under subparagraph (A). If the full amount of payments required under title II is not necessary for the Fund to pay claims that remain entitled to compensation, pay the Fund's debt, and support the Fund's continued operation as needed to pay such claims and debt, the Chief Executive Officer may reduce such payments. Any such reductions shall be allocated among participants in the same proportion as the liability under subtitles A and B of title II.

(d) CORRECTION OF INAPPROPRIATE CLAIMS CRITERIA.—If the United States Court of Appeals finds as a result of its review under subsection (b) that a significant number the claimants who qualified for compensation under the claim level under review do not suffer from an injury or disease that was caused by occupational exposure to asbestos, the Chief Executive Officer shall correct the compensation criteria in order to exclude from eligibility for compensation all such claims.

(e) JUDICIAL REVIEW OF CHIEF EXECUTIVE OFFICER CORRECTIONS.—The Chief Executive Officer's correction of compensation criteria under subsection (d) shall become effective upon the conclusion of final, unappealable judicial review in the United States Court of Appeals for the District of Columbia Circuit. Review may be sought by any interested party. The review shall be conducted under the standards and procedures of chapter 5 of title 5, United States Code, except that all findings based on medical science shall be reviewed de novo, and the Chief Executive Officer's corrections shall be reviewed to determine that the corrections are reasonably tailored to achieve the result required by this section. The Court may order such relief as is necessary to achieve the results required by this section.

(f) TEMPORARY STAY OF UNANTICIPATED CLAIMS.—The Chief Executive Officer shall stay payment of claims for a claim level that results in or is subject to review under subsection (a) pending such review and the collection of additional assessments or the correction of compensation criteria.

(g) REPORT.—The Chief Executive Officer 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.

(h) 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 Corporation and a description of the types of medical diagnoses and asbestos exposures underlying those claims;

(B) the number of claims denied by the Corporation 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 Corporation 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; and

(4) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(i) INJUNCTION AFTER CONFIRMATION OF BANKRUPTCY PLAN OF REORGANIZATION.—

(1) IN GENERAL.—Section 524(g)(2)(B)(ii)(IV)(bb) of title 11, United States Code, is amended by inserting after ''plan'' the following: '', or, if such a vote is not obtained with respect to any such class of claimants so established, the plan satisfies the requirements for confirmation of a plan under section 1129(b) that would apply to such class if the class did not accept the plan for purposes of section 1129(a)(8) (whether or not the class has accepted the plan)''.

(2) EFFECTIVE DATE; APPLICATION.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act, and shall apply with respect to cases under title 11 of the United States Code, which were commenced before, on, or after such date.

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 including the coverage of any costs associated with borrowing authorized under section 221(b)(2); 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. VIOLATIONS OF ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENTS.

(a) ASBESTOS IN COMMERCE.—If the Chief Executive Officer 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 Chief Executive Officer shall refer the matter in writing within 30 days after receiving that information to the Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer shall refer the matter in writing within 30 days after receiving that information to the Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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).

SEC. 408. 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 Chief Executive Officer, 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 2006.''.

(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 2006.''.

(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 2006.''.

SEC. 409. CORPORATE RESPONSIBILITY FOR ANNUAL AND FINANCIAL REPORTS.

(a) IN GENERAL.—Each periodic report, including the annual report of the Chief Executive Officer filed by the Chief Executive Officer in connection with this Act, shall be accompanied by a written statement by the Chief Executive Officer and Chief Financial Officer (or equivalent thereof) of the Corporation.

(b) CONTENTS.—The statement required under subsection (a) shall certify that the periodic report containing the financial statements fully complies with the requirements of this Act and that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

(c) CRIMINAL PENALTIES.—Whoever—

(1) certifies any statement as set forth under subsections (a) and (b), knowing that the periodic report accompanying the statement does not comport with all the requirements set forth under this section, shall be fined not more than $1,000,000 or imprisoned not more than 10 years, or both; or

(2) willfully certifies any statement as set forth under subsections (a) and (b), knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section, shall be fined not more than $5,000,000, or imprisoned not more than 20 years, or both.

SEC. 410. OPT-OUT RIGHTS OF CERTAIN TRUSTS AND EFFECT OF OPT-OUT.

(a) OPT-OUT RIGHTS.—Any trust defined under section 201(8) that has been established or formed under a plan of reorganization under chapter 11 of title 11, United States Code, confirmed by a duly entered order or judgment of a court, which order or judgment is no longer subject to any appeal or judicial review on the date of enactment of this Act, may elect not to be covered by this Act by filing written notice of such election to the Chief Executive Officer not later than 90 days after the date of enactment of this Act.

(b) EFFECT OF OPT-OUT.—

(1) IN GENERAL.—This Act nor any amendment made by this Act shall apply to—

(A) any trust that makes an election under subsection (a); or

(B) any claim or future demand that has been channeled to that trust.

(2) ASSETS AND OTHER RIGHTS AND CLAIMS.—A trust that makes an election under subsection (a) shall retain all of its assets. The contractual and other rights of a trust making an election under subsection (a) and claims against other persons (whether held directly or indirectly by others for the benefit of the trust), including the rights and claims of the trust against insurers, shall be preserved and not abrogated by this Act.

TITLE V—EXPEDITED CONGRESSIONAL ACTION

SEC. 501. CONGRESSIONAL ACTION REGARDING MODIFICATIONS OF THE FUND.

(a) IN GENERAL.—A modification of the Fund that is subject to action under the procedures of this title shall be submitted by the Chief Executive Officer to the chairman and ranking member of the Committees on the Judiciary of the United States Senate and the House of Representatives. The modification shall take effect only if Congress enacts a joint resolution of approval, described under section 602, regarding the modification. A modification that does not take effect as a result of Congress's failure to approve a joint resolution, or Congress's failure to override the President's veto of a joint resolution, may not be resubmitted to Congress in the same form.

(b) END-OF-SESSION SUBMISSIONS.—

(1) IN GENERAL.—In addition to the opportunity for approval otherwise provided under this title, in the case of a modification that was submitted to Congress—

(A) in the case of the Senate, 60 session days; or

(B) in the case of the House of Representatives, 60 legislative days;

before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 602 shall apply to such modification in the succeeding session of Congress.

(2) TREATMENT.—In applying section 602 for purposes of such additional review, a modification described under paragraph (1) shall be treated as though such modification were submitted to Congress—

(A) in the case of the Senate, the 15th session day; or

(B) in the case of the House of Representatives, on the 15th legislative day, after the succeeding session of Congress first convenes.

SEC. 502. CONGRESSIONAL APPROVAL PROCEDURE.

(a) JOINT RESOLUTION.—For purposes of this section, the term ''joint resolution'' means only a joint resolution introduced in the period beginning on the date on which the modification was submitted by the Chief Executive Officer to Congress (i.e., to the chairmen and ranking members of the Committees on the Judiciary of the Senate and the House of Representatives) and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: ''The Fairness in Asbestos Injury Resolution Act of 2006 is modified as follows: _____ ''. (The blank spaces being filled in with the Chief Executive Officer's proposed change to the Fund that requires congressional approval.)

(b) REFERRAL.—A joint resolution described in subsection (a) shall be referred to the Committees on the Judiciary of the Senate and House of Representatives.

(c) SENATE REPORT OR DISCHARGE.—In the Senate, if a joint resolution described in subsection (a) (or an identical joint resolution) has not been reported by the Judiciary Committee at the end of 20 calendar days after the committee received the resolution, the committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 5 Members of the Senate, and such joint resolution shall be placed on the calendar.

(d) PROCEDURES.—(1) In the Senate, when the Judiciary Committee has reported, or when the committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

(4) Appeals from the decisions of the chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

(e) CONSIDERATION AFTER EXPIRATION OF TIME.—In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a modification of the Fund after the expiration of the 60 session days beginning with the submission of the modification by the Chief Executive Officer to Congress.

(f) PREVIOUS ACTION.—If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

(1) The joint resolution of the other House shall not be referred to a committee.

(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution, the procedure in that House shall be the same as if no joint resolution had been received from the other House, except the vote on final passage shall be on the joint resolution of the other House.

(g) RULEMAKING.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supercedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SA 2803. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''Fairness in Asbestos Injury Resolution Act of 2006'' or the ''FAIR Act of 2006''.

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, one 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.

(10) The asbestos found in Libby, Montana, tremolite asbestos, has demonstrated an unusually high level of toxicity, as compared to chrysotile asbestos. Diseases contracted from this tremolite asbestos are unique and highly progressive. These diseases typically manifest in a characteristic pleural disease pattern, and often result in severe impairment or death without radiographic interstitial disease or typical chrysotile markers of radiographic severity. According to the Agency for Toxic Substances and Disease Registry previous studies by the National Institutes of Occupational Safety and Health document significantly increased rates of pulmonary abnormalities and disease (asbestosis and lung cancer) among former workers.

(11) Environmental Protection Agency supported studies have determined that the raw vermiculite ore mined and milled in Libby, Montana contained 21 to 26 percent asbestos, by weight. The milled ore, resulting from the processing in Libby, which was shipped out of Libby contained markedly reduced percentages of asbestos. A 1982 Environmental Protection Agency-supported study concluded that ore shipped out of Libby contained 0.3 to 7 percent asbestos, by weight.

(12) In Libby, Montana, exposure pathways are and were not limited to the workplace, rather, for decades there has been an unprecedented 24 hour per day contamination of the community's homes, playgrounds, gardens, and community air, such that the entire

community of Libby, Montana, has been designated a Superfund site and is listed on the Environmental Protection Agency's National Priorities List.

(13) These multiple exposure pathways have caused severe asbestos disease and death not only in former workers at the mine and milling facilities, but also in the workers' spouses and children, and in community members who had no direct contact with the mine. According to the Environmental Protection Agency, some potentially important alternative pathways for past asbestos exposure include elevated concentrations of asbestos in ambient air and recreational exposures from children playing in piles of vermiculite. Furthermore, the Environmental Protection Agency has determined that current potential pathways of exposure include vermiculite placed in walls and attics as thermal insulation, vermiculite or ore used as road bed material, ore used as ornamental landscaping, and vermiculite or concentrated ore used as a soil and garden amendment or aggregate in driveways.

(14) The Environmental Protection Agency also concluded, ''Asbestos contamination exists in a number of potential source materials at multiple locations in and around the residential and commercial area of Libby. . . While data are not yet sufficient to perform reliable human-health risk evaluations for all sources and all types of disturbance, it is apparent that releases of fiber concentrations higher than Occupational Safety and Health Administration standards may occur in some cases . . . and that screening-level estimates of lifetime excess cancer risk can exceed the upper-bound risk range of 1E–04 usually used by the Environmental Protection Agency for residents under a variety of exposure scenarios. The occurrence of non-occupational asbestos-related disease that has been observed among Libby residents is extremely unusual, and has not been associated with asbestos mines elsewhere, suggesting either very high and prolonged environmental exposures and/or increased toxicity of this form of amphibole asbestos.''.

(15) According to a November 2003 article from the Journal Environmental Health Perspectives titled, Radiographic Abnormalities and Exposure to Asbestos-Contaminated Vermiculite in the Community of Libby, Montana, USA, Libby residents who have evidence of ''no apparent exposure'', i.e., did not work with asbestos, were not a family member of a former worker, etc., had a greater rate of pleural abnormalities (6.7 percent) than did those in control groups or general populations found in other studies from other states (which ranged from 0.2 percent to 4.6 percent). ''Given the ubiquitous nature of vermiculite contamination in Libby, along with historical evidence of elevated asbestos concentrations in the air, it would be difficult to find participants who could be characterized as unexposed.''.

(16) Nothing in this Act is intended to increase the Federal deficit or impose any burden on the taxpayer. The Office of Asbestos Disease Compensation established under this Act shall be privately funded by annual payments from defendant participants that have been subject to asbestos liability and their insurers. Section 406(b) of this Act expressly provides that nothing in this Act shall be construed to create any obligation of funding from the United States or to require the United States to satisfy any claims if the amounts in the Fund are inadequate. Any borrowing by the Fund is limited to monies expected to be paid into the Fund, and the Administrator shall have no fiscal authority beyond the amount of private money coming into the Fund. This Act provides the Administrator with broad enforcement authority to pursue debts to the Fund owed by defendant participants or insurer participants and their successors in interest.

(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 worsen;

(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) asbestiform amphibole minerals;

(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;

(v) claims arising out of medical malpractice; or

(vi) any claim arising under—

(I) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(II) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(III) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.);

(IV) the Equal Pay Act of 1963 (29 U.S.C. 206);

(V) the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.);

(VI) section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983); or

(VII) the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

(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, in 1 or a series of transactions, acquires all or substantially all of the assets and properties (including, without limitation, under section 363(b) or 1123(b)(4) of title 11, United States Code), 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.

(19) 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.

(20) 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.

(21) 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.

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) TERMINATION OF THE OFFICE.—The Office of Asbestos Disease Compensation shall terminate effective not later than 12 months following certification by the Administrator that the Fund has neither paid a claim in the previous 12 months nor has debt obligations remaining to pay.

(4) EXPENSES.—There shall be available from the Fund to the Administrator such sums as are necessary for any and all expenses associated with the Office of Asbestos Disease Compensation and necessary to carry out the purposes of this Act. Expenses covered should include—

(A) management of the Fund;

(B) personnel salaries and expenses, including retirement and similar benefits;

(C) the sums necessary for conducting the studies required under this Act;

(D) all administrative and legal expenses; and

(E) any other sum that could be attributable to the Fund.

(b) APPOINTMENT OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator of the Office of Asbestos Disease Compensation shall be appointed by the President. The Administrator shall serve for a term of 10 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 primary 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 terminal 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 OF FINANCIAL RECORDS.—

(A) IN GENERAL.—Any person may label any record submitted under this section as a confidential commercial or financial record for the purpose of requesting exemption from disclosure under section 552(b)(4) of title 5, United States Code.

(B) DUTIES OF ADMINISTRATOR AND CHAIRMAN OF THE ASBESTOS INSURERS COMMISSION.—The Administrator and Chairman of the Asbestos Insurers Commission—

(i) shall adopt procedures for—

(I) handling submitted records marked confidential; and

(II) protecting from disclosure records they determine to be confidential commercial or financial information exempt under section 552(b)(4) of title 5, United States Code; and

(ii) may establish a pre-submission determination process to protect from disclosure records on reserves and asbestos-related liabilities submitted by any defendant participant that is exempt under section 552(b)(4) of title 5, United States Code.

(C) REVIEW OF COMPLAINTS.—Nothing in this section shall supersede or preempt the de novo review of complaints filed under section 552(b)(4) of title 5, United States Code.

(3) CONFIDENTIALITY OF MEDICAL RECORDS.—Any claimant may designate any record submitted under this section as a confidential personnel or medical file 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.

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 20 members, appointed by the President.

(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 10 years.

(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 120 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 and any other appropriate paralegal assistance;

(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) LIMITATION.—

(A) 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 a reasonable attorney's fee.

(ii) CALCULATION OF REASONABLE FEE.—Any fee obtained under clause (i) shall be calculated by multiplying a reasonable hourly rate by the number of hours reasonably expended on the claim of the individual.

(iii) REQUIREMENTS FOR COMPENSATION.—A representative of an individual shall not be eligible to receive a fee under clause (i), unless—

(I) such representative submits to the Administrator detailed contemporaneous billing records for any work actually performed in the course of representation of an individual; and

(II) the Administrator finds, based on billing records submitted by the representative

under subclause (I), that the work for which compensation is sought was reasonably performed, and that the requested hourly fee is reasonable.

(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.—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.

(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) IMMEDIATE STARTUP.—

(1) IN GENERAL.—Subject to section 101(d), the Administrator may—

(A) start receiving, reviewing, and deciding claims immediately upon the date of enactment of this Act; and

(B) reimburse the Department of Labor from the Fund for any expense incurred—

(i) before that date of enactment in preparation for carrying out any of the responsibilities of the Administrator under this Act; and

(ii) during the 60-day period following that date of enactment to carry out such responsibilities.

(2) 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 this title and the operation of the Fund under title II, including procedures for the expediting of terminal health claims, and processing of claims through the claims facility.

(b) INTERIM PERSONNEL AND CONTRACTING.—The Secretary of Labor and the Assistant Secretary of Labor for the Employment Standards Administration shall 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 including entering into contracts on an expedited or sole source basis during the startup period for the purpose of processing claims or providing financial analysis or assistance. 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) TERMINAL HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures, as provided in section 106(f), to provide for an expedited process to categorize, evaluate, and pay terminal health claims. Such procedures, as provided in section 106(f), shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of terminal health claims.

(2) ELIGIBLE TERMINAL HEALTH CLAIMS.—A claim shall qualify for treatment as a terminal health claim if—

(A) the claimant is living and provides a diagnosis of mesothelioma meeting the requirements of section 121(d)(9);

(B) the claimant is living and provides a credible declaration or affidavit, from a diagnosing 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 due to such asbestos-related illness; or

(C) the claimant is the spouse or child of an eligible terminal health claimant who—

(i) was living when the claim was filed with the Fund, or if before the implementation of interim regulations for the filing of claims with the Fund, on the date of enactment of this Act;

(ii) has since died from a malignant disease or condition; and

(iii) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(3) ADDITIONAL TERMINAL HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as terminal health claims under this subsection except that exceptional medical claims may not proceed.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of terminal health claims prior to the Fund being certified as operational, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, shall process and pay claims in accordnace with section 106(f)(2). The processing and payment of claims shall be subject to regulations promulgated under this Act.

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

(d) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health claims. The Administrator shall also prioritize claims from claimants who face 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 exposure to asbestos was a substantial contributing factor for the illness in question.

(f) STAY OF CLAIMS.—

(1) STAY OF CLAIMS.—Notwithstanding any other provision of this Act, any asbestos claim pending on the date of enactment of this Act is stayed.

(2) TERMINAL HEALTH CLAIMS.—

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

(i) IN GENERAL.—Any person that has filed a terminal health claim, as provided under subsection (c)(2), seeking a judgment or order for monetary damages in any Federal or State court before the date of the enactment of this Act, shall seek a settlement in accordance with this paragraph. Any person with a terminal health claim, as provided under subsection (c)(2), that arises after such date of enactment shall seek a settlement in accordance with this paragraph.

(ii) FILING.—

(I) IN GENERAL.—At any time before the Fund or claims facility is certified as operational and paying terminal health claims at a reasonable rate, any person with a terminal health claim as described under clause (i) shall file a notice of their intent to seek a settlement or shall file their exigent health claim with the Administrator or claims facility. Filing of an exigent health claim with the Administrator or claims facility may serve as notice of intent to seek a settlement.

(II) EXCEPTION.—Any person who seeks compensation for an exigent health claim from a trust in accordance with section 402(f) shall not be eligible to seek a settlement or settlement offer under this paragraph.

(iii) TERMINAL HEALTH CLAIM INFORMATION.—To file a terminal health claim, each individual shall provide all of the following information:

(I) The amount received or entitled to be received as a result of all collateral source compensation under section 134, and copies of all settlement agreements and related documents sufficient to show the accuracy of that amount.

(II) A description of any claims for compensation for an asbestos related injury or disease filed by the claimant with any trust

or class action trust, and the status or disposition or any such claims.

(III) All information that the claimant would be required to provide to the Administrator in support of a claim under sections 113(c) and 121.

(IV) A certification by the claimant that the information provided is true and complete. The certification provided under this subclause shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator or claims facility in support of a claim.

(V) For terminal health claims arising after the date of enactment of this Act, the claimant shall identify each defendant that would be an appropriate defendant in a civil action seeking damages for the asbestos claim of the claimant. Identification of all potential participants shall be made in good faith by the claimant.

(iv) TIMING.—A claimant who has filed a notice of their intent to seek a settlement under clause (ii) shall within 60 days after filing notice provide to the Administrator or claims facility the information required under clause (iii). If a claimant has filed an exigent health claim under clause (ii) the Administrator shall provide all affected defendants the information required under clause (iii).

(v) WEBSITE.—

(I) POSTING.—The Administrator or claims facility shall post the information described in subclause (II) to a secure website, accessible on a passcode-protected basis to participants.

(II) REQUIRED INFORMATION.—The website established under subclause (I) shall contain a listing of—

(aa) each claimant that has filed a notice of intent to seek a settlement or claim under this clause;

(bb) the name of such claimant; and

(cc) if applicable—

(AA) the name of the court where such claim was filed;

(BB) the case or docket number of such claim; and

(CC) the date such claim was filed.

(III) PROHIBITIONS.—The website established under subclause (I) shall not contain specific health or medical information or social security numbers.

(IV) PARTICIPANT ACCESS.—A participant's access to the website established under subclause (I) shall be limited on a need to know basis, and participants shall not disclose or sell data, or retain data for purposes other than paying an asbestos claim.

(V) VIOLATIONS.—Any person or other entity that violates any provision of this clause, including by breaching any data posted on the website, shall be subject to an injunction, or civil penalties, or both.

(vi) ADMINISTRATOR OR CLAIMS FACILITY CERTIFICATION OF SETTLEMENT.—

(I) DETERMINATION.—Within 60 days after the information under clause (iii) is provided, the Administrator or claims facility shall determine whether or not the claim meets the requirements of a terminal health claim.

(II) REQUIREMENTS MET.—If the Administrator or claims facility determines that the claim meets the requirements of a terminal health claim, the Administrator or claims facility shall immediately—

(aa) issue and serve on all parties a certification of eligibility of such claim;

(bb) determine the value of such claim under the Fund by subtracting from the amount in section 131 the total amount of collateral source compensation received by the claimant; and

(cc) pay the award of compensation to the claimant under clause (xiii).

(III) REQUIREMENTS NOT MET.—If the requirements under clause (iii) are not met, the claimant shall have 30 days to perfect the claim. If the claimant fails to perfect the claim within that 30-day period or the Administrator or claims facility determines that the claim does not meet the requirements of a terminal health claim, the claim shall not be eligible to proceed under this paragraph. A claimant may appeal any decision issued by a claims facility with the Administrator in accordance with section 114.

(vii) FAILURE TO CERTIFY.—If the Administrator or claims facility is unable to process the claim and does not make a determination regarding the certification of the claim as required under clause (vi), the Administrator or claims facility shall within 10 days after the end of the 60-day period referred to under clause (vi)(I) provide notice of the failure to act to the claimant and the defendants in the pending Federal or State court action or the defendants identified under clause (iii)(IV). If the Administrator or claims facility fails to provide such notice within 10 days, the claimant may elect to provide the notice to the affected defendants to prompt a settlement offer. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(viii) FAILURE TO PAY.—If the Administrator or claims facility does not pay the award as required under clause (xiii), the Administrator shall refer the certified claim within 10 days as a certified terminal health claim to the defendants in the pending Federal and State court action or to the potential defendants identified under clause (iii)(IV) for terminal claims arising after the date of enactment of this Act. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(ix) SETTLEMENT OFFER.—Any participant or participants may, within 30 days after receipt of such notice as provided under clause (vii) or (viii), file and serve on all parties and the Administrator a good faith settlement offer in an aggregate amount not to exceed the total amount to which the claimant would receive under section 131. If the aggregate amount offered by all participants exceeds the award determined by the Administrator, all offers shall be deemed reduced pro-rata until the aggregate amount equals the award amount. An acceptance of such settlement offer for claims pending before the date of enactment of this Act shall be subject to approval by the trial judge or authorized magistrate in the court where the claim is pending. The court shall approve any such accepted offer within 20 days after a request, unless there is evidence of bad faith or fraud. No court approval is necessary if the terminal health claim was certified by the Administrator or claims facility under clause (vi).

(x) ACCEPTANCE OR REJECTION.—Within 20 days after receipt of the settlement offer, or the amended settlement offer, the claimant shall either accept or reject such offer in writing. If the amount of the settlement offer made by the Administrator, claims facility, or participants equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xi) OPPORTUNITY TO CURE.—If the settlement offer is rejected for being less than what the claimant would receive under the Fund, the participants shall have 10 business days to make an amended offer. If the amended offer equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement offer in writing.

(xii) PAYMENT SCHEDULE.—

(I) MESOTHELIOMA CLAIMANTS.—For mesothelioma claimants—

(aa) an initial payment of 50 percent shall be made within 30 days after the date the settlement is accepted and the second and final payment shall be made 6 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participant, the payments may be extended 50 percent in 6 months and 50 percent 11 months after the date the settlement offer is accepted.

(II) OTHER TERMINAL CLAIMANTS.—For other terminal claimants, as defined under section 106(c)(2)(B) and (C)—

(aa) the initial payment of 50 percent shall be made within 6 months after the date the settlement is accepted and the second and final payment shall be made 12 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participants, the payments may be extended 50 percent within 1 year after the date the settlement offer is accepted and 50 percent in 2 years after date the settlement offer is accepted.

(III) RELEASE.—Once a claimant has received final payment of the accepted settlement offer, and penalty payment if applicable, the claimant shall release any outstanding asbestos claims.

(xiii) RECOVERY OF COSTS.—

(I) IN GENERAL.—Any participant whose settlement offer is accepted may recover the cost of such settlement by deducting from the participant's next and subsequent contributions to the Fund the full amount of the payment made by such participant to the terminal health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that the participant's offer is not in good faith. Any such payment shall be considered a payment to the Fund for purposes of section 404(e)(1) and in response to the payment obligations imposed on participants in title II.

(II) REIMBURSEMENT.—Notwithstanding subclause (I), if the deductions from the participant's next and subsequent contributions to the Fund do not fully recover the cost of such payments on or before its third annual contribution to the Fund, the Fund shall reimburse such participant for such remaining cost not later than 6 months after the date of the third scheduled Fund contribution.

(4) RESERVATION OF RIGHTS.—Participation in the offer and settlement process under this subsection shall not affect or prejudice any rights or defenses a party might have in any litigation.

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 sections 106(f)(2) and 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.

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—A claimant who receives an award for an eligible disease or condition shall not be precluded from submitting claims for and receiving additional awards under this title for any higher disease level for which the claimant becomes eligible, subject to appropriate setoffs as provided under section 134.

(B) LIBBY, MONTANA CLAIMS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), if a Libby, Montana claimant worsens in condition, as measured by pulmonary function tests, such that a claimant qualifies for a higher nonmalignant level, the claimant shall be eligible for an additional award, at the appropriate level, offset by any award previously paid under this Act, such that a claimant would qualify for Level IV if the claimant satisfies section 121(f)(8), and would qualify for Level V if the claimant provides—

(I) a diagnosis of bilateral asbestos related nonmalignant disease;

(II) evidence of TLC or FVC less than 60 percent; and

(III) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(ii) SUBSEQUENT MALIGNANT DISEASE.—If a Libby, Montana, claimant develops malignant disease, such that the claimant qualifies for Level VI, VII, VIII, or IX, subparagraph (A) shall apply.

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—If a claim is not filed with the Office within the limitations period specified in this subsection for that category of claim, such claim shall be extinguished, and any recovery thereon shall be prohibited.

(2) INITIAL CLAIMS.—An initial claim for an award under this Act shall be filed within 2 years after the date on which the claimant first received a medical diagnosis and medical test results sufficient to satisfy the criteria for the disease level for which the claimant is seeking compensation.

(3) CLAIMS FOR ADDITIONAL AWARDS.—

(A) NON-MALIGNANT DISEASES.—If a claimant has previously filed a timely initial claim for compensation for any non-malignant disease level, there shall be no limitations period applicable to the filing of claims by the claimant for additional awards for higher disease levels based on the progression of the non-malignant disease.

(B) MALIGNANT DISEASES.—Regardless of whether the claimant has previously filed a claim for compensation for any other disease level, a claim for compensation for a malignant disease level shall be filed within 2 years after the claimant first obtained a medical diagnosis and medical test results sufficient to satisfy the criteria for the malignant disease level for which the claimant is seeking compensation.

(4) 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 2 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 on any such claim 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.

(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 exsmoking, 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.

(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. AUDITING PROCEDURES.

(a) IN GENERAL.—

(1) DEVELOPMENT.—The Administrator shall develop methods for auditing and evaluating the medical and exposure evidence submitted as part of the claims process. 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, medical facility or attorney or law firm is not consistent with prevailing medical practices or the applicable requirements of this Act, any medical evidence from such physician, facility or attorney or law firm 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.—The Administrator shall prescribe procedures to randomly evaluate the x-rays submitted in support of a statistically significant number of claims by independent certified B-readers, the cost of which shall be paid by the Fund.

(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.—

(A) IN GENERAL.—The Administrator may require the performance of blood tests or any other appropriate medical test, where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(B) SERUM COTININE SCREENING.—The Administrator shall require the performance of serum cotinine screening on all claimants who assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(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).

(d) PULMONARY FUNCTION TESTING.—The Administrator shall develop auditing procedures for pulmonary function test results submitted as part of a claim, to ensure that such tests are conducted in accordance with American Thoracic Society Criteria, as defined under section 121(a)(13).

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.

(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 a significant amount of 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 a significant amount of 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 a significant amount of 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 a significant amount of 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 a detailed and specific affidavit that—

(i) is filed by—

(I) the claimant; or

(II) if the claimant is deceased, a coworker or a family member of the claimant; and

(ii) is found in proceedings under this title to be—

(I) reasonably reliable, attesting to the claimant's exposure; and

(II) credible and 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 and credible evidence.

(C) ADDITIONAL EVIDENCE.—The Administrator may require submission of other or additional evidence of exposure, if available, for a particular claim when determined necessary, as part of the minimum information required under section 113(c).

(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(g) 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.

(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;

(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, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as the cause of 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;

(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;

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

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of 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—

(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, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, 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;

(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; 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, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

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

(8) MALIGNANT LEVEL VIII.—

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

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

(ii)(I) of—

(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) of—

(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; and

(iii) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as the cause of the lung cancer in question; and 10 or more weighted years of substantial occupational exposure to asbestos.

(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; or

(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.

(g) 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.

(E) MESOTHELIOMA CASES.—

(i) IN GENERAL.—The Physicans Panel shall grant priority status to—

(I) all Level IX claims with other identifiable asbestos exposure as provided under paragraph (9)(B)(iv); and

(II) all Level IX claims that are filed as exceptional medical claims.

(ii) PHYSICIAN PANEL.—If the Physicians Panel issues a certificate of medical eligibility, the claimant shall be deemed to qualify for Level IX compensation. If the Physicians Panel rejects the claim, and the Administrator deems it rejected, the claimant may immediately seek judicial review under section 302.

(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.

(C) EVALUATION OF CLAIMS.—For purposes of evaluating exceptional medical claims from Libby, Montana, a claimant shall be deemed to have a comparable asbestos-related condition to an asbestos disease category Level IV, and shall be deemed to qualify for compensation at Level IV, if the claimant provides—

(i) a diagnosis of bilateral asbestos related nonmalignant disease;

(ii) evidence of TLC or FVC less than 80 percent; and

(iii) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(9) STUDY OF VERMICULITE PROCESSING FACILITIES.—

(A) IN GENERAL.—As part of the ongoing National Asbestos Exposure Review (in this section referred to as ''NAER'') being conducted by the Agency for Toxic Substances and Disease Registry (in this section referred to as ''ATSDR'') of facilities that received vermiculite ore from Libby, Montana, the ATSDR shall conduct a study of all Phase 1 sites where—

(i) the Environmental Protection Agency has mandated further action at the site on the basis of current contamination; or

(ii) the site was an exfoliation facility that processed roughly 100,000 tons or more of vermiculite from the Libby mine.

(B) STUDY BY ATSDR.—The study by the ATSDR shall evaluate the facilities identified under subparagraph (A) and compare—

(i) the levels of asbestos emissions from such facilities;

(ii) the resulting asbestos contamination in areas surrounding such facilities;

(iii) the levels of exposure to residents living in the vicinity of such facilities;

(iv) the risks of asbestos-related disease to the residents living in the vicinity of such facilities; and

(v) the risk of asbestos-related mortality to residents living in the vicinity of such facilities,

to the emissions, contamination, exposures, and risks resulting from the mining of vermiculite ore in Libby, Montana.

(C) RESULTS OF STUDY.—The results of the study required under this paragraph shall be transmitted to the Administrator.

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
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.—The Administrator may increase awards for Level IX claimants who have dependent children so long as the increase under this paragraph is cost neutral. Such increased awards shall be paid for by decreasing awards for claimants other than Level IX, so long as no award levels are decreased more than 10 percent.

(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) LUMP-SUM PAYMENTS.—

(A) In general.—The Administrator shall develop guidelines to provide for 1 lump-sum payment 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.

(B) TIMING OF PAYMENTS.—Lump-sum payments shall be made within the shorter of—

(i) not later than 30 days after the date the claim is approved by the Administrator; or

(ii) not later than 6 months after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 11 months after the date the claim is filed.

(5) EXPEDITED PAYMENTS.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of terminal health claims as described under section 106(c)(2)(B) and (C).

(B) TIMING OF PAYMENTS.—Total payments shall be made within the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 1 year after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 1 year after the date the claim is approved by the Administrator; or

(ii) not later than 2 years after the date the claim is filed.

(D) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health risks. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

(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.

(f) EFFECT OF PAYMENT.—The payment of an asbestos claim under this section shall be in full satisfaction of such claim and shall be deemed to operate as a release to such claim. No claimant with an asbestos claim that will be paid under this section may proceed in the tort system with respect to such claim.

SEC. 134. SETOFFS FOR COLLATERAL SOURCE COMPENSATION AND PRIOR AWARDS.

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of any collateral source compensation and by any amounts paid or to be paid to the claimant for a prior award under this Act.

(b) EXCLUSIONS.—

(1) COLLATERAL SOURCE COMPENSATION.—In no case shall 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.

(2) PRIOR AWARD PAYMENTS.—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 claims for a malignant disease (Levels VI through IX), unless the malignancy was diagnosed before the date on which the nonmalignancy claim was compensated.

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) life or health insurance carrier for insurance payments; or

(2) person or governmental entity on account of health care or disability payments.

(b) NO EFFECT ON CLAIMS.—

(1) IN GENERAL.—The payment of an award to an asbestos claimant under section 106 or 133 shall not affect any claim of an asbestos claimant against—

(A) a life or health insurance carrier with respect to insurance; or

(B) against any person or governmental entity with respect to healthcare or disability.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the pursuit of a claim that is preempted under section 403.

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) 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.

(3) 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.

(4) 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.

(5) 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(h);

(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.

(6) 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).

(7) ASBESTOS PREMISES CLAIM.—The term ''asbestos premises claim''—

(A) means an asbestos claim against a current or former premises owner or landowner, or person controlling or possessing premises or land, alleging injury or death caused by exposure to asbestos on such premises or land or by exposure to asbestos carried off such premises or land on the clothing or belongings of another person; and

(B) includes any such asbestos claim against a current or former employer alleging injury or death caused by exposure to asbestos on premises or land owned, controlled or possessed by the employer, if such claim is not a claim for benefits under a workers' compensation law or veterans' benefits program.

(8) ASBESTOS PREMISES DEFENDANT PARTICIPANT.—The term ''asbestos premises defendant participant'' means any defendant participant for which 95 percent or more of its prior asbestos expenditures relate to asbestos premises claims against that defendant participant.

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(d). 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 30 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 such confirmation is required to avoid the liquidation or the need for further financial reorganization of that entity; 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.

(6) ASBESTOS PREMISES DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Asbestos premises defendant participants that would be included in Tier II, III, IV or V according to their

prior asbestos expenditures shall, after 5 years of the Fund being operational, instead be assigned to the immediately lower tier, such that—

(i) an asbestos premises defendant participant that would be assigned to Tier II shall instead be assigned to Tier III;

(ii) an asbestos premises defendant participant that would be assigned to Tier III shall instead be assigned to Tier IV;

(iii) an asbestos premises defendant participant that would be assigned to Tier IV shall instead be assigned to Tier V; and

(iv) an asbestos premises defendant participant that would be assigned to Tier V shall instead be assigned to Tier VI.

(B) RETURN TO ORIGINAL TIER.—The Administrator may return asbestos premises defendant participants to their original tier, on a yearly basis, if the Administrator determines that the additional revenues that would be collected are needed to preserve the solvency of the Fund.

(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(j)(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.—

(i) IN GENERAL.—Each debtor included in Subtier 1 shall pay on an annual basis 1.67024 percent of the debtor's 2002 revenues.

(ii) EXCEPTION TO PAYMENT PERCENTAGE.—Notwithstanding clause (i), a debtor in Subtier 1 shall pay, on an annual basis, $500,000 if—

(I) such debtor, including its direct or indirect majority-owned subsidiaries, has less than $10,000,000 in prior asbestos expenditures;

(II) at least 95 percent of such debtors revenues derive from the provision of engineering and construction services; and

(III) such debtor, including its direct or indirect majority-owned subsidiaries, never manufactured, sold, or distributed asbestos-containing products in the stream of commerce.

(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 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, other than class action trusts under paragraph (6), 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 unencumbered 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.

(5) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, jointly held, in trust or otherwise, with a defendant participant, less—

(A) all allowable administrative expenses;

(B) allowable priority claims under section 507 of title 11, United States Code; and

(C) allowable secured claims.

(6) 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 60 days 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.

(3) OTHER PAYMENT FOR CERTAIN PERSONS AND AFFILIATED GROUPS.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, and if an adjustment authorized by this subsection does not impair the overall solvency of the Fund, any person or affiliated group within Tier VI whose required subtier payment in any given year would exceed such person's or group's average annual expenditure on settlements, and judgments of asbestos disease-related claims over the 8 years before the date of enactment of this Act shall make the payment required of the immediately lower subtier or, if the person's or group's average annual expenditures on settlements and judgments over the 8 years before the date of enactment of this Act is less than $100,000, shall not be required to make a payment under this Act.

(B) NO FURTHER ADJUSTMENT.—Any person or affiliated group that receives an adjustment under this paragraph shall not be eligible to receive any further adjustment under section 204(e).

(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, and such settlement, judgment, defense, or indemnity costs constitute 75 percent or more of the total prior asbestos expenditures by the person or affiliated group.

(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 subsections (e) and (n), 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) LIMITATION.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, any defendant participant may apply for a limitation on its annual payment obligation to

the Fund by showing that it qualifies under subparagraph (3), and the Administrator shall promptly grant such application if the standards in subparagraph (3) are satisfied.

(2) STAY OF PAYMENT.—A defendant participant who applies for a limitation on its annual payment obligation to the Fund under subparagraph (1) shall have the payment required under subsection (i)(1)(A)(iv) stayed until the Administrator has made a determination with respect to the application of such defendant participant.

(3) APPLICATION FOR LIMITATION.—A defendant participant may apply under subparagraph (A) for a limit on its annual payment obligation to the Fund if:

(A) it is included in Tiers II, III, IV, V, or VI under section 202; and

(B) its prior asbestos expenditures are less than $200 million and its revenues as defined in this section are less than $10 Billion.

(4) LIMITATION.—Such qualifying defendant participant may apply for the limit set forth in either clause (A), (B) or (C), provided that it may apply only under one such clause and may not change its application once the application has been approved by the Administrator. A defendant participant qualifying under this subparagraph may apply for a limit on its annual payment obligation to the Fund to an amount equal to—

(A) 125 percent of the arithmetical average for fiscal years 1998 through 2002 of such defendant participant's annual prior asbestos expenditures; or

(B) 150 percent of the arithmetical average for fiscal years 1998 through 2002 of such defendant participant's annual prior asbestos expenditures, excluding (I) the amount of any payments by insurance carriers for the benefit of such defendant participant or on behalf of such defendant participant, and (II) any reimbursements of the amounts actually paid by such defendant participant with respect to prior asbestos expenditures for fiscal years 1998 through 2002, regardless of when such reimbursements were actually paid; or

(C) 1.67024 percent of the revenues for the most recent fiscal year ending on or prior to December 31, 2002, of the affiliated group to which such defendant participant belongs.

(5) JUDICIAL REVIEW. A defendant participant who is aggrieved by the denial by the Administrator or its application under this paragraph is entitled to judicial review under section 303, and during the pendency of such review, section 223(a) shall not apply to that defendant participant. Without regard to section 305(a), the reviewing court may, in its discretion, provide such interlocutory relief to the defendant participant as may be just.

(6) APPLICABILITY OF THE GUARANTEE SURCHARGE.—A defendant participant whose application for a limitation on its annual payment obligation to the Fund under subparagraph (A) is approved by the Administrator, shall not be exempt from the guaranteed payment surcharge established under subsection (1) unless otherwise provided in this Act.

(7) MINIMUM PAYMENT.—Notwithstanding the limitations provided in this subsection, a defendant participant that is granted a limitation by the Administrator shall pay no less than 5 percent of the amount the participant is scheduled to pay under section 202.

(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, 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.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Funds remains outstanding any may qualify for such an adjustment by demonstrating to the satisfaction of the Administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the Administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.—In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected financial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately proceeding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101(31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments or extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the Administrator considers relevant.

(C) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the Administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the Administrator determines at the time of the renewed adjustment that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(E) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its 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.). Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this sub-paragraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and

(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 measured against the likely cost of past and potential future claims in the absence of this Act;

(III) when compared to the median payment rate for all defendant participants in the same tier; or

(IV) 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 be granted 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;

(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; and

(iv) may, subject to the discretion of the Administrator, be exempt from any payment obligation if such defendant participant establishes with the Administrator that—

(I) such participant has satisfied all past claims; and

(II) there is no reasonable likelihood in the absence of this Act of any future claims with costs for which the defendant participant might be responsible.

(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 inequity adjustment account established under subsection (k), 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 be limited.

(6) RULEMAKING AND ADVISORY PANELS.—

(A) APPOINTMENT.—The Administrator may 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. The Administrator may adopt rules consistent with this Act to make the determination of hardship and inequity adjustments more efficient and predictable.

(f) 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.

(g) 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 (j), 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 (j) 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.

(h) 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.

(i) 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), (e), (g), (h), and (n) of this section) fail in any year to raise at least $3,000,000,000, after applicable reductions or adjustments have been taken according to subsections (e) and (n), the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(j) PROCEDURES FOR MAKING PAYMENTS.—

(1) INITIAL YEAR: TIERS II–VI.—

(A) IN GENERAL.—Not later than 90 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 (g);

(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);

(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; and

(v) a signature page personally verifying the truth of the statements and estimates described under this subparagraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(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—

(i) a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2);

(ii) for those debtors subject to the payment requirement of section 203(b)(2)(B)(ii), a statement whether its prior asbestos expenditures do not exceed $10,000,000, and a description of its business operations sufficient to show the requirements of that section are met; and

(iii) 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);

(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; and

(G) a signature page personally verifying the truth of the statements and estimates described under this paragraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(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 non-debtor 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 of the Administrator's determination under subsection (e) of a financial hardship or inequity adjustment, and of the Administrator's determination under subsection (n) of a distributor's 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.

(k) DEFENDANT 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 required under subsection (i), excess monies up to a maximum of $300,000,000 in any such year shall be placed in a defendant inequity adjustment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant 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 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 (e), remaining funds in the account shall be carried forward for use by the Administrator for adjustments in subsequent years.

(l) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (i) and (k), 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(d), such monies—

(A) at the discretion of the Administrator, may be used to provide additional adjustments under subsection (e), 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 required under subsection (i), after applicable reductions or adjustments have been taken according to subsections (e) and (m) 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.

(n) ADJUSTMENTS FOR DISTRIBUTORS.—

(1) DEFINITION.—In this subsection, the term ''distributor'' means a person—

(A) whose prior asbestos expenditures arise exclusively from the sale of products manufactured by others;

(B) who did not prior to December 31, 2002, sell raw asbestos or a product containing more than 95 percent asbestos by weight;

(C) whose prior asbestos expenditures did not arise out of—

(i) the manufacture, installation, repair, reconditioning, maintaining, servicing, constructing, or remanufacturing of any product;

(ii) the control of the design, specification, or manufacture of any product; or

(iii) the sale or resale of any product under, as part of, or under the auspices of, its own brand, trademark, or service mark; and

(D) who is not subject to assignment under section 202 to Tier I, II, III or VII.

(2) TIER REASSIGNMENT FOR DISTRIBUTORS.—

(A) IN GENERAL.—Notwithstanding section 202, the Administrator shall assign a distributor to a Tier for purposes of this title under the procedures set forth in this paragraph.

(B) DESIGNATION.—After a final determination by the Administrator under section 204(j), any person who is, or any affiliated group in which every member is, a distributor may apply to the Administrator for adjustment of its Tier assignment under this subsection. Such application shall be prepared in accordance with such procedures as the Administrator shall promulgate by rule. Once the Administrator designates a person or affiliated group as a distributor under this subsection, such designation and the adjustment of tier assignment under this subsection are final.

(C) PAYMENTS.—Any person or affiliated group that seeks adjustment of its Tier assignment under this subsection shall pay all amounts required of it under this title until a final determination by the Administrator is made under this subsection. Such payments may not be stayed pending any appeal. The Administrator shall grant any person or affiliated group a refund or credit of any payments made if such adjustment results in a lower payment obligation.

(D) ADJUSTMENT.—Subject to paragraph (3), any person or affiliated group that the Administrator has designated as a distributor under this subsection shall be given an adjustment of Tier assignment as follows:

(i) A distributor that but for this subsection would be assigned to Tier IV shall be deemed assigned to Tier V.

(ii) A distributor that but for this subsection would be assigned to Tier V shall be deemed assigned to Tier VI.

(iii) A distributor that but for this subsection would be assigned to Tier VI shall be deemed assigned to no Tier and shall have no obligation to make any payment to the Fund under this Act.

(E) EXCLUSIVE TO INEQUITY ADJUSTMENT.—Any person or affiliated group designated by the Administrator as a distributor under this subsection shall not be eligible for an inequity adjustment under subsection 204(e).

(3) LIMITATION ON ADJUSTMENTS.—The aggregate total of distributor adjustments under this subsection in effect in any given year shall not exceed $50,000,000. If the aggregate total of distributors adjustments under this subsection would otherwise exceed $50,000,000, then each distributor's adjustment shall be reduced pro rata until the aggregate of all adjustments equals $50,000,000.

(4) REHEARING.—A defendant participant has a right to obtain a rehearing of the Administrator's determination on an adjustment under this subsection under the procedures prescribed in subsection (j)(10).

SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.

(a) STEPDOWNS.—

(1) IN GENERAL.—Subject to paragraph (2), the minimum aggregate annual funding obligation under section 204(i) 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. Except as otherwise provided in this paragraph, the reductions under this paragraph shall be applied on an equal pro rata basis to the funding obligations of all defendant participants.

The reductions under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reduction under this subsection exceeds the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reduction provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.

(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 as otherwise provided under this paragraph. The reductions or waivers provided under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions or waivers under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reductions or waivers under this subsection exceed the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reductions or waivers provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.

(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.

SEC. 206. ACCOUNTING TREATMENT.

Defendant participants payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each defendant participant. This section shall in no way reduce the amount of monetary payments to the Fund by defendant participants as required under section 202(a)(2).

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 the first 5 years of the life of the Fund and any subsequent years as provided in section 405(f) for any reduction in an insurer participant's annual allocated amount caused by the granting of a financial hardship or exceptional circumstance adjustment under this section, and any amount by which aggregate insurer payments fall below the level required under paragraph (3)(C) by reason of the failure or refusal of any insurer participant to make a required payment, or for any other reason that causes such payments to fall below the level required under 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 retrospective reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a risk or loss transfer to insure for 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, less any bankruptcy trust credits under section 222(d).

(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, insures the asbestos liability, directly or indirectly, of (and that arises out of the manufacture, sale, distribution or installation of materials or products by, or other conduct 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 this section 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.—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 except as provided under paragraph (1)(B), subsection (f)(3), and section 405(f), any such adjustment shall not affect 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.

(F) FUNDING HOLIDAYS.—

(i) 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 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 insurer participants for that year.

(ii) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under clause (i) every year.

(iii) LIMITATIONS OF FUNDING HOLIDAYS.—Any reduction or waiver of the insurer participants' funding obligations shall—

(I) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(II) be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(iv) 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 insurer participants for that year.

(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) AMOUNT OF INTERIM PAYMENT.—Within 90 days after the date of enactment of this Act, insurer participants shall make an aggregate payment to the Fund not to exceed 50 percent of the aggregate funding obligation specified under subsection (a)(3)(C) for year 1.

(2) RESERVE INFORMATION.—Within 30 days after the date of enactment of this Act, each insurer participant shall submit to the Administrator a certified statement of its net held reserves for asbestos liabilities as of December 31, 2004.

(3) ALLOCATION OF INTERIM PAYMENT.—The Administrator shall allocate the interim payment among the individual insurer participants on an equitable basis using the net held asbestos reserve information provided by insurer participants under subsection (a)(3)(B). Within 60 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register the name of each insurer participant, and the amount of the insurer participant's allocated share of the interim payment. The use of net held asbestos reserves as the basis to determine an interim allocation shall not be binding on the Administrator in the determination of an appropriate final allocation methodology under this section. All payments required under this paragraph 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 under subsection (a)(3)(E).

(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, consistent with subsection (a)(1)(B), 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) CREDITS FOR SHORTFALL ASSESSMENTS.—If insurer participants are required during the first 5 years of the life of the Fund to make up any shortfall in required insurer payments under subsection (a)(1)(B), then, beginning in year 6, the Administrator shall grant each insurer participant a credit against its annual required payments during the applicable years that in the aggregate equal the amount of shortfall assessments paid by such insurer participant during the first 5 years of the life of the Fund. The credit shall be prorated over the same number of years as the number of years during which the insurer participant paid a shortfall assessment. Insurer participants which did not pay all required payments to the Fund during the first 5 years of the life of the Fund shall not be eligible for a credit. The Administrator shall not grant a credit for shortfall assessments imposed under section 405(f).

(4) 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) ACCOUNTING TREATMENT.—Insurer participants' payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each insurer participant. This subsection shall in no way reduce the amount of monetary payments to the Fund by insurer participants as required under subsection (a).

(h) 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(g)(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.

(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 2 years.

(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Administrator under this subsection shall be repaid in full by the Fund contributors and is limited solely to amounts available, present or future, in the Fund.

(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(g)(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 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.

(d) 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, including a refusal or failure to provide the information required under section 204 needed to determine liability, the Administrator may bring a civil action in any appropriate United States District Court, 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;

(C) for temporary, preliminary, or permanent relief; or

(D) to enforce a subpoena issued under section 204(i)(9) to compel the production of documents necessary to determine liability.

(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 pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Administrator shall 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 unless and until it complies. If any direct insurer or reinsurer refuses to furnish any information requested by the Administrator, 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 unless and until it complies. 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 after the date of the Administrator's determination of default. 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(j)(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 2006.''.

(j) PROPOSED TRANSACTIONS.—

(1) NOTICE OF PROPOSED TRANSACTION.—Any participant that has taken any action to effectuate a proposed transaction or a proposed series of transactions under which a significant portion of such participant's assets, properties or business will, if consummated as proposed, be, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such proposed transaction (or proposed series of transactions). Upon the request of such participant, and for so long as the participant shall not publicly disclose the transaction or series of transactions and the Administrator shall not commence any action under paragraph (6), the Administrator shall treat any such notice as confidential commercial information under section 552 of title 5, United States Code.

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days before the date of consummation of the proposed transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties or business are being transferred in the proposed transaction (or proposed series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act, or

(ii) the proposed transaction (or proposed series of transactions) would, if consummated, be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person will or has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it will or has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term ''significant portion of the assets, properties or business of a participant'' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(g)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) CONSUMMATION OF TRANSACTION.—Any proposed transaction (or proposed series of transactions) with respect to which a participant is required to provide notice under paragraph (1) may not be consummated until at least 30 days after delivery to the Administrator of such notice, unless the Administrator shall earlier terminate the notice period. The Administrator shall endeavor whenever possible to terminate a notice period at the earliest practicable time.

(6) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant proposes to engage or has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status or potential status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person will or has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A)—

(I) a temporary restraining order or a preliminary or permanent injunction against such transaction (or series of transactions); or

(II) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person will not or has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person will or has become a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(7) RULES AND REGULATIONS.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing and content of notices.

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;

(vi) the intensity and duration of exposure to risk levels of naturally occurring asbestos as defined by the Environmental Protection Agency; and

(vii) 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 for reimbursement of screening services at a reasonable rate and termination of 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 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, with a minimum of $5,000,000 but not more than $10,000,000 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.

(B) REVIEW.—The Administrator may reduce the amount of funding below $5,000,000 each year if the program is fully implemented. 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 $100,000,000.

(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.

(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.

SEC. 226. NATIONAL MESOTHELIOMA RESEARCH AND TREATMENT PROGRAM.

(a) IN GENERAL.—There is established the National Mesothelioma Research and Treatment Program (referred to in this section as the ''Program'') to investigate and advance the detection, prevention, treatment, and cure of malignant mesothelioma.

(b) MESOTHELIOMA CENTERS.—

(1) IN GENERAL.—The Administrator shall make available $1,500,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015, for the establishment of each of 10 mesothelioma disease research and treatment centers.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, in consultation with the Medical Advisory Committee, shall conduct a competitive peer review process to select sites for the centers described in paragraph (1). The Director shall ensure that sites selected under this paragraph are—

(A) geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

(B) closely associated with Department of Veterans Affairs medical centers, in order to provide research benefits and care to veterans who have suffered excessively from mesothelioma;

(C) engaged in exemplary laboratory and clinical mesothelioma research, including clinical trials, to provide mechanisms for effective therapeutic treatments, as well as detection and prevention, particularly in areas of palliation of disease symptoms and pain management;

(D) participants in the National Mesothelioma Registry and Tissue Bank under subsection (c) and the annual International Mesothelioma Symposium under subsection (d)(2)(E);

(E) with respect to research and treatment efforts, coordinated with other centers and institutions involved in exemplary mesothelioma research and treatment;

(F) able to facilitate transportation and lodging for mesothelioma patients, so as to enable patients to participate in the newest developing treatment protocols, and to enable the centers to recruit patients in numbers sufficient to conduct necessary clinical trials; and

(G) nonprofit hospitals, universities, or medical or research institutions incorporated or organized in the United States.

(c) MESOTHELIOMA REGISTRY AND TISSUE BANK.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, maintenance, and operation of a National Mesothelioma Registry to collect data regarding symptoms, pathology, evaluation, treatment, outcomes, and quality of life and a Tissue Bank to include the pre- and post-treatment blood (serum and blood cells) specimens as well as tissue specimens from biopsies and surgery. Not less than $500,000 of the amount made available under the preceding sentence in each fiscal year shall be allocated for the collection and maintenance of tissue specimens.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, with the advice and consent of the Medical Advisory Committee, shall conduct a competitive peer review process to select a site to administer the Registry and Tissue Bank described in paragraph (1). The Director shall ensure that the site selected under this paragraph—

(A) is available to all mesothelioma patients and qualifying physicians throughout the United States;

(B) is subject to all applicable medical and patient privacy laws and regulations;

(C) is carrying out activities to ensure that data is accessible via the Internet; and

(D) provides data and tissue samples to qualifying researchers and physicians who apply for such data in order to further the understanding, prevention, screening, diagnosis, or treatment of malignant mesothelioma.

(d) CENTER FOR MESOTHELIOMA EDUCATION.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, with the advice and consent of the Medical Advisory Committee, of a Center for Mesothelioma Education (referred to in this section as the ''Center'') to—

(A) promote mesothelioma awareness and education;

(B) assist mesothelioma patients and their family members in obtaining necessary information; and

(C) work with the centers established under subsection (b) in advancing mesothelioma research.

(2) ACTIVITIES.—The Center shall—

(A) educate the public about the new initiatives contained in this section through a National Mesothelioma Awareness Campaign;

(B) develop and maintain a Mesothelioma Educational Resource Center (referred to in this section as the ''MERCI''), that is accessible via the Internet, to provide mesothelioma patients, family members, and frontline physicians with comprehensive, current information on mesothelioma and its treatment, as well as on the existence of, and general claim procedures for the Asbestos Injury Claims Resolution Fund;

(C) through the MERCI and otherwise, educate mesothelioma patients, family members, and front-line physicians about, and encourage such individuals to participate in, the centers established under subsection (b), the Registry and the Tissue Bank;

(D) complement the research efforts of the centers established under subsection (b) by awarding competitive, peer-reviewed grants for the training of clinical specialist fellows in mesothelioma, and for highly innovative, experimental or pre-clinical research; and

(E) conduct an annual International Mesothelioma Symposium.

(3) REQUIREMENTS.—The Center shall—

(A) be a nonprofit corporation under section 501(c)(3) of the Internal Revenue Code of 1986;

(B) be a separate entity from and not an affiliate of any hospital, university, or medical or research institution; and

(C) demonstrate a history of program spending that is devoted specifically to the mission of extending the survival of current and future mesothelioma patients, including a history of soliciting, peer reviewing through a competitive process, and funding research grant applications relating to the detection, prevention, treatment, and cure of mesothelioma.

(4) CONTRACTS FOR OVERSIGHT.—The Director of the National Institutes of Health may enter into contracts with the Center for the selection and oversight of the centers established under subsection (b), or selection of the director of the Registry and the Tissue Bank under subsection (c) and oversight of the Registry and the Tissue Bank.

(e) REPORT AND RECOMMENDATIONS.—Not later than September 30, 2015, The Director of the National Institutes of Health shall, after opportunity for public comment and review, publish and provide to Congress a report and recommendations on the results achieved and information gained through the Program, including—

(1) information on the status of mesothelioma as a national health issue, including—

(A) annual United States incidence and death rate information and whether such rates are increasing or decreasing;

(B) the average prognosis; and

(C) the effectiveness of treatments and means of prevention;

(2) promising advances in mesothelioma treatment and research which could be further developed if the Program is reauthorized; and

(3) a summary of advances in mesothelioma treatment made in the 10-year period prior to the report and whether those advances would justify continuation of the Program and whether it should be reauthorized for an additional 10 years.

(f) SEVERABILITY.—If any provision of this Act, or amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act (including this section), the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(g) REGULATIONS.—The Director of the National Institutes of Health shall promulgate regulations to provide for the implementation of 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(j), a notice of financial hardship or inequity determination under section 204(e), a notice of a distributor's adjustment under section 204(n), 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(j), a notice of financial hardship or inequity determination under section 204(e), or a notice of a distributor's adjustment under section 204(n), shall commence any action within 30 days after a decision on rehearing under section 204(j)(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.—

(1) PAYMENTS.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(2) LEGAL CHALLENGES.—No court may issue a stay or injunction pending final judicial action, including the exhaustion of all appeals, on a legal challenge to this Act or any portion of this Act.

(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.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action challenging the constitutionality of any provision or application of this Act. The following rules shall apply:

(A) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened under section 2284 of title 28, United States Code.

(B) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a

jurisdictional statement within 30 days, after the entry of the final decision.

(C) 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.

(2) 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. 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 2006, 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 2006), 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 2006) 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 2006.''.

(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 2006) 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 2006); 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 2006; 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 2006, 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 2006 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 2006 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 clause (ii) of this subparagraph and 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 2006) shall be transferred to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006 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 clause (i), and except as provided under subparagraphs (B), (C), and (E), any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), other than a trust established under a reorganization plan subject to section 202(c) of that Act, shall transfer the assets in such trust to the Fund as follows:

''(I) In the case of a trust established on or before December 31, 2005, such trust shall transfer 90 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) In the case of a trust established after December 31, 2005, such trust shall transfer 88 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(iii) Not later than 90 days after the date on which the Administrator of the Office of Asbestos Disease Compensation (referred to in this section as the 'Administrator') certifies in accordance with section 106(f)(3)(E)(ii) of the Fairness in Asbestos Injury Resolution Act of 2006 that the Fund is fully operational and paying all valid asbestos claims at a reasonable rate, any trust transferring assets under clause (ii) shall transfer all remaining assets in such trust to the Fund. The transfer required by this clause shall not include any trust assets needed to pay—

''(I) previously incurred expenses; or

''(II) claims determined to be eligible for compensation under clause (vi).

''(iv) Except as provided under subparagraph (B), the Administrator of the Fund shall accept any assets transferred under clauses (ii) or (iii) and utilize them for any purposes for the Fund under section 221 of the Fairness in Asbestos Injury Resolution Act of 2006, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(v) 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).

''(vi) Any trust transferring assets under clause (ii) shall be subject to the following requirements:

''(I) The trust may continue to process asbestos claims, make eligibility determinations, and pay claims in a manner consistent with this clause if a claimant—

''(aa) has a pending asbestos claim as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(bb) provides to the trust a copy of a binding election submitted to Administrator waiving the right to secure compensation under section 106(f)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, unless the claimant is permitted under section 106(f)(2)(B) of such Act to seek a judgment or order for monetary damages from a Federal or State court;

''(cc) meets the requirements for compensation under the distribution plan for the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(dd) for any non-malignant condition satisfies the medical criteria under the distribution plan for the trust that is most nearly equivalent to the medical criteria described in section 121(d)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, except that, notwithstanding any provision of the distribution plan of the trust to the contrary, the trust shall not accept the results of a DLCO test (as such test is defined in section 121(a) of the Fairness in Asbestos Injury Resolution Act of 2006) for the purpose of demonstrating respiratory impairment; and

''(ee) for any of the cancers listed in section 121(d)(6) of the Fairness in Asbestos Injury Resolution Act of 2006 does not seek, and the trust does not pay, any compensation until such time as the Institute of Medicine finds that there is a causal relationship between asbestos exposure and such cancer, in which case such claims may be paid if such claims otherwise qualify for compensation under the distribution plan of the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) The trust shall not accept medical evidence from any physician, medical facility, or laboratory whose evidence would be not be accepted as evidence—

''(aa) under the Manville Trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(bb) by the Administrator under section 115(a)(2) of such Act.

''(III) The trust shall not amend its scheduled payment amount or payment percentage as in effect on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(IV) The trust shall not amend its eligibility criteria after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, except to conform any criteria in any category under the distribution plan of the trust with related criteria in a related category under section 121 of the Fairness in Asbestos Injury Resolution Act of 2006.

''(V) The trust shall notify the Administrator of the Fund of any claim determined to be eligible for compensation after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and the amount of any such compensation awarded to the claimant of such claim. The notification required by this subclause shall be made in such form as the Administrator shall require, and not later than 15 days after the date the determination is made.

''(VI) The trust shall not pay any claim without a certification by a claimant, subject to the penalties described in the Fairness in Asbestos Injury Resolution Act of 2006, stating the amount of collateral source compensation that such claimant has received, or is entitled to receive, under section 134 of the Fairness in Asbestos Injury Resolution Act of 2006. In the event that collateral source compensation exceeds the amount that a claimant would be paid in the category under that Act that is most nearly similar to the claimant's claim under the distribution plan of the trust, the aggregate value of the awards received by the claimant shall be reduced pro rata so that the claimant's total compensation does not exceed what would be paid for such a condition under the Fairness in Asbestos Injury Resolution Act of 2006, excluding any adjustments under section 131(b)(3) and (4) of that Act.

''(VII) Upon finding that the trust has breached any condition or conditions of this clause, the Administrator shall require the immediate payment of remaining trust assets into the Fund in accordance with section 402(f) of the Fairness in Asbestos Injury Resolution Act of 2006. The Administrator shall be entitled to an injunction against further payments of nonliquidated claims from the assets of the trust during the pendency of any dispute regarding the findings of noncompliance by the Administrator. The court in which any action to enforce the obligations of the trust is pending shall afford the action expedited consideration.

''(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 2006 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 2006, 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 2006, 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 2006, 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 2006.

(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 2006), 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 2006), 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.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(c) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Except as provided under paragraph (3) and section 106(f), any agreement, understanding, or undertaking by any person or affiliated group with respect to the treatment of any asbestos claim, including a claim described under subsection (e)(2), 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 by—

(I) the authorized legal representative acting on behalf of the settling defendant or insurer, the settling defendant or the settling insurer; and

(II)(aa) the specific individual plaintiff, or the individual's immediate relatives; or

(bb) an authorized legal representative acting on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by that 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, the plaintiff has fulfilled all conditions to payment under the settlement agreement.

(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 section 524(j)(3) of title 11, United States Code, as amended by this Act, 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.

(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 section 524(j)(3) of title 11, United States Code, as amended by this Act.

(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.

(4) DISMISSAL.—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 30 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 180 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 180-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 30 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).

(C) EARNED EROSION AMOUNT.—The term ''earned erosion amount'' means 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 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(g), the total erosion of limits for the affiliated group under paragraph (2)(A) shall not exceed 38.1 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 38.1 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 preponderance 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).

(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 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.—Subject to section 212(a)(1)(D), 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 written agreement specifically providing insurance, reinsurance, or other reimbursement 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 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 claims are preempted, barred, or 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.

(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 disease level, 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 and over the predicted lifetime of the program 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) a summary of any legal actions brought or penalties imposed under section 223, any referrals made to law enforcement authorities under section 408 (a) and (b), and any contributions to the Fund collected under section 408(e);

(6) 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 those claimants who suffer from diseases or conditions for which exposure to asbestos was a substantial contributing factor;

(7) a summary of the results of audits conducted under section 115; and

(8) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(c) CERTIFICATION.—The Administrator shall certify in the annual report required under subsection (a) whether, in the best judgment of the Administrator, the Fund will have sufficient resources for the fiscal year in which the report is issued to make all required payments—

(1) with respect to all claims determined eligible for compensation that have been filed and that the Administrator projects will be filed with the Office for the fiscal year; and

(2) to satisfy the Fund's debt repayment obligation, administrative costs, and other financial obligations.

(d) CLAIMS ANALYSIS AND VERIFICATION OF UNANTICIPATED CLAIMS.—

(1) IN GENERAL.—If the Administrator concludes, on the basis of the annual report submitted under this section, that—

(A) the average number of claims that qualify for compensation under a claim level or designation exceeds 125 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims qualifying for compensation under the appropriate claim level or designation; or

(B) the average number of claims that qualify for compensation under a claim level or designation is less than 75 percent of the

number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims deemed ineligible for compensation under the appropriate claim level or designation.

(2) DETERMINATIONS.—The Administrator shall examine the best available medical evidence and any recommendation made under subsection (b)(5) in order to determine which 1 or more of the following is true:

(A) Without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(B) A significant number of claimants who qualified for compensation under the claim level or designation do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(C) A significant number of claimants who were denied compensation under the claim level of designation did suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(D) The Congressional Budget Office projections underestimated or overestimated the actual number of persons who suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(3) RECOMMENDATIONS CONCERNING CLAIMS CRITERIA.—If the Administrator determines that a significant number of the claimants who qualified for compensation under the claim level under review do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor, or that a significant number of the claimants who were denied compensation under the claim level under review suffered from an injury or disease for which exposure to asbestos was a substantial contributing factor, the Administrator shall recommend to Congress, under subsection (f), changes to the compensation criteria in order to ensure that the Fund provides compensation for injury or disease for which exposure to asbestos was a substantial contributing factor, but does not provide compensation to claimants who do not suffer from an injury or disease for which asbestos exposure was a substantial contributing factor.

(e) RECOMMENDATIONS OF ADMINISTRATOR AND ADVISORY COMMITTEE.—

(1) REFERRAL.—If the Administrator recommends changes to this Act under subsection (d), the recommendations and accompanying analysis shall be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 (in this subsection referred to as the ''Advisory Committee'').

(2) ADVISORY COMMITTEE RECOMMENDATIONS.—The Advisory Committee shall hold expedited public hearings on the alternatives and recommendations of the Administrator and make its own recommendations for reform of the program under titles I and II.

(3) TRANSMITTAL TO CONGRESS.—Not later than 90 days after receiving the recommendations of the Administrator, the Advisory Committee shall transmit the recommendations of the Administrator and the recommendations of the Advisory Committee to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(f) SHORTFALL ANALYSIS.—

(1) IN GENERAL.—

(A) ANALYSIS.—If the Administrator concludes, at any time, that the Fund may not be able to pay claims as such claims become due at any time within the next 5 years and to satisfy its other obligations, the Administrator shall prepare 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. The Administrator shall submit such analysis to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. Any recommendations made by the Administrator for changes to the program shall, in addition, be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 for review.

(B) RANGE OF ALTERNATIVES.—The range of alternatives under subparagraph (A) may include—

(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, enhancement of enforcement authority, changes in the timing of payments, changes in contributions by defendant participants, insurer participants (or both such participants), or changes in award values); or

(iii) any measure that the Administrator considers appropriate.

(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.

(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.

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, including any borrowing authorized under section 221(b)(2); 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).

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 2006.''.

SA 2804. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 132, between lines 7 and 8, insert the following:

(c) REIMBURSEMENT FOR REASONABLE MEDICAL EXPENSES.—In addition to the award under subsection (b), an asbestos claimant with a claim for malignant Level IX shall receive reimbursement for reasonable medical expenses recommended by a qualified physician. The Administrator shall promulgate regulations governing the reimbursement of medical expenses under this subsection.

SA 2805. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. SUBSTANTIAL WEIGHTED EXPOSURE FOR EXPOSURE OCCURRING AFTER 1975.

Notwithstanding section 121(a)(16)(E), for purposes of the calculations to be made under subparagraphs (B), (C), and (D) of paragraph (16) of section 121, each year of asbestos exposure that occurred after 1975 shall be counted as ½ of its full value.

SA 2806. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. EXPOSURE PRESUMPTIONS.

Notwithstanding any other provision of this Act, any asbestos exposure that is a contributing factor in causing an asbestos-related disease, condition, or illness shall meet the exposure requirements for this Act.

SA 2807. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. CONTINUANCE OF MESOTHELIOMA AND TERMINAL HEALTH CLAIMS.

(a) IN GENERAL.—Notwithstanding section 106(f)(2) or any other provision of this Act, each person who has filed a mesothelioma or terminal health claim before the date of enactment of this Act may continue their mesothelioma or terminal health claim in the court where the case was pending on the date of enactment of this Act. For mesothelioma or terminal health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under subparagraph (A), the pending claim is not stayed and such claimants may continue their mesothelioma or terminal health claims where the case is filed.

SA 2808. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 41, between lines 7 and 8, insert the following:

(e) VETERANS AND DEFENSE EMPLOYEE HEALTH CLAIMS.—

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

(2) ELIGIBLE VETERANS HEALTH CLAIMS.—

(A) IN GENERAL.—A claim shall qualify for treatment as a veterans and defense employee health claim if the claimant—

(i) is living;

(ii) provides a diagnosis of an asbestos-related disease or condition meeting the requirements of section 121;

(iii) contracted such asbestos-related disease or condition during the claimant's service—

(I) in the Armed Forces of the United States;

(II) as an employee of the Department of Defense; or

(III) as an employee performing official duties relating to national defense matters; and

(iv) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(B) DEFINITION.—In this paragraph, the term ''employee'' has the same meaning as in section 2105 of title 5, United States Code.

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

(4) CLAIMS FACILITY.—To facilitate the prompt payment of veterans and defense employee health claim, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, may enter into settlements with claimants. The processing and payment of any such claims shall be subject to regulations promulgated under this Act.

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

(6) RULES OF CONSTRUCTION.—

(A) NO RIGHT UNDER VETERANS' BENEFIT PROGRAM.—Nothing in this subsection shall be construed to provide any claimant with any claim, right, or cause of action for benefits under a veterans' benefit program.

(B) COLLATERAL SOURCE COMPENSATION.—In no case shall amounts or benefits received by a claimant under this subsection be deemed as collateral source compensation under this Act.

On page 41, line 8, strike ''(e)'' and insert ''(f)''.

On page 52, line 12, strike ''(f)'' and insert ''(g)''.

On page 318, line 5, strike ''(f)'' and insert ''(g)''.

On page 321, line 14, strike ''(f)'' and insert ''(g)''.

On page 322, line 24, strike ''(f)'' and insert ''(g)''.

On page 325, line 18, strike ''(f)'' and insert ''(g)''.

SA 2809. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 41, between lines 7 and 8, insert the following:

(e) VETERANS AND DEFENSE EMPLOYEE HEALTH CLAIMS.—

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

(2) ELIGIBLE VETERANS HEALTH CLAIMS.—

(A) IN GENERAL.—A claim shall qualify for treatment as a veterans and defense employee health claim if the claimant—

(i) is living;

(ii) provides a diagnosis of an asbestos-related disease or condition meeting the requirements of section 121;

(iii) contracted such asbestos-related disease or condition during the claimant's service—

(I) in the Armed Forces of the United States;

(II) as an employee of the Department of Defense; or

(III) as an employee performing official duties relating to national defense matters; and

(iv) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(B) DEFINITION.—In this paragraph, the term ''employee'' has the same meaning as in section 2105 of title 5, United States Code.

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

(4) CLAIMS FACILITY.—To facilitate the prompt payment of veterans and defense employee health claim, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, may enter into settlements with claimants. The processing and payment of any such claims shall be subject to regulations promulgated under this Act.

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

(6) RULES OF CONSTRUCTION.—

(A) NO RIGHT UNDER VETERANS' BENEFIT PROGRAM.—Nothing in this subsection shall be construed to provide any claimant with any claim, right, or cause of action for benefits under a veterans' benefit program.

(B) COLLATERAL SOURCE COMPENSATION.—In no case shall amounts or benefits received by a claimant under this subsection be deemed as collateral source compensation under this Act.

On page 41, line 8, strike ''(e)'' and insert ''(f)''.

On page 52, line 12, strike ''(f)'' and insert ''(g)''.

On page 318, line 5, strike ''(f)'' and insert ''(g)''.

On page 321, line 14, strike ''(f)'' and insert ''(g)''.

On page 322, line 24, strike ''(f)'' and insert ''(g)''.

On page 325, line 18, strike ''(f)'' and insert ''(g)''.

SA 2810. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, line 10, strike ''personal injury claim'' and insert ''civil action in Federal or State court seeking damages for personal injury''.

On page 315, line 25 and page 316, line 1, strike ''a functional impairment'' and insert ''from a disease or condition''.

On page 316, line 5, strike ''functional impairment'' and insert ''disease or condition''.

On page 316, line 7, strike ''(2) .'' and insert ''(2).''.

On page 316, line 18, strike ''Claims'' and insert ''Civil actions seeking damages for personal injury''.

On page 316, line 14, strike ''initial pleading'' and insert ''complaint''.

On page 316, line 18, strike the comma and insert a parenthesis.

On page 316, line 8, strike ''plead with'' and all that follows through ''shall'' on line 20.

On page 316, line 20, strike ''the information'' and all that follows through the end of page 317, line 2.

On page 317, line 4, strike ''report,'' and insert ''report, and''.

On page 317, line 5, strike ''and such other evidence''.

On page 318, between lines 2 and 3, insert the following:

(4) DUAL INJURY.—If an exposed person has both a silica disease or conditions resulting from exposure to silica and a disease or condition resulting from exposure to asbestos, any damages awarded for a claim that meets the requirements of paragraph (2)(A)—

(A) shall be limited to damages attributable to the exposed person's exposure to silica; and

(B) shall not include damages attributable to the exposed person's exposure to asbestos.

SA 2811. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 135, between lines 12 and 13, insert the following:

(c) REIMBURSEMENT FOR REASONABLE MEDICAL EXPENSES.—In addition to the award under subsection (b), an asbestos claimant with a claim for malignant Level IX shall receive reimbursement for reasonable medical expenses recommended by a qualified physician. The Administrator shall promulgate regulations governing the reimbursement of medical expenses under this subsection.

SA 2812. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. CONTINUANCE OF TERMINAL HEALTH CLAIMS.

(a) IN GENERAL.—Nothwithstanding section 106(f)(2) or any other provision of this Act, any individual who has filed a terminal health claim before the date of enactment of this Act may continue that terminal health claim in the court where the case was pending on the date of enactment of this Act. For terminal health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under subparagraph (A), the pending claim is not stayed and such claimants may continue the terminal health claims where the case is filed.

SA 2813. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 52, line 15, insert ''an exigent health claim to which section 106(f)(2) applies or'' after ''than''.

On page 52, line 16, insert ''or an exigent health claim'' after ''applies''.

On page 53, line 22, strike all through line 25.

On page 60, lines 3 and 4, strike ''before the stay being lifted under subparagraph (B)''.

On page 64, lines 8 through 10, strike ''before the stay being lifted under subparagraph (B)''.

On page 64, line 16, beginning with ''Fund'' strike all through ''the'' on line 18, and insert ''Fund. The''.

On page 64, line 24, strike all through page 65, line 11, and insert the following:

(B) CONTINUANCE OF CLAIMS.—Each person who has filed an exigent health claim before the date of enactment of this Act may continue their exigent health claim in the court where the case was pending on the date of enactment of this Act. For exigent health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under subparagraph (A), the pending claim is not stayed and such claimants may continue their exigent health claims where the case is filed.

SA 2814. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 73, line 7, strike ''IX'' and insert ''X''.

On page 78, line 23, strike ''or''.

On page 78, line 24, insert after the comma ''or Malignant Level IX''.

On page 88, line 8, strike ''or Malignant Level VIII'' and insert ''Malignant Level VIII, or Malignant Level IX''.

On page 89, line 18, strike ''VII or VIII'' and insert ''Level VIII, or Level IX''.

On page 90, line 1, strike ''VII or VIII'' and insert ''Level VIII, or Level IX''

On page 98, line 17, strike ''IX'' and insert ''X''.

On page 99, line 3, strike ''IX'' and insert ''X''.

On page 102, line 2, strike ''IX'' and insert ''X''.

On page 111, between lines 2 and 3, insert the following:

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

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

(B) PHYSICIANS PANEL.—All claims filed relating to Level VII under this paragraph

shall be referred to a Physicians Panel for a determination on the amount of award. 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.

On page 111, strike lines 3 and 4, and insert the following:

(8) MALIGNANT LEVEL VIII.—

(A) IN GENERAL.—To receive Level VIII

On page 112, line 2, strike ''Level VII'' and insert ''Level VIII''.

On page 112, strike lines 15 and 16, and insert the following:

(9) MALIGNANT LEVEL IX.—

(A) IN GENERAL.—To receive Level IX

On page 114, line 13, strike ''Level VIII'' and insert ''Level IX''.

On page 115, strike lines 1 and 2, and insert the following:

(10) MALIGNANT LEVEL X.—To receive Level X compensation, a claimant shall provide—

On page 126, beginning with the matter following line 20, strike all through the matter on page 127 before line 1 and insert the following:

Level	Scheduled Condition or Disease.	Scheduled Value
I	Asbestosis/Pleural Disease A.	Medical Monitoring
II	Mixed Disease With Impairment.	$32,000
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 One	individual evaluation; smokers, $75,000; ex-smokers, $200,000; non-smokers, $625,000
VIII	Lung Cancer With Pleural Disease.	smokers, $300,000; ex-smokers, $725,000; non-smokers, $800,000
IX	Lung Cancer With Asbestosis.	smokers, $600,000; ex-smokers, $975,000; non-smokers, $1,100,000
X	Mesothelioma	$1,100,000

On page 127, line 13, strike ''IX'' and insert ''X''.

On page 127, line 18, strike ''IX'' and insert ''X''.

On page 128, line 1, strike ''IX'' and insert ''X''.

On page 128, line 3, strike ''IX'' and insert ''X''.

On page 141, line 26, strike ''IX'' and insert ''X''.

On page 250, line 10, strike ''IX'' and insert ''X''.

On page 250, line 14, strike ''VIII'' and insert ''IX''.

On page 361, line 24, strike ''VIII'' and insert ''IX''.

SA 2815. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 52, line 16, insert ''or (3)'' after ''section 403(d)(2)''.

On page 321, line 14, strike ''paragraph (2),'' and insert ''paragraphs (2) and (3),''.

On page 322, between lines 14 and 15, insert the following:

(3) ASBESTOS CLAIMS BY CERTAIN LUNG CANCER VICTIMS.—This Act shall not apply to any asbestos claim brought by a person with lung cancer who had substantial exposure to asbestos but is not eligible for compensation from the Fund. Notwithstanding any other provision of this Act, a civil action for such asbestos claims may be pursued in Federal or State court alleging that asbestos exposure was a cause of the lung cancer.

SA 2816. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 41, line 21, strike ''substantial''.

On page 72, line 22, strike ''substantial''.

On page 105, line 23, strike ''substantial''.

On page 107, line 2, strike ''substantial''.

On page 108, line 2, strike ''substantial''.

On page 109, line 9, strike ''substantial''.

On page 110, line 6, strike ''substantial''.

On page 110, lines 12 and 13, strike ''substantial''.

On page 111, line 23, strike ''substantial''.

On page 114, line 8, strike ''substantial''.

On page 116, line 15, strike ''substantial''.

On page 116, line 18, strike ''substantial''.

On page 123, lines 6 and 7, strike ''substantial''.

On page 316, line 4, strike ''substantial''.

On page 347, line 3, strike ''substantial''.

On page 349, line 12, strike ''substantial''.

On page 349, lines 17 and 18, strike ''substantial''.

On page 349, lines 22 and 23, strike ''substantial''.

On page 350, lines 2 and 3, strike ''substantial''.

On page 350, line 9, strike ''substantial''.

On page 350, line 13, strike ''substantial''.

On page 350, line 18, strike ''substantial''.

On page 350, line 21, strike ''substantial''.

SA 2817. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 132, between lines 7 and 8, insert the following:

(c) REIMBURSEMENT FOR REASONABLE MEDICAL EXPENSES.—In addition to the award under subsection (b), an asbestos claimant with a claim for malignant Level IX shall receive reimbursement for reasonable medical expenses recommended by a qualified physician. The Administrator shall promulgate regulations governing the reimbursement of medical expenses under this subsection.

SA 2818. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 321, strike line 6 and all that follows through page 322, line 13, and insert the following:

(1) IN GENERAL.—Except as provided under paragraphs (2) and (3) and section 106(f) of this Act and section 524(j)(3) of title 11, United States Code, as amended by this Act, 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 impaneling 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) with respect to which 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.

(3) ASBESTOS CLAIMS BY CERTAIN LUNG CANCER VICTIMS.—

(A) IN GENERAL.—This Act shall not apply to any asbestos claim brought by a person with lung cancer who had substantial exposure to asbestos but is not eligible for compensation from the Fund. Notwithstanding any other provision of this Act, a civil action for such asbestos claims may be pursued in Federal or State court alleging that asbestos exposure was a cause of the lung cancer.

(B) RELATION TO STAYS.—Notwithstanding any other provision of this Act, section 106(f)(1) shall not apply to a claim described in subparagraph (A).

SA 2819. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, strike line 1 and all that follows through page 318, line 2, and insert the following:

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 civil action in Federal or State court seeking damages for personal injury 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 from a disease or condition that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such disease or condition; and

(ii) satisfies the requirements of paragraph (2).

(B) PREEMPTION.—Civil actions seeking damages for personal injury attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—In any claim to which paragraph (1) applies, the complaint (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 be accompanied by—

(A) admissible evidence, including at a minimum, a B-reader's report, and the underlying x-ray film showing that the claim may be maintained and is not preempted under paragraph (1);

(B) 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;

(C) 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

(D) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(4) DUAL INJURY.—If an exposed person has both a silica disease or conditions resulting from exposure to silica and a disease or condition resulting from exposure to asbestos, any damages awarded for a claim that meets the requirements of paragraph (2)—

(A) shall be limited to damages attributable to the exposed person's exposure to silica; and

(B) shall not include damages attributable to the exposed person's exposure to asbestos.

SA 2820. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 130, add after line 21 the following:

Subtitle E—Controlling Level and Awards Provisions

SEC. 141. LEVEL AND AWARDS PROVISIONS.

(a) REFERENCES TO LEVELS.—Notwithstanding any other provision of this Act, any reference to Level VII, VIII, or IX in this Act (other than this subtitle) shall be deemed a reference to Level VIII, IX, or X, respectively, as provided under this subtitle.

(b) MALIGNANT LEVEL VII.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, to receive Level VII compensation a claimant shall provide—

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

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

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

(2) PHYSICIANS PANEL.—Notwithstanding any other provision of this Act, all claims filed relating to Level VII under this paragraph shall be referred to a Physicians Panel for a determination on the amount of award. 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.

(c) AWARDS.—Notwithstanding section 131 of this Act (or any other provision of this Act) the benefits table under subsection (b)(1) of that section shall be administered as follows:

Level	Scheduled condition or disease	Scheduled value
I	Asbestosis/Pleural Disease A	Medical Monitoring
II	Mixed Disease With Impairment	$32,000
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 One	individual evaluation; smokers, $75,000; ex-smokers, $200,000; non-smokers, $625,000
VIII	Lung Cancer With Pleural Disease	smokers, $300,000; ex-smokers, $725,000; non-smokers, $800,000
IX	Lung Cancer With Asbestosis	smokers, $600,000; ex-smokers, $975,000; non-smokers, $1,100,000
X	Mesothelioma	$1,100,000

SA 2821. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. CONTINUANCE OF TERMINAL HEALTH CLAIMS.

Nothwithstanding section 106(f)(2) or any other provision of this Act, any individual who has filed a terminal health claim before the date of enactment of this Act may continue that terminal health claim in the court where the case was pending on the date of enactment of this Act. For terminal health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under section 106(f)(2), the pending claim is not stayed and such claimants may continue the terminal health claims where the case is filed.

SA 2822. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. EXPOSURE PRESUMPTIONS.

Notwithstanding any other provision of this Act, any asbestos exposure that is a contributing factor in causing an asbestos-related disease, condition, or illness shall meet the exposure requirements for this Act.

SA 2823. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 98, strike lines 6 through 17, and insert the following:

(4) WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE MINING AND PROCESSING COMMUNITIES.—

(A) IN GENERAL.—Because of the nature of asbestos exposure related to the vermiculite mining operations in Libby, Montana, and the vermiculite processing operations associated with such mining operations, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked—

(i) at the vermiculite mining operations in Libby, Montana, or lived or worked within a 20-mile radius of such mining operations, for at least 12 months before December 31, 2004; and

(ii) at sites processing vermiculite mined from mining operations in Libby, Montana; or

(iii) or lived within a 20 mile radius of a processing site described in clause (ii), for at least 12 months before December 31, 2004.

(B) REQUIRED DOCUMENTATION.—Claimants under this paragraph shall provide such supporting documentation as the Administrator shall require.

On page 118, strike line 6 and all that follows through page 120, line 4, and insert the following:

(8) VERMICULITE MINING AND PROCESSING CLAIMANTS.—

(A) IN GENERAL.—A vermiculite mining and processing claimant, as described under subsection (c)(4), may elect to have the claimant's claim designated as an exceptional medical claim and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by such a claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in vermiculite mining and processing operations, including the nature of the pleural disease related to asbestos exposure from such sites.

(B) CLAIMS.—For all claims for Levels II through IV filed by vermiculite mining and processing claimants, as described under subsection (c)(4), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to such 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, such 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 vermiculite mining and processing claimants, such claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

On page 366, strike lines 2 through 8, and insert the following:

(a) VERMICULITE MINING AND PROCESSING 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 vermiculite mining and processing communities, as described under section 121(c)(4). The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

On page 120, strike line 5 and all that follows through page 122, line 13.

SA 2824. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, add the following:

TITLE VI—PROTECTIVE ORDERS

SEC. 601. SHORT TITLE.

This title may be cited as the ''Sunshine in Litigation Act of 2006''.

SEC. 602. RESTRICTIONS ON PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS.

(a) IN GENERAL.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following:

''§ 1660. Restrictions on protective orders and sealing of cases and settlements

''(a) ORDERS RESTRICTING DISCLOSURE OF INFORMATION.—

''(1) IN GENERAL.—A court shall not enter an order under rule 26(c) of the Federal Rules of Civil Procedure restricting the disclosure of information obtained through discovery, an order approving a settlement agreement that would restrict the disclosure of such information, or an order restricting access to court records in a civil case unless the court finds—

''(A) that such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

''(B) that—

''(i) the public interest in the disclosure of potential health or safety hazards is outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

''(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

''(2) PERIOD OF EFFECT.—No order entered under paragraph (1), other than an order approving a settlement agreement, shall continue in effect after the entry of final judgment, unless at the time of, or after, such entry the court finds that the requirements of paragraph (1) have been met.

''(3) BURDEN OF PROOF.—The party who is the proponent for the entry of an order under paragraph (1) shall have the burden of proof in obtaining such an order.

''(4) NOT WAIVABLE.—This section shall apply if an order under paragraph (1) is requested—

''(A) by motion pursuant to rule 26(c) of the Federal Rules of Civil Procedure; or

''(B) by application pursuant to the stipulation of the parties.

''(5) EFFECT ON DISCOVERY.—

''(A) IN GENERAL.—The provisions of this section shall not constitute grounds for the withholding of information in discovery that is otherwise discoverable under rule 26 of the Federal Rules of Civil Procedure.

''(B) LIMIT ON REQUESTS.—No party shall request, as a condition for the production of discovery, that another party stipulate to an order that would violate this section.

''(b) DISCLOSURE TO GOVERNMENT AGENCIES.—

''(1) IN GENERAL.—A court shall not approve or enforce any provision of an agreement between or among parties to a civil action, or approve or enforce an order under subsection (a)(1), that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

''(2) SCOPE OF CONFIDENTIALITY.—Any such information disclosed to a Federal or State agency shall be confidential to the extent provided by law.

''(c) SETTLEMENTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a court shall not enforce any provision of a settlement agreement between or among parties that prohibits 1 or more parties from—

''(A) disclosing that a settlement was reached or the terms of such settlement, other than the amount of money paid; or

''(B) discussing a case, or evidence produced in the case, that involves matters related to public health or safety.

''(2) EXCEPTION.—Paragraph (1) shall not apply if the court finds that the public interest in the disclosure of potential health or safety hazards is outweighed by a specific and substantial interest in maintaining the confidentiality of the information.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 28, United States Code, is amended by adding after the item relating to section 1659 the following:

''1660. Restrictions on protective orders and sealing of cases and settlements.''.

SEC. 603. EFFECTIVE DATE.

The amendments made by this title shall—

(1) take effect 30 days after the date of enactment of this Act; and

(2) apply only to orders entered in civil actions or agreements entered into on or after the date described in paragraph (1).

SA 2825. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. VETERANS AND DEFENSE EMPLOYEE HEALTH CLAIMS.

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

(b) ELIGIBLE VETERANS HEALTH CLAIMS.—

(1) IN GENERAL.—A claim shall qualify for treatment as a veterans and defense employee health claim if the claimant—

(A) is living;

(B) provides a diagnosis of an asbestos-related disease or condition meeting the requirements of section 121;

(C) contracted such asbestos-related disease or condition during the claimant's service—

(i) in the Armed Forces of the United States;

(ii) as an employee of the Department of Defense; or

(iii) as an employee performing official duties relating to national defense matters; and

(D) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(2) DEFINITION.—In this paragraph, the term ''employee'' has the same meaning as in section 2105 of title 5, United States Code.

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

(d) CLAIMS FACILITY.—To facilitate the prompt payment of veterans and defense employee health claim, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, may enter into settlements with claimants. The processing and payment of any such claims shall be subject to regulations promulgated under this Act.

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

(f) RULES OF CONSTRUCTION.—

(1) NO RIGHT UNDER VETERANS' BENEFIT PROGRAM.—Nothing in this subsection shall be construed to provide any claimant with any claim, right, or cause of action for benefits under a veterans' benefit program.

(2) COLLATERAL SOURCE COMPENSATION.—In no case shall amounts or benefits received by a claimant under this subsection be deemed as collateral source compensation under this Act.

SA 2826. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 39, between lines 3 and 4, insert the following:

(C) CLAIMS FROM FORMER CIVIL ACTIONS.—

(i) IN GENERAL.—The Administrator may, in instances where the attorney or attorneys for the plaintiffs in a pending tort case have spent such a substantial amount of time and resources prior to April 19, 2005 that a 5% attorney fee limitation would be manifestly unfair, increase the attorney limitation fee.

SA 2827. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

If the consolidation of the existing asbestos trust funds into this trust fund is ruled unconstitutional by a final ruling of the U.S. Supreme Court, this bill shall be non-severable, unless Congress acts within six months to strike this provision.

SA 2828. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 85, after line 23, insert the following:

SEC. 116. OPT OUT PROVISION FOR CLAIMANTS AGAINST NONPARTICIPANT ENTITIES.

(a) DEFINITION.—In this section, the term ''covered claimant '' means any person who—

(1) may have contracted an asbestos-related disease or condition; and

(2) has filed, or is eligible to file, an asbestos claim under section 113 with the Fund; and

(3) except for the provisions of this Act, could file a civil action on that asbestos claim against any entity that is not a participant as defined under section 3.

(b) ELECTION.—Any covered claimant may—

(1) file an election with the Adminstrator to—

(A) withdraw the claim with the Fund; or

(B) provide notice to pursue the claim in a civil action instead of under title I; and

(2) file a civil action on that asbestos claim in an appropriate Federal or State court.

SA 2829. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 85, after line 23, insert the following:

SEC. 116. OPT OUT PROVISION FOR NATURALLY OCCURRING ASBESTOS CLAIMANTS.

(a) DEFINITION.—In this section, the term ''naturally occurring asbestos claimant '' means any person who—

(1) may have contracted an asbestos-related disease or condition caused by exposure to naturally occurring asbestos; and

(2) has filed, or is eligible to file, an asbestos claim under section 113 with the Fund; and

(3) except for the provisions of this Act, could file a civil action on that asbestos claim against any entity that is not a participant as defined under section 3.

(b) ELECTION.—Any naturally occurring asbestos claimant may—

(1) file an election with the Adminstrator to—

(A) withdraw the claim with the Fund; or

(B) provide notice to pursue the claim in a civil action instead of under title I; and

(2) file a civil action on that asbestos claim in an appropriate Federal or State court.

SA 2830. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES.

(a) IN GENERAL.—Because of the unique nature of asbestos exposure related to the processing operations of vermiculite ore, the Administrator shall waive the exposure requirements under subtitle II for an individual who worked at a vermiculite processing site in the State of California, or lived or worked within a 20 mile radius of such processing site, for at least 12 consecutive months before December 31, 2005. Claimants under this paragraph shall provide such supporting documentation, as the Administrator shall require.

(b) VERMICULITE PROCESSING SITES.—The claims procedures described under section 121(g)(8) relating to Libby, Montana claimants shall apply to any eligible claimant who worked at a vermiculite processing site in the State of California, or lived or worked within a 20 mile radius of such processing site, as described under subsection (a), and where such processing site has been identified by a Federal or State agency as having received or processed vermiculite ore from Libby, Montana.

(c) VERMICULITE PROCESSING SITE CLAIMANTS.—

(1) IN GENERAL.—Nothing is this Act shall preclude the formation of a future fund for the payment of eligible medical expenses related to treating asbestos-related disease for individuals who worked at a vermiculite processing site in the State of California, or lived or worked within a 20 mile radius of such processing site, as described under subsection (a).

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensations as defined under section 134(a).

SA 2831. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES.

(a) IN GENERAL.—Because of the unique nature of asbestos exposure related to the processing operations of vermiculite ore, the Administrator shall waive the exposure requirements under subtitle II for an individual who worked at a site processing vermiculite mined from mining operations in Libby, Montana, or lived or worked within a 20 mile radius of such processing site, for at least 12 consecutive months before December 31, 2005. Claimants under this paragraph shall provide such supporting documentation, as the Administrator shall require.

(b) VERMICULITE PROCESSING SITES.—The claims procedures described under section 121(g)(8) relating to Libby, Montana claimants shall apply to any eligible claimant who worked at a site processing vermiculite mined from mining operations in Libby, Montana, or lived or worked within a 20 mile radius of such processing site, as described under subsection (a), and where such processing site has been identified by a Federal or State agency as having received or processed vermiculite ore from Libby, Montana.

(c) VERMICULITE PROCESSING SITE CLAIMANTS.—

(1) IN GENERAL.—Nothing is this Act shall preclude the formation of a future fund for the payment of eligible medical expenses related to treating asbestos-related disease for

individuals who worked at a site processing vermiculite mined from mining operations in Libby, Montana, or lived or worked within a 20 mile radius of such processing site, as described under subsection (a).

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensations as defined under section 134(a).

SA 2832. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF MINING AND MILLING OPERATIONS AND COMMUNITIES.

(a) IN GENERAL.—Because of the unique nature of asbestos exposure related to the asbestos mining and milling operations in the areas of Coalinga, New Idria, and King City, in the State of California, the Administrator shall waive the exposure requirements under this subtitle for an individual who worked at such a mining or milling operation, or lived or worked within a 20 mile radius of such an operation, for at least 12 consecutive months before December 31, 2005. Claimants under this paragraph shall provide such supporting documentation, as the Administrator shall require.

(b) MISCELLANEOUS.—Notwithstanding section (2)(a)(9), the Congress finds that among the communities hardest hit by this crisis have been those in or near the locations where asbestos fiber was mined and milled, where for years the air and ground was contaminated and residents, as well as mine and mill workers, were exposed, and where citizens continue to be taking ill even though mining operations ceased years ago.

SA 2833. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 322, between lines 13 and 14, insert the following:

(C) SMALL BUSINESS CONCERNS.—

(i) DEFINITION.—In this subparagraph, the term ''small business concern'' has the same meaning as in section 3 of the Small Business Act (15 U.S.C. 632)).

(ii) TREATMENT OF CLAIMS.—Except as provided in clause (iv), in any civil action described under subparagraph (A), the court shall dismiss any asbestos claim against a small business concern, if such small business concern proves that it was not involved in a business involving, and did not use contractors performing duties involving—

(I) handling raw asbestos;

(II) fabricating asbestos-containing products that could lead to exposure to raw asbestos; or

(III) altering, repairing, or otherwise working with asbestos-containing products that could lead to exposure to asbestos fibers.

(iii) PRIOR JUDGMENT.—In a civil action described under subparagraph (A) involving a small business concern, the court may consider the fact that another asbestos claim against such small business concern was dismissed in determining whether such small business concern was not involved in a business involving, and did not use contractors performing duties involving the materials described in subclause (I), (II), or (III) of clause (ii).

(iv) EXCEPTIONS.—Clause (ii) and (iii) of this subparagraph shall not apply to—

(I) a claim against an insurance company; or

(II) a claim against a small business concern by a current or former employee of such small business concern.

(v) PROCEDURES FOR SETTLEMENT OF TERMINAL HEALTH CLAIMS.—Notwithstanding any other provision of this Act, the settlement requirements under section 106(f)(2) shall not apply to any terminal health claim, as provided under section 106(c)(2), against a small business concern filed before, on, or after the date of enactment of this Act seeking a judgment or order for monetary damages in any Federal or State court.

SA 2834. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 122, between lines 17 and 18, insert the following:

(11) ASBESTOS EXPOSURE AS THE RESULT OF A NATURAL OR OTHER DISASTER.—

(A) IN GENERAL.—A claimant may file an exceptional medical claim with the Fund if such claimant has been exposed to asbestos in any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) the attack on the World Trade Center in New York, New York on September 11, 2001; or

(ii) Hurricane Katrina and Hurricane Rita of 2005 in the Gulf Region of the United States.

(B) REVIEW OF EVIDENCE.—In reviewing medical evidence submitted by a claimant under subparagraph (A)(i) or (ii), the Physicians Panel shall take into consideration the unique nature of these disasters and the potential for asbestos exposure resulting from these disasters.

SA 2835. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, strike line 1 and all that follows through page 318, line 2, and insert the following:

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 civil action in Federal or State court seeking damages for personal injury 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 from a disease or condition that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such disease or condition; and

(ii) satisfies the requirements of paragraph (2).

(B) PREEMPTION.—Civil actions seeking damages for personal injury attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—In any claim to which paragraph (1) applies, the complaint (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 be accompanied by—

(A) admissible evidence, including at a minimum, a B-reader's report, and the underlying x-ray film showing that the claim may be maintained and is not preempted under paragraph (1);

(B) 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;

(C) 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

(D) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(4) DUAL INJURY.—If an exposed person has both a silica disease or conditions resulting from exposure to silica and a disease or condition resulting from exposure to asbestos, any damages awarded for a claim that meets the requirements of paragraph (2)—

(A) shall be limited to damages attributable to the exposed person's exposure to silica; and

(B) shall not include damages attributable to the exposed person's exposure to asbestos.

SA 2836. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. CONTINUANCE OF TERMINAL HEALTH CLAIMS.

Nothwithstanding section 106(f)(2) or any other provision of this Act, any individual who has filed a terminal health claim before the date of enactment of this Act may continue that terminal health claim in the court where the case was pending on the date of enactment of this Act. For terminal health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under section 106(f)(2), the pending claim is not stayed and such claimants may continue the terminal health claims where the case is filed.

SA 2837. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 46, line 18, strike all through page 62, line 8, and insert the following:

(1) STAY OF CLAIMS.—Notwithstanding any other provision of this Act, any asbestos claim pending on the date of enactment of this Act, other than a terminal health claim to which paragraph (2) of this subsection applies, a claim to which section 403(d)(2) applies, a terminal health claim, or as otherwise provided in section 402(f), is stayed.

(2) TERMINAL HEALTH CLAIMS.—

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

(i) IN GENERAL.—Any person that has filed a terminal health claim, as provided under subsection (c)(2), seeking a judgment or order for monetary damages in any Federal or State court before the date of the enactment of this Act, shall seek a settlement in accordance with this paragraph. Any person with a terminal health claim, as provided under subsection (c)(2), that arises after such date of enactment shall seek a settlement in accordance with this paragraph.

(ii) FILING.—

(I) IN GENERAL.—At any time before the Fund or claims facility is certified as operational and paying terminal health claims at a reasonable rate, any person with a terminal health claim as described under clause (i) shall file a notice of their intent to seek a settlement or shall file their exigent health claim with the Administrator or claims facility. Filing of an exigent health claim with the Administrator or claims facility may serve as notice of intent to seek a settlement.

(II) EXCEPTION.—Any person who seeks compensation for an exigent health claim from a trust in accordance with section 402(f) shall not be eligible to seek a settlement or settlement offer under this paragraph.

(iii) TERMINAL HEALTH CLAIM INFORMATION.—To file a terminal health claim, each individual shall provide all of the following information:

(I) The amount received or entitled to be received as a result of all collateral source compensation under section 134, and copies of all settlement agreements and related documents sufficient to show the accuracy of that amount.

(II) A description of any claims for compensation for an asbestos related injury or disease filed by the claimant with any trust or class action trust, and the status or disposition or any such claims.

(III) All information that the claimant would be required to provide to the Administrator in support of a claim under sections 113(c) and 121.

(IV) A certification by the claimant that the information provided is true and complete. The certification provided under this subclause shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator or claims facility in support of a claim.

(V) For terminal health claims arising after the date of enactment of this Act, the claimant shall identify each defendant that would be an appropriate defendant in a civil action seeking damages for the asbestos claim of the claimant. Identification of all potential participants shall be made in good faith by the claimant.

(iv) TIMING.—A claimant who has filed a notice of their intent to seek a settlement under clause (ii) shall within 60 days after filing notice provide to the Administrator or claims facility the information required under clause (iii). If a claimant has filed an exigent health claim under clause (ii) the Administrator shall provide all affected defendants the information required under clause (iii).

(v) WEBSITE.—

(I) POSTING.—The Administrator or claims facility shall post the information described in subclause (II) to a secure website, accessible on a passcode-protected basis to participants.

(II) REQUIRED INFORMATION.—The website established under subclause (I) shall contain a listing of—

(aa) each claimant that has filed a notice of intent to seek a settlement or claim under this clause;

(bb) the name of such claimant; and

(cc) if applicable—

(AA) the name of the court where such claim was filed;

(BB) the case or docket number of such claim; and

(CC) the date such claim was filed.

(III) PROHIBITIONS.—The website established under subclause (I) shall not contain specific health or medical information or social security numbers.

(IV) PARTICIPANT ACCESS.—A participant's access to the website established under subclause (I) shall be limited on a need to know basis, and participants shall not disclose or sell data, or retain data for purposes other than paying an asbestos claim.

(V) VIOLATIONS.—Any person or other entity that violates any provision of this clause, including by breaching any data posted on the website, shall be subject to an injunction, or civil penalties, or both.

(vi) ADMINISTRATOR OR CLAIMS FACILITY CERTIFICATION OF SETTLEMENT.—

(I) DETERMINATION.—Within 60 days after the information under clause (iii) is provided, the Administrator or claims facility shall determine whether or not the claim meets the requirements of a terminal health claim.

(II) REQUIREMENTS MET.—If the Administrator or claims facility determines that the claim meets the requirements of a terminal health claim, the Administrator or claims facility shall immediately—

(aa) issue and serve on all parties a certification of eligibility of such claim;

(bb) determine the value of such claim under the Fund by subtracting from the amount in section 131 the total amount of collateral source compensation received by the claimant; and

(cc) pay the award of compensation to the claimant under clause (xiii).

(III) REQUIREMENTS NOT MET.—If the requirements under clause (iii) are not met, the claimant shall have 30 days to perfect the claim. If the claimant fails to perfect the claim within that 30-day period or the Administrator or claims facility determines that the claim does not meet the requirements of a terminal health claim, the claim shall not be eligible to proceed under this paragraph. A claimant may appeal any decision issued by a claims facility with the Administrator in accordance with section 114.

(vii) FAILURE TO CERTIFY.—If the Administrator or claims facility is unable to process the claim and does not make a determination regarding the certification of the claim as required under clause (vi), the Administrator or claims facility shall within 10 days after the end of the 60-day period referred to under clause (vi)(I) provide notice of the failure to act to the claimant and the defendants in the pending Federal or State court action or the defendants identified under clause (iii)(IV). If the Administrator or claims facility fails to provide such notice within 10 days, the claimant may elect to provide the notice to the affected defendants to prompt a settlement offer. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(viii) FAILURE TO PAY.—If the Administrator or claims facility does not pay the award as required under clause (xiii), the Administrator shall refer the certified claim within 10 days as a certified terminal health claim to the defendants in the pending Federal and State court action or to the potential defendants identified under clause (iii)(IV) for terminal claims arising after the date of enactment of this Act. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(ix) SETTLEMENT OFFER.—Any participant or participants may, within 30 days after receipt of such notice as provided under clause (vii) or (viii), file and serve on all parties and the Administrator a good faith settlement offer in an aggregate amount not to exceed the total amount to which the claimant would receive under section 131. If the aggregate amount offered by all participants exceeds the award determined by the Administrator, all offers shall be deemed reduced pro-rata until the aggregate amount equals the award amount. An acceptance of such settlement offer for claims pending before the date of enactment of this Act shall be subject to approval by the trial judge or authorized magistrate in the court where the claim is pending. The court shall approve any such accepted offer within 20 days after a request, unless there is evidence of bad faith or fraud. No court approval is necessary if the terminal health claim was certified by the Administrator or claims facility under clause (vi).

(x) ACCEPTANCE OR REJECTION.—Within 20 days after receipt of the settlement offer, or the amended settlement offer, the claimant shall either accept or reject such offer in writing. If the amount of the settlement offer made by the Administrator, claims facility, or participants equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xi) OPPORTUNITY TO CURE.—If the settlement offer is rejected for being less than what the claimant would receive under the Fund, the participants shall have 10 business days to make an amended offer. If the amended offer equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement offer in writing. If the settlement offer is again rejected as less than what the claimant would

receive under the Fund or if participants fail to make an amended offer, the claimant shall recover 150 percent of what the claimant would receive under the Fund. If the amount of the amended settlement offer made by the Administrator, claims facility, or participants equals 150 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xii) PAYMENT SCHEDULE.—

(I) MESOTHELIOMA CLAIMANTS.—For mesothelioma claimants—

(aa) an initial payment of 50 percent shall be made within 30 days after the date the settlement is accepted and the second and final payment shall be made 6 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participant, the payments may be extended 50 percent in 6 months and 50 percent 11 months after the date the settlement offer is accepted.

(II) OTHER TERMINAL CLAIMANTS.—For other terminal claimants, as defined under section 106(c)(2)(B) and (C)—

(aa) the initial payment of 50 percent shall be made within 6 months after the date the settlement is accepted and the second and final payment shall be made 12 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participants, the payments may be extended 50 percent within 1 year after the date the settlement offer is accepted and 50 percent in 2 years after date the settlement offer is accepted.

(III) RELEASE.—Once a claimant has received final payment of the accepted settlement offer, and penalty payment if applicable, the claimant shall release any outstanding asbestos claims.

(xiii) RECOVERY OF COSTS.—

(I) IN GENERAL.—Any participant whose settlement offer is accepted may recover the cost of such settlement by deducting from the participant's next and subsequent contributions to the Fund the full amount of the payment made by such participant to the terminal health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that the participant's offer is not in good faith. Any such payment shall be considered a payment to the Fund for purposes of section 404(e)(1) and in response to the payment obligations imposed on participants in title II.

(II) REIMBURSEMENT.—Notwithstanding subclause (I), if the deductions from the participant's next and subsequent contributions to the Fund do not fully recover the cost of such payments on or before its third annual contribution to the Fund, the Fund shall reimburse such participant for such remaining cost not later than 6 months after the date of the third scheduled Fund contribution.

(xiv) FAILURE TO MAKE OFFER.—If participants fail to make a settlement offer within the 30-day period described under clause (ix) or make amended offers within the 10 business day cure period described under clause (xi), the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund.

(xv) FAILURE TO PAY.—If a participant fails to pay an accepted settlement offer within the payment schedule under clause (xii), the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund. If the stay is lifted under subparagraph (B) the claimant may seek a judgment or order for monetary damages from the court where the case is currently pending or the appropriate Federal or State court for claims arising after the date of enactment of this Act.

(B) STAY TERMINATED AND REVERSION TO COURT.—If 9 months after a terminal health claim has been filed under subparagraph (A), a claimant has not received a settlement under subparagraph (A)(xii) and the Administrator has not certified to Congress that the Fund or claims facility is operational and paying terminal health claims at a reasonable rate, the stay of claim provided under paragraph (1) shall be lifted and such terminal health claimant, may immediately seek a judgment or order for monetary damages from the court where the case is currently pending or the appropriate Federal or State court for claims arising after the date of enactment of this Act. If a claimant has failed to file a claim or notice of intent to seek a settlement, as required under subparagraph (A)(ii), the provisions of this subparagraph shall not apply.

(c) CONTINUANCE OF TERMINAL HEALTH CLAIMS.—Nothwithstanding section 106(f)(2) or any other provision of this Act, any individual who has filed a terminal health claim before the date of enactment of this Act may continue that terminal health claim in the court where the case was pending on the date of enactment of this Act. For terminal health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under subparagraph (A), the pending claim is not stayed and such claimants may continue the terminal health claims where the case is filed.

SA 2838. Mr. LAUTENBERG (for himself and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for MR. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 102, between lines 17 and 18, insert the following:

(5) WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES IN NEW JERSEY.—Because of the unique nature of asbestos exposure related to the processing operations of vermiculite ore, the Administrator shall waive the exposure requirements under this subtitle for an individual who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site, for at least 12 consecutive months before December 31, 2005. Claimants under this paragraph shall provide such supporting documentation, as the Administrator shall require.

On page 102, line 18, strike ''(5)'' and insert ''(6)''.

On page 104, line 14, strike ''(6)'' and insert ''(7)''.

On page 123, between lines 10 and 11, insert the following:

(9) NEW JERSEY PROCESSING SITES.—The claims procedures described under paragraph (8) relating to Libby, Montana claimants shall apply to any eligible claimant who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site, as described under subsection (c)(5), and where such processing site has been identified by a Federal or State agency as having received or processed vermiculite ore from Libby, Montana.

On page 123, line 11, strike ''(9)'' and insert ''(10)''.

On page 125, line 19, strike ''(10)'' and insert ''(11)''.

On page 366, between line 11 and 12, insert the following:

(b) NEW JERSEY PROCESSING SITE CLAIMANTS.—

(1) IN GENERAL.—Nothing is this Act shall preclude the formation of a future fund for the payment of eligible medical expenses related to treating asbestos-related disease for individuals who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site.

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensations as defined under section 134(a).

On page 366, line 12, strike ''(b)'' and insert ''(c)''.

SA 2839. Mr. LAUTENBERG (for himself and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES IN NEW JERSEY.

(a) IN GENERAL.—Because of the unique nature of asbestos exposure related to the processing operations of vermiculite ore, the Administrator shall waive the exposure requirements under subtitle II for an individual who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site, for at least 12 consecutive months before December 31, 2005. Claimants under this paragraph shall provide such supporting documentation, as the Administrator shall require.

(b) VERMICULITE PROCESSING SITES.—The claims procedures described under section 121(g)(8) relating to Libby, Montana claimants shall apply to any eligible claimant who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site, as described under subsection (a), and where such processing site has been identified by a Federal or State agency as having received or processed vermiculite ore from Libby, Montana.

(c) VERMICULITE PROCESSING SITE CLAIMANTS.—

(1) IN GENERAL.—Nothing is this Act shall preclude the formation of a future fund for the payment of eligible medical expenses related to treating asbestos-related diseases for individuals who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site, as described under subsection (a).

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensations as defined under section 134(a).

SA 2840. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 298, strike lines 16 and 17, and insert the following:

''(A) the trust qualifies as a trust under section 201 of that Act; and

''(B) the trust does not file an election under section 410 of that Act.''.

On page 301, line 24, insert ''or for electing to opt out under section 410 of the Fairness in Asbestos Injury Resolution Act of 2006 '' before the period.

On page 375, after line 23, insert the following:

SEC. 410. OPT-OUT RIGHTS OF CERTAIN TRUSTS AND EFFECT OF OPT-OUT.

(a) OPT-OUT RIGHTS.—Any trust defined under section 201(8) that has been established or formed under a plan of reorganization under chapter 11 of title 11, United States Code, confirmed by a duly entered order or judgment of a court, which order or judgment is no longer subject to any appeal or judicial review on the date of enactment of this Act, may elect not to be covered by this Act by filing written notice of such election to the Administrator not later than 90 days after the date of enactment of this Act.

(b) EFFECT OF OPT-OUT.—

(1) IN GENERAL.—Neither this Act nor any amendment made by this Act shall apply to—

(A) any trust that makes an election under subsection (a); or

(B) any claim or future demand that has been channeled to that trust.

(2) ASSETS AND OTHER RIGHTS AND CLAIMS.—A trust that makes an election under subsection (a) shall retain all of its assets. The contractual and other rights of a trust making an election under subsection (a) and claims against other persons (whether held directly or indirectly by others for the benefit of the trust), including the rights and claims of the trust against insurers, shall be preserved and not abrogated by this Act.

SA 2841. Mr. BURNS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 70, line 9, strike ''TLC or FVC'' and insert ''TLC, FVC, or DLCO''.

On page 119, line 22, strike ''TLC or FVC'' and insert ''TLC, FVC, or DLCO''.

SA 2842. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES.

(a) WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE MINING AND PROCESSING COMMUNITIES.—

(1) IN GENERAL.—Because of the nature of asbestos exposure related to the vermiculite mining operations in Libby, Montana, and the vermiculite processing operations associated with such mining operations, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked—

(A) at the vermiculite mining operations in Libby, Montana, or lived or worked within a 20-mile radius of such mining operations, for at least 12 months before December 31, 2004; and

(B) at sites processing vermiculite mined from mining operations in Libby, Montana, that—

(i) the United States Environmental Protection Agency has designated as requiring further action on the basis of current contamination as of the date of enactment of this Act; or

(ii) processed at least 100,000 tons or more of vermiculite from the Libby, Montana, mine; or

(iii) currently or subsequently have been identified by any Governmental agency as having processed vermiculite from the Libby, Montana, mine that caused risk from asbestos exposure; or

(C) or lived within a 20 mile radius of a processing site described in subparagraph (B), for at least 12 months before December 31, 2004.

(2) REQUIRED DOCUMENTATION.—Claimants under this paragraph shall provide such supporting documentation as the Administrator shall require.

(b) VERMICULITE MINING AND PROCESSING CLAIMANTS.—

(1) IN GENERAL.—Notwithstanding section 121(g)(8), a vermiculite mining and processing claimant, as described under subsection (a), may elect to have the claimant's claim designated as an exceptional medical claim and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by such a claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in vermiculite mining and processing operations, including the nature of the pleural disease related to asbestos exposure from such sites.

(2) CLAIMS.—For all claims for Levels II through IV filed by vermiculite mining and processing claimants, as described under subsection (a), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to such 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, such 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 vermiculite mining and processing claimants, such claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

(c) VERMICULITE MINING AND PROCESSING 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 vermiculite mining and processing communities, as described under section 121(c)(4). The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(d) MISCELLANEOUS.—Section (2)(a)(9) shall have no force or effect.

(e) DEFINITION.—For purposes of this section, the term ''Governmental agency'' means any regulatory or administrative unit responsible for evaluating sites that received and processed vermiculite ore mined in Libby, Montana.

SA 2843. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES.

(a) WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE MINING AND PROCESSING COMMUNITIES.—

(1) IN GENERAL.—Notwithstanding section 121(c)(4), because of the nature of asbestos exposure related to the vermiculite mining operations in Libby, Montana, and the vermiculite processing operations associated with such mining operations, the Administrator shall waive the exposure requirements under subtitle II for individuals who worked—

(A) at the vermiculite mining operations in Libby, Montana, or lived or worked within a 20-mile radius of such mining operations, for at least 12 months before December 31, 2004; and

(B) at sites processing vermiculite mined from mining operations in Libby, Montana, that—

(i) the United States Environmental Protection Agency has designated as requiring further action on the basis of current contamination as of the date of enactment of this Act; or

(ii) processed at least 100,000 tons or more of vermiculite from the Libby, Montana, mine; or

(C) or lived within a 20 mile radius of a processing site described in subparagraph (B), for at least 12 months before December 31, 2004.

(2) REQUIRED DOCUMENTATION.—Claimants under this subsection shall provide such supporting documentation as the Administrator shall require.

(b) VERMICULITE MINING AND PROCESSING CLAIMANTS.—

(1) IN GENERAL.—Notwithstanding section 121(g)(8), a vermiculite mining and processing claimant, as described under subsection (a), may elect to have the claimant's claim designated as an exceptional medical claim and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by such a claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in vermiculite mining and processing operations, including the nature of the pleural disease related to asbestos exposure from such sites.

(2) CLAIMS.—For all claims for Levels II through IV filed by vermiculite mining and processing claimants, as described under subsection (a), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to such 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, such 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 vermiculite mining and processing claimants, such claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

(c) VERMICULITE MINING AND PROCESSING 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 vermiculite mining and processing communities, as described under section 121(c)(4). The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(d) MISCELLANEOUS.—Section (2)(a)(9) shall have no force or effect.

SA 2844. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. LIBBY, MONTANA CLAIMANTS.

Notwithstanding any other provision of this Act, any Libby, Montana claimant shall be treated in the same manner and to the same extent as any other claimant under this Act, including for provisions relating to—

(1) eligibility under the Fund;

(2) the filing of claims; and

(3) awards under the Fund.

SA 2845. Mr. BURNS (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 119, line 22, strike ''TLC or FVC'' and insert ''TLC, FVC, or DLCO''.

SA 2846. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''Fairness in Asbestos Injury Resolution Act of 2006'' or the ''FAIR Act of 2006''.

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.

(10) The asbestos found in Libby, Montana, tremolite asbestos, has demonstrated an unusually high level of toxicity, as compared to chrysotile asbestos. Diseases contracted from this tremolite asbestos are unique and highly progressive. These diseases typically manifest in a characteristic pleural disease pattern, and often result in severe impairment or death without radiographic interstitial disease or typical chrysotile markers of radiographic severity. According to the Agency for Toxic Substances and Disease Registry previous studies by the National Institutes of Occupational Safety and Health document significantly increased rates of pulmonary abnormalities and disease (asbestosis and lung cancer) among former workers.

(11) Environmental Protection Agency supported studies have determined that the raw vermiculite ore mined and milled in Libby, Montana contained 21 to 26 percent asbestos, by weight. The milled ore, resulting from the processing in Libby, which was shipped out of Libby contained markedly reduced percentages of asbestos. A 1982 Environmental Protection Agency-supported sutdy concluded that oreshipped out of Libby contained 0.3 to 7 percent asbestos, by weight.

(12) In Libby, Montana, exposure pathways are and were not limited to the workplace, rather, for decades there has been an unprecedented 24 hour per day contamination of the community's homes, playgrounds, gardens, and community air, such that the entire community of Libby, Montana, has been designated a Superfund site and is listed on the Environmental Protection Agency's National Priorities List.

(13) These multiple exposure pathways have caused severe asbestos disease and death not only in former workers at the mine and milling facilities, but also in the workers' spouses and children, and in community members who had no direct contact with the mine. According to the Environmental Protection Agency, some potentially important alternative pathways for past asbestos exposure include elevated concentrations of asbestos in ambient air and recreational exposures from children playing in piles of vermiculite. Furthermore, the Environmental Protection Agency has determined that current potential pathways of exposure include vermiculite placed in walls and attics as thermal insulation, vermiculite or ore used as road bed material, ore used as ornamental landscaping, and vermiculite or concentrated ore used as a soil and garden amendment or aggregate in driveways.

(14) The Environmental Protection Agency also concluded, ''Asbestos contamination exists in a number of potential source materials at multiple locations in and around the residential and commercial area of Libby . . . While data are not yet sufficient to perform reliable human-health risk evaluations for all sources and all types of disturbance, it is apparent that releases of fiber concentrations higher than Occupational Safety and Health Administration standards may occur in some cases . . . and that screening-level estimates of lifetime excess cancer risk can exceed the upper-bound risk range of 1E–04 usually used by the Environmental Protection Agency for residents under a variety of exposure scenarios. The occurrence of non-occupational asbestos-related disease that has been observed among Libby residents is extremely unusual, and has not been associated with asbestos mines elsewhere, suggesting either very high and prolonged environmental exposures and/or increased toxicity of this form of amphibole asbestos.''.

(15) According to a November 2003 article from the Journal Environmental Health Perspectives titled, Radiographic Abnormalities and Exposure to Asbestos-Contaminated Vermiculite in the Community of Libby, Montana, USA, Libby residents who have evidence of ''no apparent exposure'', i.e., did not work with asbestos, were not a family member of a former worker, etc., had a greater rate of pleural abnormalities (6.7 percent) than did those in control groups or general populations found in other studies from other states (which ranged from 0.2 percent to 4.6 percent). ''Given the ubiquitous nature of vermiculite contamination in Libby, along with historical evidence of elevated asbestos concentrations in the air, it would be difficult to find participants who could be characterized as unexposed.''.

(16) Nothing in this Act is intended to increase the Federal deficit or impose any burden on the taxpayer. The Office of Asbestos Disease Compensation established under this Act shall be privately funded by annual payments from defendant participants that have been subject to asbestos liability and their insurers. Section 406(b) of this Act expressly

provides that nothing in this Act shall be construed to create any obligation of funding from the United States or to require the United States to satisfy any claims if the amounts in the Fund are inadequate. Any borrowing by the Fund is limited to monies expected to be paid into the Fund, and the Administrator shall have no fiscal authroity beyond the amount of private money coming into the Fund. This Act provides the Administrator with broad enforcement authority to pursue debts to the Fund owed by defendant participants or insurer participants and their successors in interest.

(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) asbestiform amphibole minerals;

(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;

(v) claims arising out of medical malpractice; or

(vi) any claim arising under—

(I) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(II) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(III) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.);

(IV) the Equal Pay Act of 1963 (29 U.S.C. 206);

(V) the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.);

(VI) section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983); or

(VII) the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

(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, in 1 or a series of transactions, acquires all or substantially all of the assets and properties (including, without limitation, under section 363(b) or 1123(b)(4) of title 11, United States Code), 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.

(19) 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.

(20) 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.

(21) 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.

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) TERMINATION OF THE OFFICE.—The Office of Asbestos Disease Compensation shall terminate effective not later than 12 months following certification by the Administrator that the Fund has neither paid a claim in the previous 12 months nor has debt obligations remaining to pay.

(4) EXPENSES.—There shall be available from the Fund to the Administrator such sums as are necessary for any and all expenses associated with the Office of Asbestos Disease Compensation and necessary to carry out the purposes of this Act. Expenses covered should include—

(A) management of the Fund;

(B) personnel salaries and expenses, including retirement and similar benefits;

(C) the sums necessary for conducting the studies required under this Act;

(D) all administrative and legal expenses; and

(E) any other sum that could be attributable to the Fund.

(b) APPOINTMENT OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator of the Office of Asbestos Disease Compensation shall be appointed by the President. The Administrator shall serve for a term of 10 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 primary 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 terminal 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 OF FINANCIAL RECORDS.—

(A) IN GENERAL.—Any person may label any record submitted under this section as a confidential commercial or financial record for the purpose of requesting exemption from disclosure under section 552(b)(4) of title 5, United States Code.

(B) DUTIES OF ADMINISTRATOR AND CHAIRMAN OF THE ASBESTOS INSURERS COMMISSION.—The Administrator and Chairman of the Asbestos Insurers Commission—

(i) shall adopt procedures for—

(I) handling submitted records marked confidential; and

(II) protecting from disclosure records they determine to be confidential commercial or financial information exempt under section 552(b)(4) of title 5, United States Code; and

(ii) may establish a pre-submission determination process to protect from disclosure records on reserves and asbestos-related liabilities submitted by any defendant participant that is exempt under section 552(b)(4) of title 5, United States Code.

(C) REVIEW OF COMPLAINTS.—Nothing in this section shall supersede or preempt the de novo review of complaints filed under section 552(b)(4) of title 5, United States Code.

(3) CONFIDENTIALITY OF MEDICAL RECORDS.—Any claimant may designate any record submitted under this section as a confidential personnel or medical file 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.

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 20 members, appointed by the President.

(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 10 years.

(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 120 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 and any other appropriate paralegal assistance;

(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) LIMITATION.—

(A) 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 a reasonable attorney's fee.

(ii) CALCULATION OF REASONABLE FEE.—Any fee obtained under clause (i) shall be calculated by multiplying a reasonable hourly rate by the number of hours reasonably expended on the claim of the individual.

(iii) REQUIREMENTS FOR COMPENSATION.—A representative of an individual shall not be eligible to receive a fee under clause (i), unless—

(I) such representative submits to the Administrator detailed contemporaneous billing records for any work actually performed in the course of representation of an individual; and

(II) the Administrator finds, based on billing records submitted by the representative under subclause (I), that the work for which compensation is sought was reasonably performed, and that the requested hourly fee is reasonable.

(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.—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.

(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) IMMEDIATE STARTUP.—

(1) IN GENERAL.—Subject to section 101(d), the Administrator may—

(A) start receiving, reviewing, and deciding claims immediately upon the date of enactment of this Act; and

(B) reimburse the Department of Labor from the Fund for any expense incurred—

(i) before that date of enactment in preparation for carrying out any of the responsibilities of the Administrator under this Act; and

(ii) during the 60-day period following that date of enactment to carry out such responsibilities.

(2) 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 this title and the operation of the Fund under title II, including procedures for the expediting of terminal health claims, and processing of claims through the claims facility.

(b) INTERIM PERSONNEL AND CONTRACTING.—The Secretary of Labor and the Assistant Secretary of Labor for the Employment Standards Administration shall 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 including entering into contracts on an expedited or sole source basis during the startup period for the purpose of processing claims or providing financial analysis or assistance. 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) TERMINAL HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures, as provided in section 106(f), to provide for an expedited process to categorize, evaluate, and pay terminal health claims. Such procedures, as provided in section 106(f), shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of terminal health claims.

(2) ELIGIBLE TERMINAL HEALTH CLAIMS.—A claim shall qualify for treatment as a terminal health claim if—

(A) the claimant is living and provides a diagnosis of mesothelioma meeting the requirements of section 121(d)(9);

(B) the claimant is living and provides a credible declaration or affidavit, from a diagnosing 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 due to such asbestos-related illness; or

(C) the claimant is the spouse or child of an eligible terminal health claimant who—

(i) was living when the claim was filed with the Fund, or if before the implementation of interim regulations for the filing of claims with the Fund, on the date of enactment of this Act;

(ii) has since died from a malignant disease or condition; and

(iii) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(3) ADDITIONAL TERMINAL HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as terminal health claims under this subsection except that exceptional medical claims may not proceed.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of terminal health claims prior to the Fund being certified as operational, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, shall process and pay claims in accordnace with section 106(f)(2). The processing and payment of claims shall be subject to regulations promulgated under this Act.

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

(d) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health claims. The Administrator shall also prioritize claims from claimants who face 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 exposure to asbestos was a substantial contributing factor for the illness in question.

(f) STAY OF CLAIMS.—

(1) STAY OF CLAIMS.—Notwithstanding any other provision of this Act, any asbestos claim pending on the date of enactment of this Act is stayed.

(2) TERMINAL HEALTH CLAIMS.—

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

(i) IN GENERAL.—Any person that has filed a terminal health claim, as provided under subsection (c)(2), seeking a judgment or order for monetary damages in any Federal or State court before the date of the enactment of this Act, shall seek a settlement in accordance with this paragraph. Any person with a terminal health claim, as provided under subsection (c)(2), that arises after such date of enactment shall seek a settlement in accordance with this paragraph.

(ii) FILING.—

(I) IN GENERAL.—At any time before the Fund or claims facility is certified as operational and paying terminal health claims at a reasonable rate, any person with a terminal health claim as described under clause (i) shall file a notice of their intent to seek a settlement or shall file their exigent health claim with the Administrator or claims facility. Filing of an exigent health claim with the Administrator or claims facility may serve as notice of intent to seek a settlement.

(II) EXCEPTION.—Any person who seeks compensation for an exigent health claim from a trust in accordance with section 402(f) shall not be eligible to seek a settlement or settlement offer under this paragraph.

(iii) TERMINAL HEALTH CLAIM INFORMATION.—To file a terminal health claim, each individual shall provide all of the following information:

(I) The amount received or entitled to be received as a result of all collateral source compensation under section 134, and copies of all settlement agreements and related documents sufficient to show the accuracy of that amount.

(II) A description of any claims for compensation for an asbestos related injury or disease filed by the claimant with any trust or class action trust, and the status or disposition or any such claims.

(III) All information that the claimant would be required to provide to the Administrator in support of a claim under sections 113(c) and 121.

(IV) A certification by the claimant that the information provided is true and complete. The certification provided under this subclause shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator or claims facility in support of a claim.

(V) For terminal health claims arising after the date of enactment of this Act, the claimant shall identify each defendant that would be an appropriate defendant in a civil action seeking damages for the asbestos claim of the claimant. Identification of all potential participants shall be made in good faith by the claimant.

(iv) TIMING.—A claimant who has filed a notice of their intent to seek a settlement under clause (ii) shall within 60 days after filing notice provide to the Administrator or claims facility the information required under clause (iii). If a claimant has filed an exigent health claim under clause (ii) the Administrator shall provide all affected defendants the information required under clause (iii).

(v) WEBSITE.—

(I) POSTING.—The Administrator or claims facility shall post the information described in subclause (II) to a secure website, accessible on a passcode-protected basis to participants.

(II) REQUIRED INFORMATION.—The website established under subclause (I) shall contain a listing of—

(aa) each claimant that has filed a notice of intent to seek a settlement or claim under this clause;

(bb) the name of such claimant; and

(cc) if applicable—

(AA) the name of the court where such claim was filed;

(BB) the case or docket number of such claim; and

(CC) the date such claim was filed.

(III) PROHIBITIONS.—The website established under subclause (I) shall not contain specific health or medical information or social security numbers.

(IV) PARTICIPANT ACCESS.—A participant's access to the website established under subclause (I) shall be limited on a need to know basis, and participants shall not disclose or sell data, or retain data for purposes other than paying an asbestos claim.

(V) VIOLATIONS.—Any person or other entity that violates any provision of this clause, including by breaching any data posted on the website, shall be subject to an injunction, or civil penalties, or both.

(vi) ADMINISTRATOR OR CLAIMS FACILITY CERTIFICATION OF SETTLEMENT.—

(I) DETERMINATION.—Within 60 days after the information under clause (iii) is provided, the Administrator or claims facility shall determine whether or not the claim

meets the requirements of a terminal health claim.

(II) REQUIREMENTS MET.—If the Administrator or claims facility determines that the claim meets the requirements of a terminal health claim, the Administrator or claims facility shall immediately—

(aa) issue and serve on all parties a certification of eligibility of such claim;

(bb) determine the value of such claim under the Fund by subtracting from the amount in section 131 the total amount of collateral source compensation received by the claimant; and

(cc) pay the award of compensation to the claimant under clause (xiii).

(III) REQUIREMENTS NOT MET.—If the requirements under clause (iii) are not met, the claimant shall have 30 days to perfect the claim. If the claimant fails to perfect the claim within that 30-day period or the Administrator or claims facility determines that the claim does not meet the requirements of a terminal health claim, the claim shall not be eligible to proceed under this paragraph. A claimant may appeal any decision issued by a claims facility with the Administrator in accordance with section 114.

(vii) FAILURE TO CERTIFY.—If the Administrator or claims facility is unable to process the claim and does not make a determination regarding the certification of the claim as required under clause (vi), the Administrator or claims facility shall within 10 days after the end of the 60-day period referred to under clause (vi)(I) provide notice of the failure to act to the claimant and the defendants in the pending Federal or State court action or the defendants identified under clause (iii)(IV). If the Administrator or claims facility fails to provide such notice within 10 days, the claimant may elect to provide the notice to the affected defendants to prompt a settlement offer. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(viii) FAILURE TO PAY.—If the Administrator or claims facility does not pay the award as required under clause (xiii), the Administrator shall refer the certified claim within 10 days as a certified terminal health claim to the defendants in the pending Federal and State court action or to the potential defendants identified under clause (iii)(IV) for terminal claims arising after the date of enactment of this Act. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(ix) SETTLEMENT OFFER.—Any participant or participants may, within 30 days after receipt of such notice as provided under clause (vii) or (viii), file and serve on all parties and the Administrator a good faith settlement offer in an aggregate amount not to exceed the total amount to which the claimant would receive under section 131. If the aggregate amount offered by all participants exceeds the award determined by the Administrator, all offers shall be deemed reduced pro-rata until the aggregate amount equals the award amount. An acceptance of such settlement offer for claims pending before the date of enactment of this Act shall be subject to approval by the trial judge or authorized magistrate in the court where the claim is pending. The court shall approve any such accepted offer within 20 days after a request, unless there is evidence of bad faith or fraud. No court approval is necessary if the terminal health claim was certified by the Administrator or claims facility under clause (vi).

(x) ACCEPTANCE OR REJECTION.—Within 20 days after receipt of the settlement offer, or the amended settlement offer, the claimant shall either accept or reject such offer in writing. If the amount of the settlement offer made by the Administrator, claims facility, or participants equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xi) OPPORTUNITY TO CURE.—If the settlement offer is rejected for being less than what the claimant would receive under the Fund, the participants shall have 10 business days to make an amended offer. If the amended offer equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement offer in writing.

(xii) PAYMENT SCHEDULE.—

(I) MESOTHELIOMA CLAIMANTS.—For mesothelioma claimants—

(aa) an initial payment of 50 percent shall be made within 30 days after the date the settlement is accepted and the second and final payment shall be made 6 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participant, the payments may be extended 50 percent in 6 months and 50 percent 11 months after the date the settlement offer is accepted.

(II) OTHER TERMINAL CLAIMANTS.—For other terminal claimants, as defined under section 106(c)(2)(B) and (C)—

(aa) the initial payment of 50 percent shall be made within 6 months after the date the settlement is accepted and the second and final payment shall be made 12 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participants, the payments may be extended 50 percent within 1 year after the date the settlement offer is accepted and 50 percent in 2 years after date the settlement offer is accepted.

(III) RELEASE.—Once a claimant has received final payment of the accepted settlement offer, and penalty payment if applicable, the claimant shall release any outstanding asbestos claims.

(xiii) RECOVERY OF COSTS.—

(I) IN GENERAL.—Any participant whose settlement offer is accepted may recover the cost of such settlement by deducting from the participant's next and subsequent contributions to the Fund the full amount of the payment made by such participant to the terminal health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that the participant's offer is not in good faith. Any such payment shall be considered a payment to the Fund for purposes of section 404(e)(1) and in response to the payment obligations imposed on participants in title II.

(II) REIMBURSEMENT.—Notwithstanding subclause (I), if the deductions from the participant's next and subsequent contributions to the Fund do not fully recover the cost of such payments on or before its third annual contribution to the Fund, the Fund shall reimburse such participant for such remaining cost not later than 6 months after the date of the third scheduled Fund contribution.

(3) RESERVATION OF RIGHTS.—Participation in the offer and settlement process under this subsection shall not affect or prejudice any rights or defenses a party might have in any litigation.

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 sections 106(f)(2) and 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.

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—A claimant who receives an award for an eligible disease or condition shall not be precluded from submitting claims for and receiving additional awards under this title for any higher disease level for which the claimant becomes eligible, subject to appropriate setoffs as provided under section 134.

(B) LIBBY, MONTANA CLAIMS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), if a Libby, Montana claimant worsens in condition, as measured by pulmonary function tests, such that a claimant qualifies for a higher nonmalignant level, the claimant shall be eligible for an additional award, at the appropriate level, offset by any award previously paid under this Act, such that a claimant would qualify for Level IV if the claimant satisfies section 121(f)(8), and would qualify for Level V if the claimant provides—

(I) a diagnosis of bilateral asbestos related nonmalignant disease;

(II) evidence of TLC or FVC less than 60 percent; and

(III) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(ii) SUBSEQUENT MALIGNANT DISEASE.—If a Libby, Montana, claimant develops malignant disease, such that the claimant qualifies for Level VI, VII, VIII, or IX, subparagraph (A) shall apply.

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—If a claim is not filed with the Office within the limitations period specified in this subsection for that category of claim, such claim shall be extinguished, and any recovery thereon shall be prohibited.

(2) INITIAL CLAIMS.—An initial claim for an award under this Act shall be filed within 2 years after the date on which the claimant first received a medical diagnosis and medical test results sufficient to satisfy the criteria for the disease level for which the claimant is seeking compensation.

(3) CLAIMS FOR ADDITIONAL AWARDS.—

(A) NON-MALIGNANT DISEASES.—If a claimant has previously filed a timely initial claim for compensation for any non-malignant disease level, there shall be no limitations period applicable to the filing of claims by the claimant for additional awards for higher disease levels based on the progression of the non-malignant disease.

(B) MALIGNANT DISEASES.—Regardless of whether the claimant has previously filed a claim for compensation for any other disease level, a claim for compensation for a malignant disease level shall be filed within 2 years after the claimant first obtained a medical diagnosis and medical test results sufficient to satisfy the criteria for the malignant disease level for which the claimant is seeking compensation.

(4) 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 2 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 on any such claim 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.

(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 exsmoking, 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.

(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. AUDITING PROCEDURES.

(a) IN GENERAL.—

(1) DEVELOPMENT.—The Administrator shall develop methods for auditing and evaluating the medical and exposure evidence submitted as part of the claims process. 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, medical facility or attorney or law firm is not consistent with prevailing medical practices or the applicable requirements of this Act, any medical evidence from such physician, facility or attorney or law firm 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.—The Administrator shall prescribe procedures to randomly evaluate the x-rays submitted in support of a statistically significant number of claims by independent certified B-readers, the cost of which shall be paid by the Fund.

(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.—

(A) IN GENERAL.—The Administrator may require the performance of blood tests or any other appropriate medical test, where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(B) SERUM COTININE SCREENING.—The Administrator shall require the performance of serum cotinine screening on all claimants who assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(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).

(d) PULMONARY FUNCTION TESTING.—The Administrator shall develop auditing procedures for pulmonary function test results submitted as part of a claim, to ensure that such tests are conducted in accordance with American Thoracic Society Criteria, as defined under section 121(a)(13).

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.

(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 a significant amount of 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 a significant amount of 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 a significant amount of 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 a significant amount of 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 a detailed and specific affidavit that—

(i) is filed by—

(I) the claimant; or

(II) if the claimant is deceased, a coworker or a family member of the claimant; and

(ii) is found in proceedings under this title to be—

(I) reasonably reliable, attesting to the claimant's exposure; and

(II) credible and 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 and credible evidence.

(C) ADDITIONAL EVIDENCE.—The Administrator may require submission of other or additional evidence of exposure, if available, for a particular claim when determined necessary, as part of the minimum information required under section 113(c).

(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(g) 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.

(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;

(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, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as the cause of 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;

(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;

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

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of 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—

(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, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, 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;

(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; 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, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

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

(8) MALIGNANT LEVEL VIII.—

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

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

(ii)(I) of—

(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) of—

(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; and

(iii) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as the cause of the lung cancer in question; and 10 or more weighted years of substantial occupational exposure to asbestos.

(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; or

(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.

(g) 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.

(E) MESOTHELIOMA CASES.—

(i) IN GENERAL.—The Physicans Panel shall grant priority status to—

(I) all Level IX claims with other identifiable asbestos exposure as provided under paragraph (9)(B)(iv); and

(II) all Level IX claims that are filed as exceptional medical claims.

(ii) PHYSICIAN PANEL.—If the Physicians Panel issues a certificate of medical eligibility, the claimant shall be deemed to qualify for Level IX compensation. If the Physicians Panel rejects the claim, and the Administrator deems it rejected, the claimant may immediately seek judicial review under section 302.

(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.

(C) EVALUATION OF CLAIMS.—For purposes of evaluating exceptional medical claims from Libby, Montana, a claimant shall be deemed to have a comparable asbestos-related condition to an asbestos disease category Level IV, and shall be deemed to qualify for compensation at Level IV, if the claimant provides—

(i) a diagnosis of bilateral asbestos related nonmalignant disease;

(ii) evidence of TLC or FVC less than 80 percent; and

(iii) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(9) STUDY OF VERMICULITE PROCESSING FACILITIES.—

(A) IN GENERAL.—As part of the ongoing National Asbestos Exposure Review (in this section referred to as ''NAER'') being conducted by the Agency for Toxic Substances and Disease Registry (in this section referred to as ''ATSDR'') of facilities that received vermiculite ore from Libby, Montana, the ATSDR shall conduct a study of all Phase 1 sites where—

(i) the Environmental Protection Agency has mandated further action at the site on the basis of current contamination; or

(ii) the site was an exfoliation facility that processed roughly 100,000 tons or more of vermiculite from the Libby mine.

(B) STUDY BY ATSDR.—The study by the ATSDR shall evaluate the facilities identified under subparagraph (A) and compare—

(i) the levels of asbestos emissions from such facilities;

(ii) the resulting asbestos contamination in areas surrounding such facilities;

(iii) the levels of exposure to residents living in the vicinity of such facilities;

(iv) the risks of asbestos-related disease to the residents living in the vicinity of such facilities; and

(v) the risk of asbestos-related mortality to residents living in the vicinity of such facilities,

to the emissions, contamination, exposures, and risks resulting from the mining of vermiculite ore in Libby, Montana.

(C) RESULTS OF STUDY.—The results of the study required under this paragraph shall be transmitted to the Administrator.

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
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.—The Administrator may increase awards for Level IX claimants who have dependent children so long as the increase under this paragraph is cost neutral. Such increased awards shall be paid for by decreasing awards for claimants other than Level IX, so long as no award levels are decreased more than 10 percent.

(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) LUMP-SUM PAYMENTS.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for 1 lump-sum payment 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.

(B) TIMING OF PAYMENTS.—Lump-sum payments shall be made within the shorter of—

(i) not later than 30 days after the date the claim is approved by the Administrator; or

(ii) not later than 6 months after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 11 months after the date the claim is filed.

(5) EXPEDITED PAYMENTS.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of terminal health claims as described under section 106(c)(2)(B) and (C).

(B) TIMING OF PAYMENTS.—Total payments shall be made within the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 1 year after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 1 year after the date the claim is approved by the Administrator; or

(ii) not later than 2 years after the date the claim is filed.

(D) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health risks. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

(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.

(f) EFFECT OF PAYMENT.—The payment of an asbestos claim under this section shall be in full satisfaction of such claim and shall be deemed to operate as a release to such claim. No claimant with an asbestos claim that will be paid under this section may proceed in the tort system with respect to such claim.

SEC. 134. SETOFFS FOR COLLATERAL SOURCE COMPENSATION AND PRIOR AWARDS.

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of any collateral source compensation and by any amounts paid or to be paid to the claimant for a prior award under this Act.

(b) EXCLUSIONS.—

(1) COLLATERAL SOURCE COMPENSATION.—In no case shall 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.

(2) PRIOR AWARD PAYMENTS.—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 claims for a malignant disease (Levels VI through IX), unless the malignancy was diagnosed before the date on which the nonmalignancy claim was compensated.

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) life or health insurance carrier for insurance payments; or

(2) person or governmental entity on account of health care or disability payments.

(b) NO EFFECT ON CLAIMS.—

(1) IN GENERAL.—The payment of an award to an asbestos claimant under section 106 or 133 shall not affect any claim of an asbestos claimant against—

(A) a life or health insurance carrier with respect to insurance; or

(B) against any person or governmental entity with respect to healthcare or disability.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the pursuit of a claim that is preempted under section 403.

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) 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.

(3) 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.

(4) 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.

(5) 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(h);

(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.

(6) 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).

(7) ASBESTOS PREMISES CLAIM.—The term ''asbestos premises claim''—

(A) means an asbestos claim against a current or former premises owner or landowner, or person controlling or possessing premises or land, alleging injury or death caused by exposure to asbestos on such premises or land or by exposure to asbestos carried off such premises or land on the clothing or belongings of another person; and

(B) includes any such asbestos claim against a current or former employer alleging injury or death caused by exposure to asbestos on premises or land owned, controlled or possessed by the employer, if such claim is not a claim for benefits under a workers' compensation law or veterans' benefits program.

(8) ASBESTOS PREMISES DEFENDANT PARTICIPANT.—The term ''asbestos premises defendant participant'' means any defendant participant for which 95 percent or more of its prior asbestos expenditures relate to asbestos premises claims against that defendant participant.

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(d). 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 30 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 such confirmation is required to avoid the liquidation or the need for further financial reorganization of that entity; 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.

(6) ASBESTOS PREMISES DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Asbestos premises defendant participants that would be included in Tier II, III, IV or V according to their prior asbestos expenditures shall, after 5 years of the Fund being operational, instead be assigned to the immediately lower tier, such that—

(i) an asbestos premises defendant participant that would be assigned to Tier II shall instead be assigned to Tier III;

(ii) an asbestos premises defendant participant that would be assigned to Tier III shall instead be assigned to Tier IV;

(iii) an asbestos premises defendant participant that would be assigned to Tier IV shall instead be assigned to Tier V; and

(iv) an asbestos premises defendant participant that would be assigned to Tier V shall instead be assigned to Tier VI.

(B) RETURN TO ORIGINAL TIER.—The Administrator may return asbestos premises defendant participants to their original tier, on a yearly basis, if the Administrator determines that the additional revenues that would be collected are needed to preserve the solvency of the Fund.

(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(j)(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.—

(i) IN GENERAL.—Each debtor included in Subtier 1 shall pay on an annual basis 1.67024 percent of the debtor's 2002 revenues.

(ii) EXCEPTION TO PAYMENT PERCENTAGE.—Notwithstanding clause (i), a debtor in Subtier 1 shall pay, on an annual basis, $500,000 if—

(I) such debtor, including its direct or indirect majority-owned subsidiaries, has less than $10,000,000 in prior asbestos expenditures;

(II) at least 95 percent of such debtors revenues derive from the provision of engineering and construction services; and

(III) such debtor, including its direct or indirect majority-owned subsidiaries, never manufactured, sold, or distributed asbestos-containing products in the stream of commerce.

(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 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, other than class action trusts under paragraph (6), 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 unencumbered 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.

(5) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, jointly held, in trust or otherwise, with a defendant participant, less—

(A) all allowable administrative expenses;

(B) allowable priority claims under section 507 of title 11, United States Code; and

(C) allowable secured claims.

(6) 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 60 days 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.

(3) OTHER PAYMENT FOR CERTAIN PERSONS AND AFFILIATED GROUPS.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, and if an adjustment authorized by this subsection does not impair the overall solvency of the Fund, any person or affiliated group within Tier VI whose required subtier payment in any given year would exceed such person's or group's average annual expenditure on settlements, and judgments of asbestos disease-related claims over the 8 years before the date of enactment of this Act shall make the payment required of the immediately lower subtier or, if the person's or group's average annual expenditures on settlements and judgments over the 8 years before the date of enactment of this Act is less than $100,000, shall not be required to make a payment under this Act.

(B) NO FURTHER ADJUSTMENT.—Any person or affiliated group that receives an adjustment under this paragraph shall not be eligible to receive any further adjustment under section 204(e).

(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, and such settlement, judgment, defense, or indemnity costs constitute 75 percent or more of the total prior asbestos expenditures by the person or affiliated group.

(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 subsections (e) and (n), 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) LIMITATION.—For any affiliated group, the total payment in any year, including any guaranteed pay'ment surcharge under subsection (m) and any bankruptcy trust guarantee surcharge under section 222(c), shall not exceed the lesser of $16,702,400 or 1.67024 percent of the revenues of the affiliated group for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation is applied, whichever is greater. For purposes of this subsection, the term ''affiliated group'' shall include any defendant participant that is an ultimate parent. The limitation in this subsection shall not apply to defendant participants in Tier I or to any affiliated group whose revenues for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation applied, whichever is greater, exceeds $1,000,000,000. The revenues of the affiliated group shall be determined in accordance with section 203(a)(2), except for the applicable date. An affiliated group that claims a reduction in its payment in any year shall file with the Administrator, in accordance with procedures prescribed by the Administrator, sufficient infonnation to allow the Administrator to determine the amount of any such reduction in that year. If as a result of the application of the limitation provided in this subsection an affiliated group is exempt from paying all or part of a guaranteed payment surcharge or bankruptcy trust surcharge, then the reduction in the affiliated group's payment obligation due to the limitation in this subsection shall be redistributed in accordance with subsection (m). Nothing in this subsection shall be construed as reducing the minimum aggregate annual payment obligation of defendant participants as provided in section 204(i)(1).''

(d) 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.

(e) 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 (j)(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 (k) after payment of the otherwise applicable payment obligation, at the discretion of the Administrator.

(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such an adjustment by demonstrating to the satisfaction of the Administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the Administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.—In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected financial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately preceding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101 (31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments of extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the Administrator considers relevant.

(B) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the Administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(C) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the Administrator determines at the time of the renewed adjustment that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its 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.). Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this sub-paragraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and analyses submitted to the Administrator were made in good faith and are reasonable and attainable.

(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 measured against the likely cost of past and potential future claims in the absence of this Act;

(III) when compared to the median payment rate for all defendant participants in the same tier; or

(IV) 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 be granted 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;

(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; and

(iv) may, subject to the discretion of the Administrator, be exempt from any payment obligation if such defendant participant establishes with the Administrator that—

(I) such participant has satisfied all past claims; and

(II) there is no reasonable likelihood in the absence of this Act of any future claims with costs for which the defendant participant might be responsible.

(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 inequity adjustment account established under subsection (k), 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 inequity adjustments under paragraph (3) in effect in any given year shall not exceed $300,000,000, except to the extent that additional monies are available for such adjustments as a result of carryover of prior years' funds under subsection (k)(3) or as a result of monies being made available in that year under subsection (l)(1)(A).

(B) the Administrator determines that the $300,000,000 is insufficient and additional adjustments as provided under paragraph (5) are needed to address situations in which a defendant participant would otherwise be rendered insolvent by its payment obligations without such adjustment.

(6) RULEMAKING AND ADVISORY PANELS.—

(A) APPOINTMENT.—The Administrator may 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. The Administrator may adopt rules consistent with this Act to make the determination of hardship and inequity adjustments more efficient and predictable.

(f) 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.

(g) 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 (j), 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 (j) 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.

(h) 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.

(i) 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), (e), (g), (h), and (n) of this section) fail in any year to raise at least $3,000,000,000, after applicable reductions or adjustments have been taken according to subsections (e) and (n), the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(j) PROCEDURES FOR MAKING PAYMENTS.—

(1) INITIAL YEAR: TIERS II–VI.—

(A) IN GENERAL.—Not later than 90 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 (g);

(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);

(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; and

(v) a signature page personally verifying the truth of the statements and estimates described under this subparagraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(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—

(i) a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2);

(ii) for those debtors subject to the payment requirement of section 203(b)(2)(B)(ii), a statement whether its prior asbestos expenditures do not exceed $10,000,000, and a description of its business operations sufficient to show the requirements of that section are met; and

(iii) 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);

(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; and

(G) a signature page personally verifying the truth of the statements and estimates described under this paragraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(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 non-debtor 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 of the Administrator's determination under subsection (e) of a financial hardship or inequity adjustment, and of the Administrator's determination under subsection (n) of a distributor's 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.

(k) DEFENDANT 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 required under subsection (i), excess monies up to a maximum of $300,000,000 in any such year shall be placed in a defendant inequity adjustment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant 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 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 (e), remaining funds in the account shall be carried forward for use by the Administrator for adjustments in subsequent years.

(l) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (i) and (k), 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(d), such monies—

(A) at the discretion of the Administrator, may be used to provide additional adjustments under subsection (e), 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 required under subsection (i), after applicable reductions or adjustments have been taken according to subsections (e) and (m) 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.

(n) ADJUSTMENTS FOR DISTRIBUTORS.—

(1) DEFINITION.—In this subsection, the term ''distributor'' means a person—

(A) whose prior asbestos expenditures arise exclusively from the sale of products manufactured by others;

(B) who did not prior to December 31, 2002, sell raw asbestos or a product containing more than 95 percent asbestos by weight;

(C) whose prior asbestos expenditures did not arise out of—

(i) the manufacture, installation, repair, reconditioning, maintaining, servicing, constructing, or remanufacturing of any product;

(ii) the control of the design, specification, or manufacture of any product; or

(iii) the sale or resale of any product under, as part of, or under the auspices of, its own brand, trademark, or service mark; and

(D) who is not subject to assignment under section 202 to Tier I, II, III or VII.

(2) TIER REASSIGNMENT FOR DISTRIBUTORS.—

(A) IN GENERAL.—Notwithstanding section 202, the Administrator shall assign a distributor to a Tier for purposes of this title under the procedures set forth in this paragraph.

(B) DESIGNATION.—After a final determination by the Administrator under section 204(j), any person who is, or any affiliated group in which every member is, a distributor may apply to the Administrator for adjustment of its Tier assignment under this subsection. Such application shall be prepared in accordance with such procedures as

the Administrator shall promulgate by rule. Once the Administrator designates a person or affiliated group as a distributor under this subsection, such designation and the adjustment of tier assignment under this subsection are final.

(C) PAYMENTS.—Any person or affiliated group that seeks adjustment of its Tier assignment under this subsection shall pay all amounts required of it under this title until a final determination by the Administrator is made under this subsection. Such payments may not be stayed pending any appeal. The Administrator shall grant any person or affiliated group a refund or credit of any payments made if such adjustment results in a lower payment obligation.

(D) ADJUSTMENT.—Subject to paragraph (3), any person or affiliated group that the Administrator has designated as a distributor under this subsection shall be given an adjustment of Tier assignment as follows:

(i) A distributor that but for this subsection would be assigned to Tier IV shall be deemed assigned to Tier V.

(ii) A distributor that but for this subsection would be assigned to Tier V shall be deemed assigned to Tier VI.

(iii) A distributor that but for this subsection would be assigned to Tier VI shall be deemed assigned to no Tier and shall have no obligation to make any payment to the Fund under this Act.

(E) EXCLUSIVE TO INEQUITY ADJUSTMENT.—Any person or affiliated group designated by the Administrator as a distributor under this subsection shall not be eligible for an inequity adjustment under subsection 204(e).

(3) LIMITATION ON ADJUSTMENTS.—The aggregate total of distributor adjustments under this subsection in effect in any given year shall not exceed $50,000,000. If the aggregate total of distributors adjustments under this subsection would otherwise exceed $50,000,000, then each distributor's adjustment shall be reduced pro rata until the aggregate of all adjustments equals $50,000,000.

(4) REHEARING.—A defendant participant has a right to obtain a rehearing of the Administrator's determination on an adjustment under this subsection under the procedures prescribed in subsection (j)(10).

SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.

(a) STEPDOWNS.—

(1) IN GENERAL.—Subject to paragraph (2), the minimum aggregate annual funding obligation under section 204(i) 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. Except as otherwise provided in this paragraph, the reductions under this paragraph shall be applied on an equal pro rata basis to the funding obligations of all defendant participants.

The reductions under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reduction under this subsection exceeds the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligations shall be further reduced by the difference between the potential reduction provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reduction provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.

(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 as otherwise provided under this paragraph. The reductions or waivers provided under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c0 or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions or waivers under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reductions or waivers under this subsection exceed the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reductions or waivers provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.

(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.

SEC. 206. ACCOUNTING TREATMENT.

Defendant participants payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each defendant participant. This section shall in no way reduce the amount of monetary payments to the Fund by defendant participants as required under section 202(a)(2).

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 the first 5 years of the life of the Fund and any subsequent years as provided in section 405(f) for any reduction in an insurer participant's annual allocated amount caused by the granting of a financial hardship or exceptional circumstance adjustment under this section, and any amount by which aggregate insurer payments fall below the level required under paragraph (3)(C) by reason of the failure or refusal of any insurer participant to make a required payment, or for any other reason that causes such payments to fall below the level required under 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 retrospective reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a risk or loss transfer to insure for 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, less any bankruptcy trust credits under section 222(d).

(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, insures the asbestos liability, directly or indirectly, of (and that arises out of the manufacture, sale, distribution or installation of materials or products by, or other conduct 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 this section 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.—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 except as provided under paragraph (1)(B), subsection (f)(3), and section 405(f), any such adjustment shall not affect 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.

(F) FUNDING HOLIDAYS.—

(i) 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 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 insurer participants for that year.

(ii) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under clause (i) every year.

(iii) LIMITATIONS OF FUNDING HOLIDAYS.—Any reduction or waiver of the insurer participants' funding obligations shall—

(I) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(II) be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(iv) 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 insurer participants for that year.

(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) AMOUNT OF INTERIM PAYMENT.—Within 90 days after the date of enactment of this Act, insurer participants shall make an aggregate payment to the Fund not to exceed 50 percent of the aggregate funding obligation specified under subsection (a)(3)(C) for year 1.

(2) RESERVE INFORMATION.—Within 30 days after the date of enactment of this Act, each insurer participant shall submit to the Administrator a certified statement of its net held reserves for asbestos liabilities as of December 31, 2004.

(3) ALLOCATION OF INTERIM PAYMENT.—The Administrator shall allocate the interim payment among the individual insurer participants on an equitable basis using the net held asbestos reserve information provided by insurer participants under subsection (a)(3)(B). Within 60 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register the name of each insurer participant, and the amount of the insurer participant's allocated share of the interim payment. The use of net held asbestos reserves as the basis to determine an interim allocation shall not be binding on the Administrator in the determination of an appropriate final allocation methodology under this section. All payments required under this paragraph 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 under subsection (a)(3)(E).

(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, consistent with subsection (a)(1)(B), 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) CREDITS FOR SHORTFALL ASSESSMENTS.—If insurer participants are required during the first 5 years of the life of the Fund to make up any shortfall in required insurer payments under subsection (a)(1)(B), then, beginning in year 6, the Administrator shall grant each insurer participant a credit against its annual required payments during the applicable years that in the aggregate equal the amount of shortfall assessments paid by such insurer participant during the first 5 years of the life of the Fund. The credit shall be prorated over the same number of years as the number of years during which the insurer participant paid a shortfall assessment. Insurer participants which did not pay all required payments to the Fund during the first 5 years of the life of the Fund shall not be eligible for a credit. The Administrator shall not grant a credit for shortfall assessments imposed under section 405(f).

(4) 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) ACCOUNTING TREATMENT.—Insurer participants' payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each insurer participant. This subsection shall in no way reduce the amount of monetary payments to the Fund by insurer participants as required under subsection (a).

(h) 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(g)(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.

(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 2 years.

(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Administrator under this subsection shall be repaid in full by the Fund contributors and is limited solely to amounts available, present or future, in the Fund.

(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(g)(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 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.

(d) 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, including a refusal or failure to provide the information required under section 204 needed to determine liability, the Administrator may bring a civil action in any appropriate United States District Court, 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;

(C) for temporary, preliminary, or permanent relief; or

(D) to enforce a subpoena issued under section 204(i)(9) to compel the production of documents necessary to determine liability.

(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 pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Administrator shall 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 unless and until it complies. If any direct insurer or reinsurer refuses to furnish any information requested by the Administrator, 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 unless and until it complies. 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 after the date of the Administrator's determination of default. 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(j)(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 2006.''.

(j) PROPOSED TRANSACTIONS.—

(1) NOTICE OF PROPOSED TRANSACTION.—Any participant that has taken any action to effectuate a proposed transaction or a proposed series of transactions under which a significant portion of such participant's assets, properties or business will, if consummated as proposed, be, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such proposed transaction (or proposed series of transactions). Upon the request of such participant, and for so long as the participant shall not publicly disclose the transaction or series of transactions and the Administrator shall not commence any action under paragraph (6), the Administrator shall treat any such notice as confidential commercial information under section 552 of title 5, United States Code.

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days before the date of consummation of the proposed transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties or business are being transferred in the proposed transaction (or proposed series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act, or

(ii) the proposed transaction (or proposed series of transactions) would, if consummated, be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person will or has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it will or has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term ''significant portion of the assets, properties or business of a participant'' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(g)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) CONSUMMATION OF TRANSACTION.—Any proposed transaction (or proposed series of transactions) with respect to which a participant is required to provide notice under paragraph (1) may not be consummated until at least 30 days after delivery to the Administrator of such notice, unless the Administrator shall earlier terminate the notice period. The Administrator shall endeavor whenever possible to terminate a notice period at the earliest practicable time.

(6) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant proposes to engage or has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status or potential status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person will or has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A)—

(I) a temporary restraining order or a preliminary or permanent injunction against such transaction (or series of transactions); or

(II) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person will not or has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person will or has become a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(7) RULES AND REGULATIONS.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing and content of notices.

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;

(vi) the intensity and duration of exposure to risk levels of naturally occurring asbestos as defined by the Environmental Protection Agency; and

(vii) 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 for reimbursement of screening services at a reasonable rate and termination of 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 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, with a minimum of $5,000,000 but not more than $10,000,000 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.

(B) REVIEW.—The Administrator may reduce the amount of funding below $5,000,000 each year if the program is fully implemented. 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 $100,000,000.

(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.

(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.

SEC. 226. NATIONAL MESOTHELIOMA RESEARCH AND TREATMENT PROGRAM.

(a) IN GENERAL.—There is established the National Mesothelioma Research and Treatment Program (referred to in this section as the ''Program'') to investigate and advance the detection, prevention, treatment, and cure of malignant mesothelioma.

(b) MESOTHELIOMA CENTERS.—

(1) IN GENERAL.—The Administrator shall make available $1,500,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015, for the establishment of each of 10 mesothelioma disease research and treatment centers.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, in consultation with the Medical Advisory Committee, shall conduct a competitive peer review process to select sites for the centers described in paragraph (1). The Director shall ensure that sites selected under this paragraph are—

(A) geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

(B) closely associated with Department of Veterans Affairs medical centers, in order to provide research benefits and care to veterans who have suffered excessively from mesothelioma;

(C) engaged in exemplary laboratory and clinical mesothelioma research, including clinical trials, to provide mechanisms for effective therapeutic treatments, as well as detection and prevention, particularly in areas of palliation of disease symptoms and pain management;

(D) participants in the National Mesothelioma Registry and Tissue Bank under subsection (c) and the annual International Mesothelioma Symposium under subsection (d)(2)(E);

(E) with respect to research and treatment efforts, coordinated with other centers and institutions involved in exemplary mesothelioma research and treatment;

(F) able to facilitate transportation and lodging for mesothelioma patients, so as to enable patients to participate in the newest developing treatment protocols, and to enable the centers to recruit patients in numbers sufficient to conduct necessary clinical trials; and

(G) nonprofit hospitals, universities, or medical or research institutions incorporated or organized in the United States.

(c) MESOTHELIOMA REGISTRY AND TISSUE BANK.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, maintenance, and operation of a National Mesothelioma Registry to collect data regarding symptoms, pathology, evaluation, treatment, outcomes, and quality of life and a Tissue Bank to include the pre- and post-treatment blood (serum and blood cells) specimens as well as tissue specimens from biopsies and surgery. Not less than $500,000 of the amount made available under the preceding sentence in each fiscal year shall be allocated for the collection and maintenance of tissue specimens.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, with the advice and consent of the Medical Advisory Committee, shall conduct a competitive peer review process to select a site to administer the Registry and Tissue Bank described in paragraph (1). The Director shall ensure that the site selected under this paragraph—

(A) is available to all mesothelioma patients and qualifying physicians throughout the United States;

(B) is subject to all applicable medical and patient privacy laws and regulations;

(C) is carrying out activities to ensure that data is accessible via the Internet; and

(D) provides data and tissue samples to qualifying researchers and physicians who apply for such data in order to further the understanding, prevention, screening, diagnosis, or treatment of malignant mesothelioma.

(d) CENTER FOR MESOTHELIOMA EDUCATION.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, with the advice and consent of the Medical Advisory Committee, of a Center for Mesothelioma Education (referred to in this section as the ''Center'') to—

(A) promote mesothelioma awareness and education;

(B) assist mesothelioma patients and their family members in obtaining necessary information; and

(C) work with the centers established under subsection (b) in advancing mesothelioma research.

(2) ACTIVITIES.—The Center shall—

(A) educate the public about the new initiatives contained in this section through a National Mesothelioma Awareness Campaign;

(B) develop and maintain a Mesothelioma Educational Resource Center (referred to in this section as the ''MERCI''), that is accessible via the Internet, to provide mesothelioma patients, family members, and front-line physicians with comprehensive, current information on mesothelioma and its treatment, as well as on the existence of, and general claim procedures for the Asbestos Injury Claims Resolution Fund;

(C) through the MERCI and otherwise, educate mesothelioma patients, family members, and front-line physicians about, and encourage such individuals to participate in, the centers established under subsection (b), the Registry and the Tissue Bank;

(D) complement the research efforts of the centers established under subsection (b) by awarding competitive, peer-reviewed grants for the training of clinical specialist fellows in mesothelioma, and for highly innovative, experimental or pre-clinical research; and

(E) conduct an annual International Mesothelioma Symposium.

(3) REQUIREMENTS.—The Center shall—

(A) be a nonprofit corporation under section 501(c)(3) of the Internal Revenue Code of 1986;

(B) be a separate entity from and not an affiliate of any hospital, university, or medical or research institution; and

(C) demonstrate a history of program spending that is devoted specifically to the mission of extending the survival of current and future mesothelioma patients, including a history of soliciting, peer reviewing through a competitive process, and funding research grant applications relating to the detection, prevention, treatment, and cure of mesothelioma.

(4) CONTRACTS FOR OVERSIGHT.—The Director of the National Institutes of Health may enter into contracts with the Center for the selection and oversight of the centers established under subsection (b), or selection of the director of the Registry and the Tissue Bank under subsection (c) and oversight of the Registry and the Tissue Bank.

(e) REPORT AND RECOMMENDATIONS.—Not later than September 30, 2015, The Director of the National Institutes of Health shall, after opportunity for public comment and review, publish and provide to Congress a report and recommendations on the results achieved and information gained through the Program, including—

(1) information on the status of mesothelioma as a national health issue, including—

(A) annual United States incidence and death rate information and whether such rates are increasing or decreasing;

(B) the average prognosis; and

(C) the effectiveness of treatments and means of prevention;

(2) promising advances in mesothelioma treatment and research which could be further developed if the Program is reauthorized; and

(3) a summary of advances in mesothelioma treatment made in the 10-year period prior to the report and whether those advances would justify continuation of the Program and whether it should be reauthorized for an additional 10 years.

(f) SEVERABILITY.—If any provision of this Act, or amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act (including this section), the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(g) REGULATIONS.—The Director of the National Institutes of Health shall promulgate regulations to provide for the implementation of 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(j), a notice of financial hardship or inequity determination under section 204(e), a notice of a distributor's adjustment under section 204(n), 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(j), a notice of financial hardship or inequity determination under section 204(e), or a notice of a distributor's adjustment under section 204(n), shall commence any action within 30 days after a decision on rehearing under section 204(j)(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.—

(1) PAYMENTS.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(2) LEGAL CHALLENGES.—No court may issue a stay or injunction pending final judicial action, including the exhaustion of all appeals, on a legal challenge to this Act or any portion of this Act.

(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.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action challenging the constitutionality of any provision or application of this Act. The following rules shall apply:

(A) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened under section 2284 of title 28, United States Code.

(B) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, after the entry of the final decision.

(C) 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.

(2) 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. 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 2006, 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 2006), 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 2006) 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 2006.''.

(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 2006) 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 2006); 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 2006; 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 2006, 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 2006 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 2006 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 clause (ii) of this subparagraph and 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 2006) shall be transferred to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006 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 clause (i), and except as provided under subparagraphs (B), (C), and (E), any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), other than a trust established under a reorganization plan subject to section 202(c) of that Act, shall transfer the assets in such trust to the Fund as follows:

''(I) In the case of a trust established on or before December 31, 2005, such trust shall transfer 90 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) In the case of a trust established after December 31, 2005, such trust shall transfer 88 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(iii) Not later than 90 days after the date on which the Administrator of the Office of Asbestos Disease Compensation (referred to in this section as the 'Administrator') certifies in accordance with section 106(f)(3)(E)(ii) of the Fairness in Asbestos Injury Resolution Act of 2006 that the Fund is fully operational and paying all valid asbestos claims at a reasonable rate, any trust transferring assets under clause (ii) shall transfer all remaining assets in such trust to the Fund. The transfer required by this clause shall not include any trust assets needed to pay—

''(I) previously incurred expenses; or

''(II) claims determined to be eligible for compensation under clause (vi).

''(iv) Except as provided under subparagraph (B), the Administrator of the Fund shall accept any assets transferred under clauses (ii) or (iii) and utilize them for any purposes for the Fund under section 221 of the Fairness in Asbestos Injury Resolution Act of 2006, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(v) 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).

''(vi) Any trust transferring assets under clause (ii) shall be subject to the following requirements:

''(I) The trust may continue to process asbestos claims, make eligibility determinations, and pay claims in a manner consistent with this clause if a claimant—

''(aa) has a pending asbestos claim as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(bb) provides to the trust a copy of a binding election submitted to Administrator waiving the right to secure compensation under section 106(f)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, unless the claimant is permitted under section 106(f)(2)(B) of such Act to seek a judgment or order for monetary damages from a Federal or State court;

''(cc) meets the requirements for compensation under the distribution plan for the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(dd) for any non-malignant condition satisfies the medical criteria under the distribution plan for the trust that is most nearly equivalent to the medical criteria described in section 121(d)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, except that, notwithstanding any provision of the distribution plan of the trust to the contrary, the trust shall not accept the results of a DLCO test (as such test is defined in section 121(a) of the Fairness in Asbestos Injury Resolution Act of 2006) for the purpose of demonstrating respiratory impairment; and

''(ee) for any of the cancers listed in section 121(d)(6) of the Fairness in Asbestos Injury Resolution Act of 2006 does not seek, and the trust does not pay, any compensation until such time as the Institute of Medicine finds that there is a causal relationship between asbestos exposure and such cancer, in which case such claims may be paid if such claims otherwise qualify for compensation under the distribution plan of the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) The trust shall not accept medical evidence from any physician, medical facility, or laboratory whose evidence would be not be accepted as evidence—

''(aa) under the Manville Trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(bb) by the Administrator under section 115(a)(2) of such Act.

''(III) The trust shall not amend its scheduled payment amount or payment percentage as in effect on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(IV) The trust shall not amend its eligibility criteria after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, except to conform any criteria in any category under the distribution plan of the trust with related criteria in a related category under section 121 of the Fairness in Asbestos Injury Resolution Act of 2006.

''(V) The trust shall notify the Administrator of the Fund of any claim determined to be eligible for compensation after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and the amount of any such compensation awarded to the claimant of such claim. The notification required by this subclause shall be made in such form as the Administrator shall require, and not later than 15 days after the date the determination is made.

''(VI) The trust shall not pay any claim without a certification by a claimant, subject to the penalties described in the Fairness in Asbestos Injury Resolution Act of 2006, stating the amount of collateral source compensation that such claimant has received, or is entitled to receive, under section 134 of the Fairness in Asbestos Injury Resolution Act of 2006. In the event that collateral source compensation exceeds the amount that a claimant would be paid in the category under that Act that is most nearly similar to the claimant's claim under the distribution plan of the trust, the aggregate value of the awards received by the claimant shall be reduced pro rata so that the claimant's total compensation does not exceed what would be paid for such a condition under the Fairness in Asbestos Injury Resolution Act of 2006, excluding any adjustments under section 131(b)(3) and (4) of that Act.

''(VII) Upon finding that the trust has breached any condition or conditions of this clause, the Administrator shall require the immediate payment of remaining trust assets into the Fund in accordance with section 402(f) of the Fairness in Asbestos Injury Resolution Act of 2006. The Administrator shall be entitled to an injunction against further payments of nonliquidated claims from the assets of the trust during the pendency of any dispute regarding the findings of noncompliance by the Administrator. The

court in which any action to enforce the obligations of the trust is pending shall afford the action expedited consideration.

''(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 2006 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 2006, 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 2006, 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 2006, 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 2006.

(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 2006), 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 2006), 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.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(c) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Except as provided under paragraph (3) and section 106(f), any agreement, understanding, or undertaking by any person or affiliated group with respect to the treatment of any asbestos claim, including a claim described under subsection (e)(2), 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 by—

(I) the authorized legal representative acting on behalf of the settling defendant or insurer, the settling defendant or the settling insurer; and

(II)(aa) the specific individual plaintiff, or the individual's immediate relatives; or

(bb) an authorized legal representative acting on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by that 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, the plaintiff has fulfilled all conditions to payment under the settlement agreement.

(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) and section 106(f) of this Act and section 524(j)(3) of title 11, United States Code, as amended by this Act, 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) 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.

(4) DISMISSAL.—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 30 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 180 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 180-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 30 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).

(C) EARNED EROSION AMOUNT.—The term ''earned erosion amount'' means 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 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(g), the total erosion of limits for the affiliated group under paragraph (2)(A) shall not exceed 38.1 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 38.1 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 preponderance 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).

(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 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.—Subject to section 212(a)(1)(D), 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 written agreement specifically providing insurance, reinsurance, or other reimbursement 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 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 claims are preempted, barred, or 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.

(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 disease level, 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 and over the predicted lifetime of the program 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) a summary of any legal actions brought or penalties imposed under section 223, any referrals made to law enforcement authorities under section 408 (a) and (b), and any contributions to the Fund collected under section 408(e);

(6) 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 those claimants who suffer from diseases or conditions for which exposure to asbestos was a substantial contributing factor;

(7) a summary of the results of audits conducted under section 115; and

(8) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(c) CERTIFICATION.—The Administrator shall certify in the annual report required under subsection (a) whether, in the best judgment of the Administrator, the Fund will have sufficient resources for the fiscal year in which the report is issued to make all required payments—

(1) with respect to all claims determined eligible for compensation that have been filed and that the Administrator projects will be filed with the Office for the fiscal year; and

(2) to satisfy the Fund's debt repayment obligation, administrative costs, and other financial obligations.

(d) CLAIMS ANALYSIS AND VERIFICATION OF UNANTICIPATED CLAIMS.—

(1) IN GENERAL.—If the Administrator concludes, on the basis of the annual report submitted under this section, that—

(A) the average number of claims that qualify for compensation under a claim level or designation exceeds 125 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims qualifying for compensation under the appropriate claim level or designation; or

(B) the average number of claims that qualify for compensation under a claim level or designation is less than 75 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims deemed ineligible for compensation under the appropriate claim level or designation.

(2) DETERMINATIONS.—The Administrator shall examine the best available medical evidence and any recommendation made under subsection (b)(5) in order to determine which 1 or more of the following is true:

(A) Without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(B) A significant number of claimants who qualified for compensation under the claim level or designation do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(C) A significant number of claimants who were denied compensation under the claim level of designation did suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(D) The Congressional Budget Office projections underestimated or overestimated the actual number of persons who suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(3) RECOMMENDATIONS CONCERNING CLAIMS CRITERIA.—If the Administrator determines that a significant number of the claimants who qualified for compensation under the claim level under review do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor, or that a significant number of the claimants who were denied compensation under the claim level under review suffered from an injury or disease for which exposure to asbestos was a substantial contributing factor, the Administrator shall recommend to Congress, under subsection (f), changes to the compensation criteria in order to ensure that the Fund provides compensation for injury or disease for which exposure to asbestos was a substantial contributing factor, but does not provide compensation to claimants who do not suffer from an injury or disease for which asbestos exposure was a substantial contributing factor.

(e) RECOMMENDATIONS OF ADMINISTRATOR AND ADVISORY COMMITTEE.—

(1) REFERRAL.—If the Administrator recommends changes to this Act under subsection (d), the recommendations and accompanying analysis shall be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 (in this subsection referred to as the ''Advisory Committee'').

(2) ADVISORY COMMITTEE RECOMMENDATIONS.—The Advisory Committee shall hold

expedited public hearings on the alternatives and recommendations of the Administrator and make its own recommendations for reform of the program under titles I and II.

(3) TRANSMITTAL TO CONGRESS.—Not later than 90 days after receiving the recommendations of the Administrator, the Advisory Committee shall transmit the recommendations of the Administrator and the recommendations of the Advisory Committee to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(f) SHORTFALL ANALYSIS.—

(1) IN GENERAL.—

(A) ANALYSIS.—If the Administrator concludes, at any time, that the Fund may not be able to pay claims as such claims become due at any time within the next 5 years and to satisfy its other obligations, the Administrator shall prepare 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. The Administrator shall submit such analysis to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. Any recommendations made by the Administrator for changes to the program shall, in addition, be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 for review.

(B) RANGE OF ALTERNATIVES.—The range of alternatives under subparagraph (A) may include—

(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, enhancement of enforcement authority, changes in the timing of payments, changes in contributions by defendant participants, insurer participants (or both such participants), or changes in award values); or

(iii) any measure that the Administrator considers appropriate.

(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.

(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.

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, including any borrowing authorized under section 221(b)(2); 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).

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 2006.''.

(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 2006.''.

(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 2006.''.

SA 2847. Mr. ISAKSON submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 223(j) and insert the following:

Section 223

(j) TRANSACTIONS.—

(1) NOTICE OF TRANSACTION.—Any participant that has engaged in any transaction or series of transactions under which a significant portion of such participant's assets, properties or business was, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such transaction (or series of transactions).

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days after the date of consummation of the transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties or business were transferred in the transaction (or series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act, or (ii) the transaction (or series of transactions) is subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term 'significant portion of the assets, properties or business of a participant' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States' generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant for purposes of this Act, where the status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person has become the successor in interest of such participant for purposes of this Act; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A)—

(I) a temporary restraining order or a preliminary or permanent injunction against such transaction (or series of transactions); or

(II) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person became a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(6) RULES AND REGULATIONS.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing and content of notices.

SA 2848. Mr. THUNE (for himself, Mr. COLEMAN, and Mr. GRAHAM) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 144, between lines 6 and 7, insert the following:

(9) SAFETY EQUIPMENT MANUFACTURER DEFENDANT PARTICIPANT.—The term ''safety equipment manufacturer defendant participant'' means any defendant participant that—

(A) has continuously manufactured respiratory protection equipment in the United States on and after December 31, 1972; and

(B) based upon the portion of its prior asbestos expenditures attributable to asbestos claims relating to respiratory protection products being treated as total prior asbestos expenditures would result in that participant being assigned to the same tier to which that participant is assigned under section 202(d) based on its total prior asbestos expenditures.

On page 151, between lines 16 and 17, insert the following:

(7) SAFETY EQUIPMENT MANUFACTURER DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—A safety equipment manufacturer defendant participant that would be included in Tier II, III, IV, or V according to that defendant participant's prior asbestos expenditures shall instead be assigned to the immediately lower tier, such that—

(i) a safety equipment manufacturer defendant participant that would be assigned to Tier II shall instead be assigned to Tier III;

(ii) a safety equipment manufacturer defendant participant that would be assigned to Tier III shall instead be assigned to Tier IV;

(iii) a safety equipment manufacturer defendant participant that would be assigned to Tier IV shall instead be assigned to Tier V; and

(iv) a safety equipment manufacturer defendant participant that would be assigned to Tier V shall instead be assigned to Tier VI.

(B) RETURN TO ORIGINAL TIER.—

(i) CESSATION OF MANUFACTURING.—The Administrator shall return a safety equipment manufacturer defendant participant to that participant's original tier, on a yearly basis, if the Administrator determines that the safety equipment manufacturer defendant has ceased manufacturing respiratory protection equipment in the United States.

(ii) SOLVENCY OF FUND.—The Administrator may return all safety equipment manufacturer defendant participants to their original tiers, on a yearly basis, if the Administrator determines that the additional revenues that would be collected are needed to preserve the solvency of the Fund.

SA 2849. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury

caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 366, between lines 12 and 13, insert the following:

(c) APPLICATION OF THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT.—Employers and their insurers who pay compensation or medical benefits or who are potentially liable to their employees and other beneficiaries for compensation or medical benefits under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) shall be entitled to—

(1) a lien for compensation and medical benefits paid; and

(2) release as the case may be, as per the provisions of 33 U.S.C. Section 933; provided, however, that such employers, insurers, employees and other persons entitled to the compensation or medical benefits under that Act may not bring actions under Section 933 against third parties who are protected under this Act.

SA 2850. Mr. KYL (for himself and Mr. CHAMBLISS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

SEC. 1. PROPORTIONAL PAYMENTS.

(a) At page 171, after line 5, insert new (c) as follows, the subsection references assume that the required renumbering has occurred:

''(c) LIMITATION.—For any affiliated group, the total payment in any year, including any guaranteed payment surcharge under subsection (m) and any bankruptcy trust guarantee surcharge under section 222(c), shall not exceed the lesser of $16,702,400 or 1.67024 percent of the revenues of the affiliated group for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation is applied, whichever is greater. For purposes of this subsection, the term ''affiliated group'' shall include any defendant participant that is an ultimate parent. The limitation in this subsection shall not apply to defendant participants in Tier I or to any affiliated group whose revenues for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation applied, whichever is greater, exceeds $1,000,000,000. The revenues of the affiliated group shall be determined in accordance with section 203(a)(2), except for the applicable date. An affiliated group that claims a reduction in its payment in any year shall file with the administrator, in accordance with procedures prescribed by the administrator, sufficient information to allow the administrator to determine the amount of any such reduction in that year. If as a result of the application of the limitation provided in this subsection an affiliated group is exempt from paying all or part of a guaranteed payment surcharge or bankruptcy trust surcharge, then the reduction in the affiliated group's payment obligation due to the limitation in this subsection shall be redistributed in accordance with subsection (m). Nothing in this subsection shall be construed as reducing the minimum aggregate annual payment obligation of defendant participants as provided in section 204(i)(1).''

(b) Renumber subsections following new subsection (c).

(c) Subsequent to renumbering the subsections following new subsection 204(c), make the following cross-reference changes:

At page 142, line 7, replace ''204(g)'' with ''204(h)''.

At page 151, line 20, replace ''204(i)(6)'' with ''204(j)(6)''.

At page 160, line 21, replace ''204(1)'' with ''204(m)''.

At page 167, line 24, replace ''204(d)'' with ''204(e)''.

At page 170, lines 21 and 22, replace ''(d) and (m)'' with ''(e) and (n)''.

At page 171, line 22, replace ''(i)(10)'' with ''(j)(10)''.

At page 172, line 3, replace ''(j)'' with ''(k)''.

At page 177, line 12, replace ''(j) with ''(k)''.

At page 178, line 25, replace ''(j)(3)'' with ''(k)(3)''.

At page 179, line 2, replace ''(k)(1)(A)'' with ''(l)(1)(A)''.

At page 182, line 16, replace ''(i) with ''(j)''.

At page 183, line 6, replace ''(i)'' with ''(j)''.

At page 186, lines 7 and 8, replace ''(d), (f), (g), and (m)'' with ''(e), (g), (h) and (n)''.

At page 186, line 11, replace ''(d) and (m)'' with ''(e) and ''(n)''.

At page 186, line 20, replace ''(d) and (m)'' with ''(e) and ''(n)''.

At page 186, line 23, replace ''(l)'' with ''(m)''.

At page 187, line 8, replace ''(f)'' with ''(g)''.

At page 196, line 20, replace ''(d)'' with ''(e)''.

At page 196, line 22, replace ''(m)'' with ''(n)''.

At page 197, line 13, replace ''(h)'' with ''(i)''.

At page 198, line 11, replace ''(d)'' with ''(e)''.

At page 198, line 16, replace ''(h)'' with ''(i)''.

At page 198, line 17, replace ''(j)'' with ''(k)''.

At page 198, line 23, replace ''(d)'' with ''(e)''.

At page 199, line 10, replace ''(h)'' with ''(i)''.

At page 199, line 12, replace ''(d) and (m)'' with ''(e) and (n)''.

At page 199, line 20, replace ''(k)'' with ''(l)''.

At page 199, line 22, replace ''(h)'' with ''(i)''.

At page 200, line 3, replace ''(h)'' with ''(i)''.

At page 200, line 7, replace ''(d), (t), (g), and (m)'' with ''(e), (g), (h) and (n)''.

At page 200, line 22, replace ''(d), (t), and (g)'' with ''(e), (g), and (h)''.

At page 201, line 5, replace ''(i)(9)'' with ''(j)(9)''.

At page 203, line 6, replace ''204(i)'' with ''204(j)''.

At page 204, line 23, replace ''204(d)'' with ''204(e)''.

At page 205, line 11, replace ''(i)(10)'' with ''(j)(10)''.

At page 205, line 16, replace ''204(h)'' with ''204(i)''.

At page 248, line 21, replace ''204(f)(3)'' with ''204(g)(3)''.

At page 261, line 14, replace ''204(i)(10)'' with ''204(j)(10)''.

At page 266, line 14, replace ''204(f)'' with ''204(g)''.

At page 289, line 9, replace ''204(i)'' with ''204(j)''.

At page 289, line 11, replace ''204(d)'' with ''204(e)''.

At page 289, line 12, replace ''204(m)'' with ''204(n)''.

At page 289, line 19, replace ''204(i)'' with ''204(j)''.

At page 289, line 20, replace ''204(d)'' with ''204(e)''.

At page 289, line 21, replace ''204(m)'' with ''204(n)''.

At page 289, line 23, replace ''204(i)(10)'' with ''204(j)(10)''.

At page 334, line 8, replace ''204(f)'' with ''204(g)''.

SEC. 2. HARDSHIP ADJUSTMENTS.

(a) Strike page 172, line 6, through page 173, line 17, and insert the following:

(2) FINANCIAL HARDSHIP ADJUSTMENTS.

(A) IN GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such an adjustment by demonstrating to the satisfaction of the administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.—In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected financial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately preceding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101(31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments of extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the administrator considers relevant.

(C) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the administrator determines at the time of the renewed adjustment that a shorter or longer

period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(E) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its 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. Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this subparagraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and analyses submitted to the administrator were made in good faith and are reasonable and attainable.

(b) CONFORMING CHANGES.—

At page 177, line 10, strike ''hardship and''.

At page 178, lines 19–20, strike ''financial hardship adjustments under paragraph (2) and''.

At page 178, lines 22–23, strike ''—(A).''.

At page 179, line 2, insert a period after ''(k)(1)(A)'' and delete '';or''.

At pages 179–181, strike line 10 on page 179 through line 2 on page 181.

At page 181, at line 3: Insert ''RULEMAKING AND'' before ''ADVISORY''.

At page 181, line 5: Strike ''shall'' and insert ''may''.

At page 181, following line 14, insert: ''The Administrator may adopt rules consistent with this Act to make the determination of hardship and inequity adjustments more efficient and predictable.''.

At page 197, line 8, strike ''HARDSHIP AND''.

At page 197, line 15, strike ''hardship and''.

At page 197, line 19, strike ''hardship and''.

At page 197, lines 24 and 25, strike ''severe financial hardship or''.

SEC. 3. STEPDOWNS AND FUNDING HOLIDAYS.

(a) At page 205, line 20, strike ''The'' and insert: ''Except as otherwise provided in this paragraph, the''

(b) At page 205, lines 22 through 24 strike: '', except with respect to defendant participants in Tier I, Subtiers 2 and 3, and class action trusts'' and insert the following:

''. The reductions under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reduction under this subsection exceeds the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reduction provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reduction provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.''

(c) At page 207, line 10 through 12, strike the text following ''except'' in line 10 and insert ''as otherwise provided under this paragraph. The reductions or waivers provided under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions or waivers under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reductions or waivers under this subsection exceed the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reductions or waivers provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.''

SEC. 4. ECONOMICALLY DISTRESSED INDUSTRIES.

(a) On page 145, between lines 8 and 9, insert the following:

''(4) ECONOMICALLY DISTRESSED INDUSTRY.—The term ''economically distressed industry'' means an industry, defined by a primary 5–digit NAICS code, wherein two or more defendant participants are in Subtier of Tier II, under sections 202 and 203, and at least two-thirds of such Tier II defendant participants suffered net operating losses in their U.S. manufacturing business in 2005.''

(b) On page 204, line 3, insert ''— (i)'' before ''impose''.

On page 204, line 6, strike the period and insert ''; or''.

On page 204, insert between lines 6 and 7 the following:

''(ii) notwithstanding paragraph (1), impose in any year a surcharge under this subsection on any defendant participant in an economically distressed industry in excess of 15 percent of the amount set forth for Tier II, Subtier 1 defendant participants under section 203(c)(2)(A).''

SA 2851. Mr. KYL submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 310, lines 15–16, strike ''effect'' and insert the following: '';provided, however, that any provision of such an injunction channeling asbestos claims to such a trust for resolution shall be of no force and effect.''

On page 312, line 18, strike ''Notwithstanding'' and all that follows through ''retain such jurisdiction.''

On pages 359–60, strike subparagraphs (7) and (8) of subsection 405(g) and insert the following:

''(7) ESTABLISHMENT OF MASTER ASBESTOS TRUST.—

(A) CREATION.—Within 120 days after the determination of the Administrator under paragraph (1), the Administrator shall create a trust to be the successor to the asbestos trusts and any class action trust, to receive funds equal to the amount determined by the Administrator to be necessary to pay the remaining aggregate obligations to the asbestos trusts and any class action trust under paragraphs 1(A)(iii) and 1(B), and to use such funds for the exclusive purpose of providing benefits in accordance with the terms of this [master trust section?] to persons who would have held valid asbestos claims against the asbestos trusts or any class action trust had the Fairness in Asbestos Resolution Act of [2006] not been enacted and to otherwise defray the reasonable expenses of administering the master trust.

(B) JURISDICTION.—The United States District Court for the District of Columbia shall have exclusive jurisdiction, without regard to amount in controversy, over the master trust and all civil actions involving the application and construction of this subparagraph and the trust documents, including any action for the payment of benefits due under the terms of this subparagraph after exhaustion of trust remedies and any action for breach of fiduciary duty on the part of any fiduciary of the master trust.

(C) TRUSTEES.—The district court shall appoint, upon petition by the Administrator after consultation with the Advisory Committee, three trustees to administer the master trust. Each trustee, and any successor to each trustee, must be independent, free of any adverse interest and have sufficient qualifications and experience to fulfill the responsibilities described in this section.

(D) TRUST ADVISORY COMMITTEE.—The Administrator, in consultation with the Advisory Committee, shall appoint three persons to represent the interests of trust beneficiaries as members of a trust advisory committee to consult with and advise the trustees respecting the administration of the master trust and resolution of asbestos claims. At least one of the members of the trust advisory committee shall be selected from among individuals recommended by recognized national labor federations, and at least one of the members of the trust advisory committee shall be experienced in representing the interests of trust beneficiaries.

(E) LEGAL REPRESENTATIVE.—The district court shall appoint, upon petition by the Administrator after consultation with the Advisory Committee, a legal representative of persons who may in the future have claims against the master trust for the purpose of protecting the rights of such persons respecting the master trust and consulting with and advising the trustees respecting the administration of the master trust and resolution of asbestos claims. The legal representative,

and any successor to the legal representative, must be independent, free of any adverse interest and have sufficient qualifications and experience to fulfill the responsibilities described in this section. The legal representative shall have standing to appear and be heard as a representative of the future asbestos claimants in any civil action before the district court relating to the master trust. The legal representative shall not represent the interests of any person who has filed a claim for benefits against the master trust with respect to such claim.

(F) TRUST DOCUMENTS.—The Administrator, in consultation with the Advisory Committee, shall create such trust documents as may be necessary to create and govern the operations of the master trust. The trust documents shall contain provisions that (i) address the payment of compensation to and reimbursement of necessary and reasonable expenses of the trustees, trust advisory committee members and legal representative, and appointment of successors to such persons, subject to approval by the district court in the case of successors to the trustees and legal representative, and (ii) provide for the master trust's obligation to defend and indemnify the Administrator, trustees, members of the trust advisory committee, legal representative and their respective successors against and from legal actions and related losses to the extent that a corporation is permitted under the laws of Delaware to defend and indemnify its officers and directors.

(G) DUTY OF TRUSTEES.—The trustees shall administer the master trust in accordance with the terms of this subparagraph and the Trust Documents for the exclusive purpose of providing benefits to persons with valid claims against the master trust and otherwise defraying the reasonable expenses of administering the master trust, and shall manage and invest the assets of the trust with the care, skill, prudence, and diligence, under like circumstances prevailing at the time, that a prudent person acting in like capacity and manner would use.

(H) CLAIMS RESOLUTION PROCEDURES.—The trustees, in consultation with the trust advisory committee and the legal representative, shall adopt claims resolution procedures that provide for fair and expeditious payment of benefits to all persons described in subpart A of this subparagraph. The claims resolution procedures adopted and implemented by the trustees shall contain the following features:

(i) pro rata distributions of award amounts that are subject to adjustment, if necessary, based on periodic evaluations of the value of the master trust's assets and estimates of the numbers and values of present and future asbestos claims for benefits that may be awarded by the master trust and other mechanisms that provide reasonable assurance that the master trust will value, and be in a financial position to pay, similarly situated asbestos claims presented to it that involve similar diseases in substantially the same manner;

(ii) proof requirements, claim submission procedures, and claim evaluation and allowance procedures that provide for expeditious filing and evaluation of all asbestos claims submitted to the master trust;

(iii) provisions for priority review and payment of claimants whose circumstances require expedited evaluation and compensation;

(iv) exposure requirements for asbestos claimants to qualify for a remedy that fairly reflect the legal responsibility of at least one entity whose liabilities were channeled to an asbestos trust or any class action trust; and

(v) review and dispute resolution procedures for disputes regarding the master trust's disallowance or other treatment of claims for benefits.

(I) MEDICAL CRITERIA.—The trustees, in consultation with the trust advisory committee and the legal representative, shall adopt and maintain uniform medical criteria that fairly reflect a current state of applicable law and scientific and medical knowledge. The trustees may adopt the medical criteria of section 121.

(J) AWARD AMOUNTS.—The trustees, in consultation with the trust advisory committee and the legal representative, shall adopt a matrix of award amounts for disease categories that applies to all claimants who qualify for payment under the medical criteria and claims resolution procedures. The trustees may adopt the matrix of award amounts of section 131 or such other matrix that the trustees determine provides similar benefits for similar claims and fairly reflects the liability of the entities whose liabilities were channeled to the asbestos trusts and any class action trust.

(K) PAYMENTS TO CLAIMANTS.—The trustees shall pay each qualifying claimant a benefit equal to the product of the master trust payment percentage and the award amount to such claimant. The master trust payment percentage at any given time shall be determined by the trustees based on their periodic evaluation of the master trust's assets and projected claims as described in subpart (H)(i) of this subparagraph.

(L) AMENDMENTS.—The trustees, in consultation with the trust advisory committee and legal representative, may amend the trust documents, the claims resolution procedures, the medical criteria and the award matrix to the extent necessary to more effectively and efficiently carry out the purpose of the master trust. Further, if the substantive consolidation of the asbestos trusts and any class action trust effected by this subsection is held to be unconstitutional, the trustees shall adopt amendments to the trust documents, claims resolution procedures, medical criteria and award matrix as may be necessary to bring the master trust in compliance with the Constitution, including if necessary amendments requiring, for each such trust, separate claims resolution procedures, award amounts and accounting of assets and liabilities.

(8) PAYMENT TO MASTER TRUST.—The amount determined by the Administrator to be necessary to pay the remaining aggregate obligations to the asbestos trusts and any class action trust under paragraphs 1(A)(iii) and 1(B) shall be transferred to the master trust within 90 days of termination under this subsection. Any individual with a valid asbestos claim against any asbestos trust or class action trust shall be entitled to seek relief on account of such claim from the master trust described in subparagraph (7) in accordance with the provisions of such subparagraph.''

On page 357, strike lines 12 through 24 and insert the following:

''(B) REMAINING OBLIGATIONS.—For purposes of subparagraph (A)(ii)(II), the remaining obligations to the asbestos trust of the debtor and the class action trust shall be determined by multiplying the amount of assets transferred to the Fund by such debtor or class action trust by the applicable percentage set forth in the following schedule depending on the year in which a termination shall take effect under paragraph (2). The applicable percentage shall be adjusted between years by quarter-annual increments.

Year after Enactment in Which the Termination is Effective	Applicable Percentage
1	100.00
2	93.95
3	87.98
4	82.40
5	76.97
6	71.66
7	66.50
8	61.48
9	56.61
10	52.01
11	47.65
12	43.52
13	39.62
14	35.96
15	32.55
16	29.36
17	26.39
18	23.65
19	21.11
20	18.76
21	16.62
22	14.66
23	12.86
24	11.24
25	9.78
26	8.48
27	7.32
28	6.29
29	5.37
30	4.55
31	3.83
32	3.20
33	2.66
34	2.18
35	1.77
36	1.42
37	1.13
38	0.89
39	0.70
40	0.54
41	0.40
42	0.29
43	0.19
44	0.12
45	0.05
46 and thereafter	0.00''

On page 360, line 21, strike the period and insert the following:

''; provided, however, that any individual who would have held a valid asbestos claim against any asbestos trust or class action trust had the Fairness in Asbestos Resolution Act not been enacted may obtain relief on account of such claim only from the master trust described in subparagraph (g)(7) in accordance with the provisions of such subparagraph.''

On page 364, line 4, strike ''; and'' and insert a period.

On page 364, strike lines 5–14.

SA 2852. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, strike lines 16 through 22.

SA 2853. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, strike line 6 and all that follows through page 244, line 14, and insert the following:

(b) BORROWING AUTHORITY.—The Administrator is authorized to borrow, in any calendar year, an amount not to exceed anticipated contributions to the Fund in the following calendar year for purposes of carrying out the obligations of the Fund under this Act.

SA 2854. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, strike lines 16 through 22 and insert the following:

(2) FEDERAL FINANCING BANK.—

(A) IN GENERAL.—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) in an amount not to exceed $5,000,000,000 for performance of the Administrator's duties under this Act for the first 5 years.

(B) INTEREST TO BE CHARGED.—

(i) IN GENERAL.—Any funds borrowed under subparagraph (A) shall be charged interest at the private market prime lending rate and repaid not later than 18 months after the date on which such funds were borrowed.

(ii) SURCHARGE.—The Administrator shall impose a surcharge on defendants and insurers to meet the repayment obligations under clause (i) and paragraph (4).

SA 2855. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 186, between lines 4 and 5, insert the following:

(2) INSUFFICIENT FUNDS IN YEARS 1 THOUGH 6.—

(A) IN GENERAL.—Notwithstanding any provision of sections 202 or 203 or this section, during the 6-year period beginning on the date of enactment of this Act, if at any time during such period the Administrator determines that there are insufficient funds available to pay all qualifying claims that have been received and to satisfy all other obligations of the Fund, the Administrator shall impose on each defendant participant in Tier I and Tier II a surcharge in such amounts as necessary to meet the cost of paying such claims and satisfying such other obligations.

(B) PRO RATA BASIS.—Any surcharge imposed under subparagraph (A) shall be imposed on a prorated basis in accordance with the liability of each defendant participant established under sections 202 and 203.

On page 186, line 5, strike ''(2)'' and insert ''(3)''.

On page 186, line 15, strike ''(3)'' and insert ''(4)''.

On page 243, strike lines 7 through 15, and insert the following:

(3) BORROWING CAPACITY.—The Administrator is authorized to borrow, in any calendar year, an amount not to exceed anticipated contributions to the Fund in the following calendar year for purposes of carrying out the obligations of the Fund under this Act.

SA 2856. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 67, between lines 10 and 11, insert the following:

(g) PRECONDITIONS FOR CERTIFICATION.—For the purpose of this section, the Administrator is prohibited from certifying the Fund as operational until the Administrator has—

(1) finalized the tier designation and amount of assessment to each participating defendant or insurer; and

(2) determined from such designations that such assessments will produce the annual statutory revenues required under title II.

SA 2857. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 183, between lines 17 and 18, insert the following:

(4) CERTAIN CONSOLIDATIONS PROHIBITED.—Notwithstanding paragraphs (1) through (3), the following consolidations are prohibited:

(A) Any consolidation, including a consolidation involving intra-company or inter-company affiliates, that would lessen the amount that otherwise would be collected by the Administrator under Title II.

(B) Any consolidation, including a consolidation involving intra-company or inter-company affiliates, that would reduce the payment amount of any participating defendant in a consolidation that has greater liabilities than another participating defendant in the same consolidation.

SA 2858. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 14, strike line 19 and all that follows through page 15, line 2, and insert the following:

(6) COLLATERAL SOURCE COMPENSATION.—

(A) IN GENERAL.—The term ''collateral source compensation'' means the net 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.

(B) NET COMPENSATION.—Amounts paid or incurred by the claimant for legal or related expenses in connection with the asbestos-related injury shall be excluded in computing the reduction under this paragraph. Such legal or related expenses may be evidenced by an award, written agreement, or court order in a State or Federal proceeding or by such other evidence as the Administrator may require.

SA 2859. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 123, between lines 2 and 3, insert the following:

SEC. 122. EXTENSION OF CERTAIN BENEFITS TO OTHERS SUBJECT TO COMMUNITY EXPOSURE TO ASBESTOS.

(a) WAIVER FOR RESIDENTS OF WEST CHICAGO, ILLINOIS.—The Administrator shall waive the exposure requirements under this subtitle for individuals who lived or worked within 10 miles of the former W.R. Grace & Company facility in West Chicago, Illinois, for at least 12 consecutive months before December 31, 2004. Claimants under this subsection shall provide such supporting documentation as the Administrator shall require.

(b) CLAIMS PROCEDURES FOR WEST CHICAGO, ILLINOIS.—The claims procedures described under section 121(g)(8) relating to Libby, Montana, claimants shall also apply to any eligible claimants who resided within 10 miles of the former W.R. Grace & Company facility in West Chicago, Illinois.

(c) WEST CHICAGO, ILLINOIS 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 individuals who reside, or resided, within 10 miles of the former W.R. Grace & Company facility in West Chicago, Illinois. The payment of any such medical expenses shall not be collateral source compensation, as defined under section 134(a).

SA 2860. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. INTERSTATE COMPACTS AND CAPTIVE INSURANCE COMPANY.

(a) DEFINITION OF PERSON.—The term person as defined in section 3(13) shall not include the captive insurance company established and funded under title III of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 517).

(b) DEFINITION OF STATE.—The term State as defined in section 3(14) shall include entities created by interstate compact.

SA 2861. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 199, line 25, insert ''in Tier II'' after ''participant''.

SA 2862. Mr. FEINGOLD submitted an amendment intended to be proposed

to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. NON-SEVERABILITY.

Notwithstanding section 226(f), if any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall have no force and effect.

SA 2863. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 325, strike line 17 and all that follows through page 326, line 2, and insert the following:

(4) DISMISSAL.—

(A) IN GENERAL.—Except as provided under subsection (d)(2), no judgment other than a judgment for dismissal may be entered in any action asserting an asbestos claim (including any claim described in paragraph (2)) in any Federal or State court on or after the date of enactment of this Act.

(B) DISMISSAL ON MOTION.—A court may dismiss any action asserting an asbestos claim (including any claim described in paragraph (2)) on—

(i) motion by any party to such action; or

(ii) its own motion.

(C) DENIAL OF MOTION.—If a court denies a motion to dismiss under subparagraph (B)(i), it shall stay further proceedings in any such action until final disposition of any appeal taken under this Act.

(D) EXCEPTION FOR PENDING CLAIMS IN COURT.—

(i) IN GENERAL.—Except as provided under subsection (d)(2) and clause (ii) of this subparagraph, an action asserting an asbestos claim that is pending on the date of enactment of this Act in any Federal or State court may not be dismissed under subparagraph (A), but any stay shall continue in effect, if the plaintiff (or the personal representative of the plaintiff, if the plaintiff is deceased or incompetent) in such action has filed a claim, or is still entitled under section 113(b) to file a claim, with the Fund with respect to the disease, condition, or injury forming the basis of such action.

(ii) DISMISSAL ALLOWED IF CLAIM IS ADJUDICATED.—An action exempt from dismissal under clause (i) shall be dismissed if—

(I) the plaintiff's claim under the Fund has been finally adjudicated and the award, if any, to the plaintiff from the Fund has been paid in full;

(II) the plaintiff's claim under the Fund has been finally adjudicated and the claimant is not entitled to receive a monetary award or medical monitoring under subtitle D of title I;

(III) the plaintiff's claim has been resolved and paid in full under section 106(f); or

(IV) after the Administrator certifies to Congress that the Fund has become operational and paying all valid asbestos claims at a reasonable rate, the plaintiff's claim is pending in any venue other than a venue described under section 405(g)(3).

(E) NOTICE.—The Administrator shall send notice to the appropriate Federal or State court of any adjudication of any claim with the Fund filed by a plaintiff in an action that has been stayed under subparagraph (D)(i).

(F) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit dismissal, at any time, of a claim pending in Federal or State court for reasons independent of the enactment of this Act.

SA 2864. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 67, between lines 10 and 11, insert the following:

(g) PRECONDITIONS FOR CERTIFICATION.—For the purpose of this section, the Administrator is prohibited from certifying the Fund as operational until the Administrator has—

(1) finalized the tier designation and amount of assessment to each participating defendant or insurer; and

(2) determined from such designations that such assessments will produce the annual statutory revenues required under title II.

SA 2865. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 162, line 22 strike all through page 163, line 22, and insert the following:

(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 revenues of such person or affiliated group. 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.—Except as adjusted by paragraph (3), 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.

(3) ADJUSTMENTS.—The following persons or affiliated groups in Tier II shall have their annual payment to the Fund adjusted as follows:

(A) Each person or affiliated group with prior asbestos expenditures equal to, or greater than, $200,000,000 but less than $300,000,000 shall pay, on an annual basis, an amount equal to 200 percent of the amount for the subtier to which that person or affiliated group is assigned under this subsection.

(B) Each person or affiliated group with prior asbestos expenditures equal to, or greater than, $300,000,000 but less than $400,000,000 shall pay, on an annual basis, an amount equal to 250 percent of the amount for the subtier to which that person or affiliated group is assigned under this subsection.

(C) Each person or affiliated group with prior asbestos expenditures equal to, or greater than, $400,000,000 but less than $500,000,000 shall pay, on an annual basis, an amount equal to 300 percent of the amount for the subtier to which that person or affiliated group is assigned under this subsection.

(D) Each person or affiliated group with prior asbestos expenditures equal to, or greater than, $500,000,000 shall pay, on an annual basis, an amount equal to 350 percent of the amount for the subtier to which that person or affiliated group is assigned under this subsection.

SA 2866. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 46, line 20, strike ''date of enactment of this Act'' and insert ''effective date of this subsection''.

On page 392, after line 5, insert the following:

TITLE VI—EFFECTIVE DATE

SEC. 601. EFFECTIVE DATE.

Notwithstanding any other provision of this Act, section 106(f) and section 403 shall not become effective until—

(1) the Administrator has met the public notice requirements for defendant and insurer participants under section 204(i)(6)(A)(ii) and section 212(b)(1);

(2) defendant and insurer participants have made their initial payments under section 204(i)(6)(C) and section 212(e); and

(3) the Administrator has certified that the aggregate payments by defendant and insurer participants are sufficient to satisfy the requirements of section 204(h)(1) and section 212(a)(3)(C)(i) for the first calendar year of the Fund.

SA 2867. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 291, between lines 12 and 13, insert the following:

(c) JUDICIAL STAYS.—Notwithstanding subsections (d) and (e) of section 403, if this Act is stayed by judicial order, pending judicial review of the constitutionality or enforceability of this Act, asbestos claims shall be permitted to continue in Federal or State court for as long as such stay remains in effect.

On page 291, line 13, strike ''(c)'' and insert ''(d)''.

SA 2868. Mr. BIDEN submitted an amendment intended to be proposed to

amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 319, strike lines 3 through 18, and insert the following:

(i) before the date of enactment of this Act, the settlement agreement or confirmation of settlement was authorized by the settling defendant or the settling insurer, and confirmed by, or with, counsel for the settling defendant or settling insurer;

On page 320, between lines 6 and 7, insert the following:

(B) AGREEMENTS DEALING WITH MORE THAN 1 CLAIM.—For the purposes of subparagraph (A), a settlement agreement which includes more than 1 asbestos claim shall only be enforceable as to any asbestos claim settled within such settlement agreement if—

(i) before the date of enactment of this Act, the specific asbestos claim was settled under such settlement agreement for a specific sum with a specific named plaintiff; and

(ii) the specific named plaintiff has complied with subparagraph (A)(iii).

On page 320, line 7, strike ''(B)'' and insert ''(C)''.

On page 320, line 11, strike ''(C)'' and insert ''(D)''.

On page 320, line 15, strike ''(D)'' and insert ''(E)''.

On page 320, line 21, strike ''(E)'' and insert ''(F)''.

SA 2869. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 344, line 16, insert ''(i)'' before ''who''.

On page 344, line 17, strike ''calendar'' and insert ''fiscal''.

On page 344, line 19, insert ''and (ii)'' before ''who have received''.

On page 347, strike line 13 and all that follows through ''Administrator,'' on line 15, and insert the following:

(c) CERTIFICATION.—The Administrator shall certify in the annual report required under subsection (a)—

(1) that

On page 347, line 18, strike ''(1)'' and insert ''(A)''.

On page 347, line 22, strike ''(2)'' and insert ''(B)''.

On page 347, line 24, strike the period and insert ''; and''.

On page 347, after line 24, insert the following:

(2) that—

(A) 100 percent of the asbestos claimants who filed claims during the prior fiscal year, and who were determined to be eligible to receive compensation under this Act, received the compensation to which they are entitled during that fiscal year; and

(B) 100 percent of the total obligations due to be paid to eligible claimants in the prior fiscal year have been paid.

On page 350, strike line 4 and all that follows through page 351, line 21.

On page 351, line 24, insert ''INITIAL'' before ''ANALYSIS''.

On page 352, line 5, strike ''when'' and insert ''the date on which''.

On page 352, line 6, insert ''in full'' after ''claims''.

On page 352, line 10, insert a period after ''claimants''.

On page 352, lines 10 and 11, strike ''and the public.'' and all that follows through ''Fund'' on line 15.

On page 353, line 6, strike the semicolon and insert ''; or''.

On page 353, line 7, strike ''reform'' and all that follows through line 13.

On page 353, line 14, strike ''changes'' and insert ''increases''.

On page 353, lines 16 and 17, strike '', or changes in award values)'' and insert ''in order to keep the Fund operational''.

On page 353, line 17, strike ''; or'' and insert a period.

On page 353, strike lines 18 through 19.

On page 354, line 6, strike ''except'' through ''212(a)(3)(C).'' on line 15.

On page 355, line 7, insert ''and'' after ''fraud,''.

On page 355, line 8, strike all after ''mesothelioma'' through line 10 and insert a semicolon.

On page 355, strike lines 11 through 14.

On page 355, line 15, strike ''(D)'' and insert ''(C)''.

On page 355, line 18, strike ''(E)'' and insert ''(D)''.

On page 355, line 20, strike ''(F)'' and insert ''(E)''.

On page 355, strike line 22 and all that follows through page 356, line 4, and insert the following:

(3) TERMINATION PLAN.—

(A) IN GENERAL.—Any recommendation of termination shall include a plan for terminating the affairs of the Fund (and the program generally) within a defined period.

(B) PLAN REQUIREMENTS.—The termination plan shall—

(i) specify the date on which the Fund will no longer be able to timely process and pay all eligible claims that are filed with the Fund while satisfying the other financial obligations of the Fund; and

(ii) provide for paying in full all such eligible claims and all claims resolved before that date.

On page 356, between lines 4 and 5, insert the following:

(4) PERIODIC REVIEWS.—The Administrator shall provide updates on any shortfall analysis to Congress every 6 months, or at such shorter intervals as the Administrator determines appropriate.

On page 356, line 5, strike ''(4)'' and insert ''(5)''.

On page 356, line 14, strike ''titles I (except subtitle A) and II and''.

On page 356, line 15, strike ''403 and 404(e)(2)'' and insert ''113, 403, 404, and 406''.

On page 356, line 19 insert ''(I)'' after ''(ii)''.

On page 356, line 19 strike ''part of the'' and all that follows through ''determines'' on line 24, and insert ''a result of the annual report, shortfall analysis or periodic reviews the Administrator determines''.

On page 356, line 25, strike ''claims are resolved'' and insert ''eligible claims are received''.

On page 357, line 3, strike ''221when'' and insert ''221 when''.

On page 357, line 3, insert ''such eligible claims and all previously'' after ''all''.

On page 357, line 7 strike ''(I)'' and insert ''(aa)''.

On page 357, line 9 strike ''(II)'' and insert ''(bb)''.

On page 357, line 11, strike the period and insert ''; or''.

On page 357, between lines 11 and 12, insert the following:

(II)(aa) the Administrator has failed to make the certifications under subsection (c); or

(bb) the Government Accountability Office has failed to report, pursuant to subsection (j), that the Administrator's certifications under subsection (c) are accurate.

On page 358, line 2, after ''effect'' insert ''either—

(A) on the date which the Administrator has determined is the date the Fund will not have sufficient funds to pay all eligible claims filed with the Fund and all claims resolved prior to that date while satisfying its financial obligations; or

(B) ''.

On page 358, line 3, strike ''180'' and insert ''90''.

On page 358, line 3, strike ''date of a determination of the'' and all that follows through line 6, and insert ''date on which the certifications described in paragraph (1)(A)(iii) failed to occur.''.

On page 359, strike line 24 and all that follows through page 360, line 4.

On page 360, line 5, strike ''(8)'' and insert ''(7)''.

On page 361, line 13, strike ''MESOTHELIOMA CLAIM'' and insert ''ADDITIONAL CLAIMS''.

On page 361, line 17, insert ''a more serious condition or'' after ''a claim for''.

On page 361, line 18, insert ''more serious condition or'' after ''unless the''.

On page 362, line 15, strike ''or''.

On page 362, line 17, strike the period and insert a semicolon.

On page 362, between lines 17 and 18, insert the following:

(iv) any State court in a State where the company has its headquarters or its principal place of business; or

(v) any State court in a State where the company has at least 10 percent of its employees or 10 percent of its sales.

On page 362, line 20, strike ''(ii) or (iii)'' and insert ''(ii), (iii), (iv), or (v)''.

On page 363, strike line 1 and all that follows through line 18.

On page 364 strike line 15 and all that follows through page 365 line 4.

On page 365 between lines 8 and 9, insert ''(j) GOVERNMENT ACCOUNTABILITY OFFICE REPORT.—The Government Accountability Office shall annually review the certifications required in subsection (c), and any relevant supporting documentation, and report to Congress whether these certifications are accurate.

SA 2870. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 143, line 8 strike all through page 144 line 6 and insert the following:

(7) ASBESTOS PREMISES CLAIM.—The term ''asbestos premises claim''—

(A) means an asbestos claim against a current or former premises owner or landowner, or person controlling or possessing premises or land, alleging injury or death caused by exposure to asbestos on such premises or land or by exposure to asbestos carried off such premises or land on the clothing or belongings of another person; and

(B) includes any such asbestos claim against a current or former employer alleging injury or death caused by exposure to asbestos on premises or land owned, controlled, or possessed by the employer, if that claim is not a claim for benefits under a workers' compensation law or veteran benefits program.

(8) ASBESTOS PREMISES DEFENDANT PARTICIPANT.—The term ''asbestos premises defendant participant'' means any defendant participant for which 90 percent or more of its prior asbestos expenditures relate to asbestos premises claims against that defendant participant.

On page 150, strike lines 1 through page 151 line 16, and insert the following:

(d) TIERS II THROUGH VIII.—

(1) IN GENERAL.—Except as provided in section 204 and subsection (b) of this section, persons or affiliated groups are included in Tier II, III, IV, V, VI, VII, or VIII according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

(A) Tier II: $350,000,000 or greater.

(B) Tier III: $200,000,000 or greater, but less than $350,000,000.

(C) Tier IV: $75,000,000 or greater, but less than $200,000,000.

(D) Tier V: $50,000,000 or greater, but less than $75,000,000.

(E) Tier VI: $10,000,000 or greater, but less than $50,000,000.

(F) Tier VII: $5,000,000 or greater, but less than $10,000,000.

(G) Tier VIII: $1,000,000 or greater, but less than $5,000,000.

(2) ASBESTOS PREMISES DEFENDANT PARTICIPANTS.—Asbestos premises defendant participants which would be assigned to Tiers IV, V, VI, or VII according to their prior asbestos expenditures shall instead be assigned to the immediately lower tier, such that an asbestos premises defendant participant which would be assigned to Tier IV shall instead be assigned to Tier V, an asbestos premises defendant participant which would be assigned to Tier V shall instead be assigned to Tier VI, an asbestos premises defendant participant which would be assigned to Tier VI shall instead be assigned to Tier VII, and an asbestos premises defendant participant which would be assigned to Tier VII shall instead be assigned to Tier VIII.

On page 162, strike line 22 through page 170, line 9, and insert the following:

(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: $49,500,000.

(B) Subtier 2: $46,750,000.

(C) Subtier 3: $44,000,000.

(D) Subtier 4: $41,250,000.

(E) Subtier 5: $38,500,000.

(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: $38,500,000.

(B) Subtier 2: $35,750,000.

(C) Subtier 3: $33,000,000.

(D) Subtier 4: $30,250,000.

(E) Subtier 5: $27,500,000.

(e) TIER IV SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier IV shall be included in 1 of the 5 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—

(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.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 5 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—

(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.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 4 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 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.

(h) TIER VII SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VII shall be included in 1 of the 3 subtiers of Tier VII, 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.

(i) TIER VIII SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VIII shall be included in 1 of the 3 subtiers of Tier VIII, 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.

(j) TIER IX.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, VI, VII, or VIII, a person or affiliated group shall also be included in Tier IX, 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 IX shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VIII.

(3) SUBTIER 1.—Each person or affiliated group in Tier IX 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 IX 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 IX 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.

SA 2871. Mr. LAUTENBERG submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike from line 6 on page 321 to line 13 on page 322, and insert in lieu thereof the following:

(1) IN GENERAL.—Except as provided under paragraph (2) and section 106(f) of this Act and section 524(j)(3) of title 11, United States Code, as amended by this Act, 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) This Act shall not be the exclusive remedy for claims in which a defendant is a company or any domestic or foreign subsidiary of that company that does business with the Islamic Republic of Iran.

(B) 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 impaneling 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.

(C) NONAPPLICABILITY.—This Act shall not apply to a civil action described under subparagraph (B) throughout the final disposition of the action.

SA 2872. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 369, line 3, strike all through page 371, line 5 and insert the following:

(e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND BY 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 and State agencies that are counterparts, for contributions to the Asbestos Injury Claims Resolution Fund.

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall 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 C.F.R. 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).

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual under paragraph (2) 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 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.

SA 2873. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 376, line 5, strike all through the matter between lines 5 and 6 on page 386.

On page 370, lines 14 through 16, strike ''and the regulations banning asbestos promulgated under section 501 of this Act),''.

SA 2874. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 370, lines 14 through 16, strike ''and the regulations banning asbestos promulgated under section 501 of this Act),''.

On page 369, line 3, strike all through page 371, line 5 and insert the following:

(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 and State agencies that are counterparts, for contributions to the Asbestos Injury Claims Resolution Fund.

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall 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 C.F.R. 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).

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual under paragraph (2) 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 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.

On page 376, line 5, strike all through the matter between lines 5 and 6 on page 386.

On page 386, line 6, strike all through page 393, line 7.

SA 2875. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 376, line 4, strike all through page 393, line 7.

On page 370, lines 14 through 16, strike ''and the regulations banning asbestos promulgated under section 501 of this Act),''.

SA 2876. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 386, line 6, strike all through page 393, line 7.

SA 2877. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, add the following:

SEC. 503. ASBESTOS EXPOSURE AS THE RESULT OF A NATURAL OR OTHER DISASTER.

(a) MEDICAL CLAIMS.—

(1) IN GENERAL.—A claimant may file an exceptional medical claim with the Fund under section 121 if —

(A) such claimant has been exposed to asbestos from any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) a natural or other disaster, occurring before, on, or after the date of enactment of this Act, including—

(I) the attack on the World Trade Center in New York, New York on September 11, 2001; and

(II) Hurricane Katrina of 2005 in the Gulf Region of the United States; or

(ii) the clean up and remediation following a disaster described in clause (i); or

(B) as a result of living with a person who has met the exposure requirements described in subparagraph (A).

(2) PHYSICIAN PANEL.—In reviewing medical evidence submitted by a claimant under paragraph (1), the Physicians Panel shall take into consideration the unique nature of such disasters and the potential for asbestos exposure resulting from such disasters.

(b) PRESERVATION OF ACTIONS.—Nothing in this Act shall be construed to limit or abrogate any pending or future civil action against the United States Government or any State or local government, or any agency or subdivision thereof, or any former or present officer or employee thereof, in either their official or individual capacities, seeking redress for exposure to asbestos—

(1) from any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(A) a natural or other disaster, occurring before, on, or after the date of enactment of this Act, including—

(i) the attack on the World Trade Center in New York, New York on September 11, 2001; and

(ii) Hurricane Katrina of 2005 in the Gulf Region of the United States; or

(B) the clean up and remediation following a disaster described in subparagraph (A); or

(2) as a result of living with a person who has met the exposure requirements described in paragraph (1).

(c) NATURAL OR OTHER DISASTER FUNDS.—

(1) IN GENERAL.—Nothing in this Act shall be construed to limit or abrogate any existing fund, or preclude the formation of any future fund, for the payment of eligible medical expenses relating to treating asbestos-related disease for individuals exposed to asbestos—

(A) from any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) a natural or other disaster, occurring before, on, or after the date of enactment of this Act, including—

(I) the attack on the World Trade Center in New York, New York on September 11, 2001; and

(II) Hurricane Katrina of 2005 in the Gulf Region of the United States; or

(ii) the clean up and remediation following a disaster described in clause (i); or

(B) as a result of living with a person who has met the exposure requirements described in subparagraph (A).

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensation as defined under section 134(a).

(d) DEFINITION OF PERSON.—The term person as defined in section 3(13) shall not include the captive insurance company established and funded under title III of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 517).

SA 2878. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 17, line 21, before the period at the end, insert the following: '', or the captive insurance company established and funded under title III of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 517)''.

SA 2879. Mr. REID (for Mr. BIDEN) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 359, strike line 3 and all that follows through page 361, line 23, and insert the following:

(6) ASBESTOS TRUSTS AND CLASS ACTION TRUSTS.—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.

(7) PAYMENT TO ASBESTOS TRUSTS AND CLASS ACTION TRUSTS.—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.

(h) NATURE OF CLAIM AFTER SUNSET.—

(1) IN GENERAL.—

(A) RELIEF.—

(i) IN GENERAL.—Except as provided in subparagraphs (B) and (C), on and after the date of termination under subsection (g), 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 (g).

(ii) RULE OF CONSTRUCTION.—This subparagraph shall not be construed as creating a new Federal cause of action.

(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) MESOTHELIOMA 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.

(D) STATUTE OF LIMITATIONS.—Notwithstanding any other provision of law, a claimant who, on the date of termination under subsection (g), had a claim filed with the Fund that was unresolved or was eligible to file a claim with the Fund under section 113(b) may file a civil action in accordance with this section not less than 2 years after the date of termination under subsection (g).

SA 2880. Mr. MARTINEZ (for himself, Mr. ALLEN, Mr. ROBERTS, and Mr. BURR) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 155, line 17, strike all through page 115, line 8, and insert the following:

(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 previously reported as revenues or that would have been reported as revenues, and determined in accordance with generally accepted accounting principles, for the most recent fiscal year ending on or before December 31, 2002.

SA 2881. Mr. BURNS (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 70, line 9, strike ''TLC or FVC'' and insert ''TLC, FVC, or DLCO''.

SA 2882. Mr. SPECTER (for himself, Mr. LIEBERMAN, and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 329, line 4 , insert '', including a claim described under paragraph (2),'' after ''claim''.

SA 2883. Mr. SPECTER (for himself, Mr. LIEBERMAN, and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 212, line 21, strike all through page 214, line 22, and insert the following:

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—

(i) AMOUNT OF 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 shall be uniform for all insurer participants.

(ii) RESERVE STUDY REQUIRED.—The Commission shall conduct a reserve study (the

''Reserve Study'') to determine the appropriate reserve allocation of each insurer participant and may request information from each insurer participant, defendant participant, the Securities and Exchange Commission or any State regulatory agency for the purpose of conducting the Reserve Study. The Reserve Study shall calculate each insurer's exposure to current and future asbestos claims in the asbestos litigation environment as it existed prior to enactment. Such calculation shall be derived from the following elements:

(I) an estimation of each and every defendant participant's current and future exposure to expense and loss costs in the asbestos litigation environment as it existed prior to enactment (''Ultimate Expense and Loss'');

(II) applying a uniform set of assumptions regarding the application of insurance and reinsurance to Ultimate Expense and Loss, an analysis of each insurer participant's unresolved or unexhausted insurance or reinsurance coverage applicable to such Ultimate Expense and Loss for each defendant participant;

(III) a project of each insurer's exposure to claims by entities that had not yet become defendants as of the date of enactment, but might reasonably have been anticipated to become defendants in the future if the asbestos litigation environment as it existed prior to enactment had continued. Not later than 60 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 conducting the Reserve Study and allocating payments among insurer participants on the basis of the Reserve Study. Such methodology shall be consistent with the provisions of this paragraph.

(iii) PERMITTED EXTRAPOLATION OF ULTIMATE EXPENSE AND LOSS FOR PERIPHERAL DEFENDANT PARTICIPANTS.—The Commission shall be given the discretion to establish an appropriate methodology to extrapolate Ultimate Expense and Loss for Tier VI defendant participants for the purposes of the Reserve Study. Considerations for such methodology shall include, but not be limited to, the nature of that Tier VI defendant participant's asbestos liability, the number of pending and historic asbestos claims against the Tier VI defendant participant and the jurisdictions in which such Tier VI defendant participant had been sued for asbestos liability.

(iv) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall undermine the initial payment requirement in section 212(e)(1).

SA 2884. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 70, line 23, strike all through page 73, line 2, and insert the following:

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—If a claim is not filed with the Office within the limitations period specified in this subsection for that category of claim, such claim shall be extinguished, and any recovery thereon shall be prohibited.

(2) INITIAL CLAIMS.—An initial claim for an award under this Act shall be filed within 5 years after the date on which the claimant first received a medical diagnosis and medical test results sufficient to satisfy the criteria for the disease level for which the claimant is seeking compensation.

(3) CLAIMS FOR ADDITIONAL AWARDS.—

(A) NONMALIGNANT DISEASES.—If a claimant has previously filed a timely initial claim for compensation for any nonmalignant disease level, there shall be no limitations period applicable to the filing of claims by the claimant for additional awards for higher disease levels based on the progression of the nonmalignant disease.

(B) MALIGNANT DISEASES.—Regardless of whether the claimant has previously filed a claim for compensation for any other disease level, a claim for compensation for a malignant disease level shall be filed within 5 years after the claimant first obtained a medical diagnosis and medical test results sufficient to satisfy the criteria for the malignant disease level for which the claimant is seeking compensation.

(4) EFFECT ON PENDING CLAIMS.—

(A) IN GENERAL.—Subject to subparagraph (C), if an asbestos claim that was timely filed within ten years prior to the date of enactment is pending as of the date of enactment and is preempted under section 403(e), a claim under this Act for the same disease or condition may be filed with the Office under this section within 5 years after such date of enactment.

(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.

SA 2885. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 306, line 20, strike all after the period through page 307, line 10, and insert ''In the event that collateral source compensation exceeds the amount that the claimant would be paid (excluding any adjustments under section 131(b) (3) and (4) of the Act) for such condition under the Act most similar to the claimant's claim with the trust, such trust shall not make any payment to the claimant.''.

SA 2886. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 262, line 20, strike all through page 270, line 20, and insert the following:

(j) TRANSACTIONS.—

(1) NOTICE OF TRANSACTION.—Any participant that has engaged in any transaction or series of transactions under which a significant portion of such participant's assets, properties or business was, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such transaction (or series of transactions).

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days after the date of consummation of the transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties or business were transferred in the transaction (or series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act; or

(ii) the transaction (or series of transactions) is subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term ''significant portion of the assets, properties or business of a participant'' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States' generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A) a temporary restraining order or a preliminary or permanent injunction such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person became a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be exclusively brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(6) RULES AND REGULATIONS.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing, and content of notices.

SA 2887. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 302, strike line 9 and all that follows through page 304, line 17, and insert the following:

''(aa) provides to the trust a copy of a binding election submitted to Administrator waiving the right to secure compensation under section 106(f)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, unless the claimant is permitted under section 106(f)(2)(B) of such Act to seek a judgment or order for monetary damages from a Federal or State court;

''(bb) meets the requirements for compensation under the distribution plan for the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(cc) for any condition satisfies the medical criteria under the distribution plan for the trust that is most nearly equivalent to the medical criteria described in paragraph (2), (3), (4), (5), (7), (8), or (9) of section 121(d) of the Fairness in Asbestos Injury Resolution Act of 2006, except that, notwithstanding any provision of the distribution plan of the trust to the contrary, the trust shall not accept the results of a DLCO test (as such test is defined in section 121(a) of the Fairness in Asbestos Injury Resolution Act of 2006) for the purpose of demonstrating respiratory impairment; and

''(dd) for any of the cancers listed in section 121(d)(6) of the Fairness in Asbestos Injury Resolution Act of 2006 does not seek, and the trust does not pay, any compensation until such time as the Institute of Medicine finds that there is a causal relationship between asbestos exposure and such cancer, in which case such claims may be paid if such claims otherwise qualify for compensation under the distribution plan of the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

SA 2888. Mr. ISAKSON submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter, insert the following:

SEC. 503. TRANSACTIONS.

(a) NOTICE OF TRANSACTIONS.—Notwithstanding any other provision of this Act, any participant that has engaged in any transaction or a series of transactions under which a significant portion of such participant's assets, properties, or business was, directly or indirectly, transferred by any means (including by sale, dividend, contribution to a subsidiary, or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such transaction (or series of transactions).

(b) TIMING OF NOTICE AND RELATED ACTIONS.—

(1) IN GENERAL.—Any notice that a participant is required to give under subsection (a) shall be given not later than 30 days after the date of consummation of the transaction or the first transaction to occur in a proposed series of transactions.

(2) OTHER NOTIFICATIONS.—

(A) IN GENERAL.—Not later than the date in any year on which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(i) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this section; or

(ii) the participant was not required to provide any notice under this section during such period.

(B) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(3) NOTICE COMPLETION.—The Administrator shall not consider any notice given under subsection (a) as given until such time as the Administrator receives substantially all the information required by this section.

(c) CONTENTS OF NOTICE.—

(1) IN GENERAL.—The Administrator shall determine by regulation the information to be included in the notice required under this section, which shall include such information as may be necessary to enable the Administrator to determine whether—

(A) the person or persons to whom the assets, properties or business were transferred in the transaction (or series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act; or

(B) the transaction (or series of transactions) is subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(2) STATEMENTS.—The notice shall also include—

(A) a statement by the participant as to whether the participant believes any person has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(B) a statement by the participant as to whether that person has acknowledged that such person has become a successor in interest for purposes of this Act.

(d) DEFINITION.—In this section, the term ''significant portion of the assets, properties or business of a participant'' means assets (including tangible or intangible assets, securities, and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(1) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(2) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(3) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(4) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(e) RIGHT OF ACTION.—

(1) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions) that—

(A) involves a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(B) may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(2) RELIEF ALLOWED.—In any action commenced under this section, the Administrator or a participant, as applicable, may seek—

(A) with respect to a transaction (or series of transactions) referred to under subparagraph (A) of paragraph (1), a declaratory judgment regarding whether such person has become the successor in interest of such participant; or

(B) with respect to a transaction (or series of transactions) referred to under subparagraph (B) of paragraph (1)—

(i) a temporary restraining order or a preliminary or permanent injunction; or

(ii) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(3) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person has not become a successor in interest for purposes of this Act, then this subsection shall be the exclusive means by which the determination of whether such person became a successor in interest of the participant shall be made. This subsection shall not preempt any other rights of any person under applicable Federal or State law.

(4) VENUE.—Any action under this subsection shall be exclusively brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(f) REGULATIONS.—The Administrator—

(1) shall promulgate rules to carry out subsection (c), including regulations relating to the form, timing and content of notices; and

(2) may promulgate regulations to effectuate the intent of this section.

(g) PREEMPTION OF SECTION 223(J).—Section 223(j) shall have no force or effect.

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON NATIONAL PARKS

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been rescheduled before the Subcommittee on National Parks.

The hearing originally scheduled for Thursday, February 16, 2006 at 2:30 p.m. in Room SD–366 of the Dirksen Senate Office Building will now be held at 1:30 p.m. on February 16, 2006 in the same room.

The purpose of the hearing is to receive testimony on the following bills: S.J. Res. 28, a joint resolution approving the location of the commemorative work in the District of Columbia honoring former President Dwight D. Eisenhower; S. 1870, a bill to clarify the authorities for the use of certain National Park Service properties within Golden Gate National Recreation Area and San Francisco Maritime National Historical Park, and for other purposes; S. 1913, a bill to authorize the Secretary of the Interior to lease a portion of the Dorothy Buell Memorial Visitor Center for use as a visitor center for the Indiana Dunes National Lakeshore, and for other purposes; S. 1970, a bill to amend the National Trails System Act to update the feasibility and suitability study originally prepared for the Trail of Tears National Historic Trail and provide for the inclusion of new trail segments, land components, and campgrounds associated with that trail, and for other purposes; H.R. 562, a bill to authorize the Government of Ukraine to establish a memorial on Federal land in the District of Columbia to honor the victims of the manmade famine that occurred in Ukraine in 1932–1933; H.R. 318, a bill to authorize the Secretary of the Interior to study the suitability and feasibility of designating Castle Nugent Farms located on St. Croix, Virgin Islands, as a unit of the National Park System, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Tom, Lillie at (202) 224–5161 or David Szymanski at (202) 224–6293.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been rescheduled before the Committee on Energy and Natural Resources.

The hearing originally scheduled for Tuesday, February, 14, 2006 at 10 a.m. in Room. SD–366 of the Dirksen Senate Office Building will now be held on Thursday, February 16, 2006 at 2:30 p.m. in the same room.

The purpose of the hearing is to discuss the Energy Information Administration's 2006 Annual Energy Outlook on trends and issues affecting the United States' energy market.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Lisa Epifani 202–224–5269 or Shannon Ewan at 202–224–7555.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on February 14, 2006, at 10 a.m., to conduct a hearing on the nomination of Mr. Randall S. Kroszner, of New Jersey, to be a member of the Board of Governors of the Federal Reserve System; Mr. Edward P. Lazear, of California, to be a member of the Council of Economic Advisers; Mr. Kevin M. Warsh, of New York, to be a member of the Board of Governors of the Federal Reserve System.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, February 14, 2006, at 10 a.m., on State and local issues and municipal networks.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, February 14 at 10 a.m. The purpose of this hearings is to discuss the Energy Information Administration's 2006 annual energy outlook on trends and issues affecting the United States Energy Market.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, February 14, 2006, at 10 a.m. to hold a hearing on the President's budget for foreign affairs, and a business meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Tuesday, February 14, 2006, at 10 a.m. for a hearing titled, ''Hurricane Katrina: The Homeland Security Department's Preparation and Response.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Tuesday, February 14, 2006, at 2:30 p.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on the President's Fiscal Year 2007 Budget Request for Indian Programs. Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

The PRESIDING OFFICER. Without objection, it is so ordered.