

Calendar No. 131

109TH CONGRESS
1ST SESSION

S. 852

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

IN THE SENATE OF THE UNITED STATES

APRIL 19, 2005

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

JUNE 16, 2005

Reported by Mr. SPECTER, with amendments

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

A BILL

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

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

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

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

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

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

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

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

Subtitle B—Asbestos Disease Compensation Procedures

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

Subtitle C—Medical Criteria

Sec. 121. Medical criteria requirements.

Subtitle D—Awards

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

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

Sec. 201. Definitions.
 Sec. 202. Authority and tiers.
 Sec. 203. Subtiers.
 Sec. 204. Assessment administration.

- Sec. 205. Stepdowns and funding holidays.
 Sec. 206. Accounting treatment.

Subtitle B—Asbestos Insurers Commission

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

Subtitle C—Asbestos Injury Claims Resolution Fund

- Sec. 221. Establishment of Asbestos Injury Claims Resolution Fund.
 Sec. 222. Management of the Fund.
 Sec. 223. Enforcement of payment obligations.
 Sec. 224. Interest on underpayment or nonpayment.
 Sec. 225. Education, consultation, screening, and monitoring.
 Sec. 226. *National Mesothelioma Research and Treatment Program.*

TITLE III—JUDICIAL REVIEW

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

TITLE IV—MISCELLANEOUS PROVISIONS

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

TITLE V—ASBESTOS BAN

- Sec. 501. Prohibition on asbestos containing products.
 Sec. 502. *Naturally occurring asbestos.*

1 SEC. 2. FINDINGS AND PURPOSE.

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

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

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

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

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

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

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

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

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

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

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

8 *(10) The asbestos found in Libby, Montana,*
9 *tremolite asbestos, has demonstrated an unusually*
10 *high level of toxicity, as compared to chrysotile asbes-*
11 *tos. Diseases contracted from this tremolite asbestos*
12 *are unique and highly progressive. These diseases*
13 *typically manifest in a characteristic pleural disease*
14 *pattern, and often result in severe impairment or*
15 *death without radiographic interstitial disease or typ-*
16 *ical chrysotile markers of radiographic severity. Ac-*
17 *ording to the Agency for Toxic Substances and Dis-*
18 *ease Registry previous studies by the National Insti-*
19 *tutes of Occupational Safety and Health document*
20 *significantly increased rates of pulmonary abnormali-*
21 *ties and disease (asbestosis and lung cancer) among*
22 *former workers.*

23 *(11) In Libby, Montana, exposure pathways are*
24 *and were not limited to the workplace, rather, for dec-*
25 *ades there has been an unprecedented 24 hour per day*

1 *contamination of the community's homes, play-*
2 *grounds, gardens, and community air, such that the*
3 *entire community of Libby, Montana, has been des-*
4 *ignated a Superfund site and is listed on the Envi-*
5 *ronmental Protection Agency's National Priorities*
6 *List.*

7 (12) *These multiple exposure pathways have*
8 *caused severe asbestos disease and death not only in*
9 *former workers at the mine and milling facilities, but*
10 *also in the workers' spouses and children, and in*
11 *community members who had no direct contact with*
12 *the mine. According to the Environmental Protection*
13 *Agency, some potentially important alternative path-*
14 *ways for past asbestos exposure include elevated con-*
15 *centrations of asbestos in ambient air and rec-*
16 *reational exposures from children playing in piles of*
17 *vermiculite. Furthermore, the Environmental Protec-*
18 *tion Agency has determined that current potential*
19 *pathways of exposure include vermiculite placed in*
20 *walls and attics as thermal insulation, vermiculite or*
21 *ore used as road bed material, ore used as ornamental*
22 *landscaping, and vermiculite or concentrated ore used*
23 *as a soil and garden amendment or aggregate in*
24 *driveways.*

1 (13) *The Environmental Protection Agency also*
2 *concluded, “Asbestos contamination exists in a num-*
3 *ber of potential source materials at multiple locations*
4 *in and around the residential and commercial area of*
5 *Libby... While data are not yet sufficient to perform*
6 *reliable human-health risk evaluations for all sources*
7 *and all types of disturbance, it is apparent that re-*
8 *leases of fiber concentrations higher than Occupa-*
9 *tional Safety and Health Administration standards*
10 *may occur in some cases ... and that screening-level*
11 *estimates of lifetime excess cancer risk can exceed the*
12 *upper-bound risk range of 1E-04 usually used by the*
13 *Environmental Protection Agency for residents under*
14 *a variety of exposure scenarios. The occurrence of*
15 *non-occupational asbestos-related disease that has*
16 *been observed among Libby residents is extremely un-*
17 *usual, and has not been associated with asbestos*
18 *mines elsewhere, suggesting either very high and pro-*
19 *longed environmental exposures and/or increased tox-*
20 *icity of this form of amphibole asbestos.”.*

21 (14) *According to a November 2003 article from*
22 *the Journal Environmental Health Perspectives titled,*
23 *Radiographic Abnormalities and Exposure to Asbes-*
24 *tos-Contaminated Vermiculite in the Community of*
25 *Libby, Montana, USA, Libby residents who have evi-*

1 *dence of “no apparent exposure”, i.e., did not work*
2 *with asbestos, were not a family member of a former*
3 *worker, etc., had a greater rate of pleural abnormali-*
4 *ties (6.7 percent) than did those in control groups or*
5 *general populations found in other studies from other*
6 *states (which ranged from 0.2 percent to 4.6 percent).*
7 *“Given the ubiquitous nature of vermiculite contami-*
8 *nation in Libby, along with historical evidence of ele-*
9 *vated asbestos concentrations in the air, it would be*
10 *difficult to find participants who could be character-*
11 *ized as unexposed.”.*

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

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

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

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

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

5 **SEC. 3. DEFINITIONS.**

6 In this Act, the following definitions shall apply:

7 (1) ADMINISTRATOR.—The term “Adminis-
 8 trator” means the Administrator of the Office of As-
 9 bestos Disease Compensation appointed under sec-
 10 tion 101(b).

11 (2) ASBESTOS.—The term “asbestos” in-
 12 cludes—

13 (A) chrysotile;

14 (B) amosite;

15 (C) crocidolite;

16 (D) tremolite asbestos;

17 (E) winchite asbestos;

18 (F) richterite asbestos;

19 (G) anthophyllite asbestos;

20 (H) actinolite asbestos;

21 ~~(I) amphibole asbestos;~~

22 (I) *asbestiform amphibole minerals*;

23 (J) any of the minerals listed under sub-
 24 paragraphs (A) through (I) that has been
 25 chemically treated or altered, and any

1 asbestiform variety, type, or component thereof;
2 and

3 (K) asbestos-containing material, such as
4 asbestos-containing products, automotive or in-
5 dustrial parts or components, equipment, im-
6 provements to real property, and any other ma-
7 terial that contains asbestos in any physical or
8 chemical form.

9 (3) ASBESTOS CLAIM.—

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

22 (B) EXCLUSION.—The term does not in-
23 clude—

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

1 (ii) claims for benefits under a work-
2 ers' compensation law or veterans' benefits
3 program;

4 (iii) claims arising under any govern-
5 mental or private health, welfare, dis-
6 ability, death or compensation policy, pro-
7 gram or plan;

8 (iv) claims arising under any employ-
9 ment contract or collective bargaining
10 agreement; or

11 (v) claims arising out of medical mal-
12 practice.

13 (4) ASBESTOS CLAIMANT.—The term “asbestos
14 claimant” means an individual who files a claim
15 under section 113.

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

23 (6) COLLATERAL SOURCE COMPENSATION.—
24 The term “collateral source compensation” means
25 the compensation that the claimant received, or is

1 entitled to receive, from a defendant or an insurer
2 of that defendant, or compensation trust as a result
3 of a final judgment or settlement for an asbestos-re-
4 lated injury that is the subject of a claim filed under
5 section 113.

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

10 (8) EMPLOYERS’ LIABILITY ACT.—The term
11 “Act of April 22, 1908 (45 U.S.C. 51 et seq.), com-
12 monly known as the Employer’s Liability Act” shall,
13 for all purposes of this Act, include the Act of June
14 5, 1920 (46 U.S.C. App. 688), commonly known as
15 the Jones Act, and the related phrase “operations as
16 a common carrier by railroad” shall include oper-
17 ations as an employer of seamen.

18 (9) FUND.—The term “Fund” means the As-
19 bestos Injury Claims Resolution Fund established
20 under section 221.

21 (10) INSURANCE RECEIVERSHIP PRO-
22 CEEDING.—The term “insurance receivership pro-
23 ceeding” means any State proceeding with respect to
24 a financially impaired or insolvent insurer or rein-
25 surer including the liquidation, rehabilitation, con-

1 servation, supervision, or ancillary receivership of an
2 insurer under State law.

3 (11) LAW.—The term “law” includes all law,
4 judicial or administrative decisions, rules, regula-
5 tions, or any other principle or action having the ef-
6 fect of law.

7 (12) PARTICIPANT.—

8 (A) IN GENERAL.—The term “participant”
9 means any person subject to the funding re-
10 requirements of title II, including—

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

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

17 (iii) any successor in interest of a par-
18 ticipant.

19 (B) EXCEPTION.—

20 (i) IN GENERAL.—A defendant partic-
21 ipant shall not include any person pro-
22 tected from any asbestos claim by reason
23 of an injunction entered in connection with
24 a plan of reorganization under chapter 11
25 of title 11, United States Code, that has

1 been confirmed by a duly entered order or
2 judgment of a court that is no longer sub-
3 ject to any appeal or judicial review, and
4 the substantial consummation, as such
5 term is defined in section 1101(2) of title
6 11, United States Code, of such plan of re-
7 organization has occurred.

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

14 (13) PERSON.—The term “person”—

15 (A) means an individual, trust, firm, joint
16 stock company, partnership, association, insur-
17 ance company, reinsurance company, or cor-
18 poration; and

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

24 (14) STATE.—The term “State” means any
25 State of the United States and also includes the Dis-

1 trict of Columbia, Commonwealth of Puerto Rico,
2 the Northern Mariana Islands, the Virgin Islands,
3 Guam, American Samoa, and any other territory or
4 possession of the United States or any political sub-
5 division of any of the entities under this paragraph.

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

10 (16) SUCCESSOR IN INTEREST.—The term
11 “successor in interest” means any person that ~~ae-~~
12 ~~quires assets~~, *in 1 or a series of transactions, ac-*
13 *quires all or substantially all of the assets and prop-*
14 *erties (including, without limitation, under section*
15 *363(b) or 1123(b)(4) of title 11, United States Code),*
16 and substantially continues the business operations,
17 of a participant. The factors to be considered in de-
18 termining whether a person is a successor in interest
19 include—

20 (A) retention of the same facilities or loca-
21 tion;

22 (B) retention of the same employees;

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

1 (D) retention of the same supervisory per-
2 sonnel;

3 (E) continuity of assets;

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

6 (G) retention of the same name;

7 (H) maintenance of the same customer
8 base;

9 (I) identity of stocks, stockholders, and di-
10 rectors between the asset seller and the pur-
11 chaser; or

12 (J) whether the successor holds itself out
13 as continuation of previous enterprise, but ex-
14 pressly does not include whether the person ac-
15 tually knew of the liability of the participant
16 under this Act.

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

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

24 (A) means a law respecting a program ad-
25 ministered by a State or the United States to

1 provide benefits, funded by a responsible em-
 2 ployer or its insurance carrier, for occupational
 3 diseases or injuries or for disability or death
 4 caused by occupational diseases or injuries;

5 (B) includes the Longshore and Harbor
 6 Workers' Compensation Act (33 U.S.C. 901 et
 7 seq.) and chapter 81 of title 5, United States
 8 Code; and

9 (C) does not include the Act of April 22,
 10 1908 (45 U.S.C. 51 et seq.), commonly known
 11 as the Employers' Liability Act, or damages re-
 12 covered by any employee in a liability action
 13 against an employer.

14 **TITLE I—ASBESTOS CLAIMS**
 15 **RESOLUTION**

16 **Subtitle A—Office of Asbestos**
 17 **Disease Compensation**

18 **SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DIS-**
 19 **EASE COMPENSATION.**

20 (a) IN GENERAL.—

21 (1) ESTABLISHMENT.—There is established
 22 within the Department of Labor the Office of Asbes-
 23 tos Disease Compensation (hereinafter referred to in
 24 this Act as the “Office”), which shall be headed by
 25 an Administrator.

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

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

13 (3) *TERMINATION OF THE OFFICE.—The Office*
 14 *of Asbestos Disease Compensation shall terminate ef-*
 15 *fective not later than 12 months following certifi-*
 16 *cation by the Administrator that the Fund has nei-*
 17 *ther paid a claim in the previous 12 months nor has*
 18 *debt obligations remaining to pay.*

19 (4) *EXPENSES.—There shall be available from*
 20 *the Fund to the Administrator such sums as are nec-*
 21 *essary for any and all expenses associated with the*
 22 *Office of Asbestos Disease Compensation and nec-*
 23 *essary to carry out the purposes of this Act. Expenses*
 24 *covered should include—*

25 (A) *management of the Fund;*

1 (B) *personnel salaries and expenses, includ-*
2 *ing retirement and similar benefits;*

3 (C) *the sums necessary for conducting the*
4 *studies provided for in section 121(e);*

5 (D) *all administrative and legal expenses;*
6 *and*

7 (E) *any other sum that could be attrib-*
8 *utable to the Fund.*

9 (b) APPOINTMENT OF ADMINISTRATOR.—

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

15 (2) REPORTING.—The Administrator shall re-
16 port directly to the Assistant Secretary of Labor for
17 the Employment Standards Administration.

18 (c) DUTIES OF ADMINISTRATOR.—

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

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

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

3 (C) appointing or contracting for the serv-
4 ices of such personnel, making such expendi-
5 tures, and taking any other actions as may be
6 necessary and appropriate to carry out the re-
7 sponsibilities of the Office, including entering
8 into cooperative agreements with other Federal
9 agencies or State agencies and entering into
10 contracts with nongovernmental entities;

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

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

17 (i) administering, in a fiduciary capac-
18 ity, the assets of the Fund for the ~~exclu-~~
19 ~~sive~~ *primary* purpose of providing benefits
20 to asbestos claimants and their bene-
21 ficiaries;

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

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

1 (iv) retaining advisers, managers, and
2 custodians who possess the necessary fa-
3 cilities and expertise to provide for the
4 skilled and prudent management of the
5 Fund, to assist in the development, imple-
6 mentation and maintenance of the Fund's
7 investment policies and investment activi-
8 ties, and to provide for the safekeeping and
9 delivery of the Fund's assets; and

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

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

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

20 (H) excluding evidence and disqualifying or
21 debarring any attorney, physician, provider of
22 medical or diagnostic services, including labora-
23 tories and others who provide evidence in sup-
24 port of a claimant's application for compensa-
25 tion where the Administrator determines that

1 materially false, fraudulent, or fictitious state-
2 ments or practices have been submitted or en-
3 gaged in by such individuals or entities; and

4 (I) having all other powers incidental, nec-
5 essary, or appropriate to carrying out the func-
6 tions of the Office.

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

15 (3) SELECTION OF DEPUTY ADMINISTRA-
16 TORS.—The Administrator shall select a Deputy Ad-
17 ministrator for Claims Administration to carry out
18 the Administrator’s responsibilities under this title
19 and a Deputy Administrator for Fund Management
20 to carry out the Administrator’s responsibilities
21 under title II of this Act. The Deputy Administra-
22 tors shall report directly to the Administrator and
23 shall be in the Senior Executive Service.

24 (d) EXPEDITIOUS DETERMINATIONS.—The Adminis-
25 trator shall prescribe rules to expedite claims for asbestos

1 claimants with exigent circumstances in order to expedite
2 the payment of such claims as soon as possible after start-
3 up of the Fund. The Administrator shall contract out the
4 processing of such claims.

5 (e) AUDIT AND PERSONNEL REVIEW PROCE-
6 DURES.—The Administrator shall establish audit and per-
7 sonnel review procedures for evaluating the accuracy of
8 eligibility recommendations of agency and contract per-
9 sonnel.

10 (f) APPLICATION OF FOIA.—

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

16 ~~(2) CONFIDENTIALITY.—Any person may des-~~
17 ~~ignate any record submitted under this section as a~~
18 ~~confidential commercial or financial record for pur-~~
19 ~~poses of section 552 of title 5, United States Code.~~
20 ~~The Administrator and the Chairman of the Asbes-~~
21 ~~tos Insurers Commission shall adopt procedures for~~
22 ~~designating such records as confidential. Information~~
23 ~~on reserves and asbestos-related liabilities submitted~~
24 ~~by any participant for the purpose of the allocation~~

1 of payments under subtitles A and B of title II shall
2 be deemed to be confidential financial records.

3 (2) *CONFIDENTIALITY OF FINANCIAL RECORDS.*—

4 (A) *IN GENERAL.*—Any person may label
5 any record submitted under this section as a
6 confidential commercial or financial record for
7 the purpose of requesting exemption from disclo-
8 sure under section 552(b)(4) of title 5, United
9 States Code.

10 (B) *DUTIES OF ADMINISTRATOR AND*
11 *CHAIRMAN OF THE ASBESTOS INSURERS COM-*
12 *MISSION.*—The Administrator and Chairman of
13 the Asbestos Insurers Commission—

14 (i) shall adopt procedures for—

15 (I) handling submitted records
16 marked confidential; and

17 (II) protecting from disclosure
18 records they determine to be confiden-
19 tial commercial or financial informa-
20 tion exempt under section 552(b)(4) of
21 title 5, United States Code; and

22 (ii) may establish a pre-submission de-
23 termination process to protect from disclo-
24 sure records on reserves and asbestos-related
25 liabilities submitted by any defendant par-

1 *ticipant that is exempt under section*
 2 *552(b)(4) of title 5, United States Code.*

3 *(C) REVIEW OF COMPLAINTS.—Nothing in*
 4 *this section shall supersede or preempt the de*
 5 *novo review of complaints filed under 552(b)(4)*
 6 *of title 5, United States Code.*

7 *(3) CONFIDENTIALITY OF MEDICAL RECORDS.—*
 8 *Any claimant may designate any record submitted*
 9 *under this section as a confidential personnel or med-*
 10 *ical file for purposes of section 552 of title 5, United*
 11 *States Code. The Administrator and the Chairman of*
 12 *the Asbestos Insurers Commission shall adopt proce-*
 13 *dures for designating such records as confidential.*

14 **SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE**
 15 **COMPENSATION.**

16 (a) ESTABLISHMENT.—

17 (1) IN GENERAL.—Not later than 120 days
 18 after the date of enactment of this Act, the Adminis-
 19 trator shall establish an Advisory Committee on As-
 20 bestos Disease Compensation (hereinafter the “Advi-
 21 sory Committee”).

22 (2) COMPOSITION AND APPOINTMENT.—The
 23 Advisory Committee shall be composed of ~~24~~ 20
 24 members, appointed as follows—

1 (A) The Majority and Minority Leaders of
2 the Senate, the Speaker of the House, and the
3 Minority Leader of the House shall each ap-
4 point 4 members. Of the 4—

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

10 (ii) 2 shall be selected to represent the
11 interests of participants, 1 of whom shall
12 be selected to represent the interests of the
13 insurer participants and 1 of whom shall
14 be selected to represent the interests of the
15 defendant participants.

16 (B) The Administrator shall appoint 8 4
17 members, who shall be individuals with quali-
18 fications and expertise in occupational or pul-
19 monary medicine, occupational health, workers'
20 compensation programs, financial administra-
21 tion, investment of funds, program auditing, or
22 other relevant fields.

23 (3) QUALIFICATIONS.—All of the members de-
24 scribed in paragraph (2) shall have expertise or ex-
25 perience relevant to the asbestos compensation pro-

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

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

14 (1) claims filing and claims processing proce-
15 dures;

16 (2) claimant assistance programs;

17 (3) audit procedures and programs to ensure
18 the quality and integrity of the compensation pro-
19 gram;

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

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

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

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

9 (c) OPERATION OF THE COMMITTEE.—

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

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

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

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

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

23 (3) The Administrator shall designate a Chair-
24 person and Vice Chairperson from among members

1 of the Advisory Committee appointed under sub-
2 section (a)(2)(B).

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

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

21 (6) The Administrator shall provide the Advi-
22 sory Committee with such administrative support as
23 is reasonably necessary to enable it to perform its
24 functions.

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

10 **SEC. 103. MEDICAL ADVISORY COMMITTEE.**

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

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

20 **SEC. 104. CLAIMANT ASSISTANCE.**

21 (a) ESTABLISHMENT.—Not later than 180 days after
22 the enactment of this Act, the Administrator shall estab-
23 lish a comprehensive asbestos claimant assistance program
24 to—

1 (1) publicize and provide information to poten-
2 tial claimants about the availability of benefits for
3 eligible claimants under this Act, and the procedures
4 for filing claims and for obtaining assistance in fil-
5 ing claims;

6 (2) provide assistance to potential claimants in
7 preparing and submitting claims, including assist-
8 ance in obtaining the documentation necessary to
9 support a claim;

10 (3) respond to inquiries from claimants and po-
11 tential claimants;

12 (4) provide training with respect to the applica-
13 ble procedures for the preparation and filing of
14 claims to persons who provide assistance or rep-
15 resentation to claimants; and

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

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

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

8 (d) LEGAL ASSISTANCE.—

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

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

21 (3) NOTICE.—

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

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

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

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

10 (e) ATTORNEY'S FEES.—

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

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

21 (A) \$5,000; or

22 (B) twice the amount received by the rep-
23 resentative for services rendered in connection
24 with each such violation.

1 **SEC. 105. PHYSICIANS PANELS.**

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

7 (b) FORMATION OF PANELS.—

8 (1) IN GENERAL.—The Administrator shall pe-
9 riodically determine—

10 (A) the number of Physicians Panels nec-
11 essary for the efficient conduct of the medical
12 review process under section 121;

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

17 (C) the particular expertise necessary for
18 each panel.

19 (2) EXPERTISE.—Each Physicians Panel shall
20 be composed of members having the particular ex-
21 pertise determined necessary by the Administrator,
22 randomly selected from among the physicians ap-
23 pointed under subsection (a) having such expertise.

24 (3) PANEL MEMBERS.—

25 ~~(A) IN GENERAL.~~—Except as provided
26 under subparagraph (B), each Physicians Panel

1 shall consist of 3 physicians, 2 of whom shall be
 2 designated to participate in each case submitted
 3 to the Physicians Panel, and the third of whom
 4 shall be consulted in the event of disagreement.

5 ~~(B) WAIVER.—The Administrator may~~
 6 ~~waive the provisions of subparagraph (A) and~~
 7 ~~may provide for panels of less than 3 physi-~~
 8 ~~cians, if the Administrator determines that—~~

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

11 ~~and~~

12 ~~(ii) such shortage will result in admin-~~
 13 ~~istrative delay in the claims process.~~

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

16 (1) a physician licensed in any State;

17 (2) board-certified in pulmonary medicine, occu-
 18 pational medicine, internal medicine, oncology, or
 19 pathology; and

20 (3) an individual who, for each of the 5 years
 21 before and during his or her appointment to a Phy-
 22 sicians Panel, has earned not more than 15 percent
 23 of his or her income as an employee of a partici-
 24 pating defendant or insurer or a law firm rep-
 25 resenting any party in asbestos litigation or as a

1 consultant or expert witness in matters related to
2 asbestos litigation.

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

4 (1) make such medical determinations as are
5 required to be made by Physicians Panels under sec-
6 tion 121; and

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

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

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

18 **SEC. 106. PROGRAM STARTUP.**

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

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

13 (c) EXIGENT HEALTH CLAIMS.—

14 (1) IN GENERAL.—The Administrator shall de-
15 velop procedures to provide for an expedited process
16 to categorize, evaluate, and pay exigent health
17 claims. Such procedures shall include, pending pro-
18 mulgation of final regulations, adoption of interim
19 regulations as needed for processing of exigent
20 health claims.

21 (2) ELIGIBLE EXIGENT HEALTH CLAIMS.—A
22 claim shall qualify for treatment as an exigent
23 health claim if ~~the claimant is living and the claim-~~
24 ~~ant provides—~~

1 (A) *the claimant is living and provides a*
 2 *diagnosis of mesothelioma meeting the require-*
 3 *ments of section 121(d)(10); ~~or~~*

4 (B) *the claimant is living and provides a*
 5 *declaration or affidavit, from a physician who*
 6 *has examined the claimant within 120 days be-*
 7 *fore the date of such declaration or affidavit,*
 8 *that the physician has diagnosed the claimant*
 9 *as being terminally ill from an asbestos-related*
 10 *illness and having a life expectancy of less than*
 11 *1 year; or*

12 (C) *the claimant is the spouse or child of an*
 13 *eligible exigent health claimant who—*

14 *(i) was living when the claim was filed*
 15 *with the Fund, or if before the implementa-*
 16 *tion of interim regulations for the filing of*
 17 *claims with the Fund, on the date of enact-*
 18 *ment of this Act;*

19 *(ii) has since died from an asbestos-re-*
 20 *lated disease or condition; and*

21 *(iii) has not received compensation*
 22 *from the Fund for the disease or condition*
 23 *for which the claim was filed.*

24 (3) **ADDITIONAL EXIGENT HEALTH CLAIMS.—**

25 The Administrator may, in final regulations promul-

1 gated under section 101(c), designate additional cat-
2 egories of claims that qualify as exigent health
3 claims under this subsection.

4 (4) CLAIMS FACILITY.—To facilitate the prompt
5 payment of exigent health claims, the Administrator
6 shall contract with a claims facility, which applying
7 the medical criteria of section 121, may enter into
8 settlements with claimants. ~~In the absence of an~~
9 ~~offer of judgment as provided under section~~
10 ~~106(f)(2), the claimant may submit a claim to that~~
11 ~~claims facility. The claims facility shall receive the~~
12 ~~claimant's submissions and evaluate the claim in ac-~~
13 ~~cordance with subtitles B and C. The claims facility~~
14 ~~shall then submit the file to the Administrator for~~
15 ~~payment in accordance with subtitle D. This sub-~~
16 ~~section shall not apply to exceptional medical claims~~
17 ~~under section 121(f). A claimant may appeal any de-~~
18 ~~cision at a claims facility with the Administrator in~~
19 ~~accordance with section 114. *The processing and*~~
20 ~~*payment of claims shall be subject to regulations pro-*~~
21 ~~*mulgated under this Act.*~~

22 (5) AUTHORIZATION FOR CONTRACTS WITH
23 CLAIMS FACILITIES.—The Administrator may enter
24 into contracts with ~~claims facilities~~ *a claims facility*

1 for the processing of claims (except for exceptional
2 medical claims) in accordance with this title.

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

8 (e) INTERIM ADMINISTRATOR.—Until an Adminis-
9 trator is appointed and confirmed under section 101(b),
10 the responsibilities of the Administrator under this Act
11 shall be performed by the Assistant Secretary of Labor
12 for the Employment Standards Administration, who shall
13 have all the authority conferred by this Act on the Admin-
14 istrator and who shall be deemed to be the Administrator
15 for purposes of this Act. Before final regulations being
16 promulgated relating to claims processing, the Interim Ad-
17 ministrator may prioritize claims processing, without re-
18 gard to the time requirements prescribed in subtitle B of
19 this title, based on severity of illness and likelihood that
20 the illness in question was caused by exposure to asbestos.
21 *exposure to asbestos was a substantial contributing factor*
22 *for the illness in question.*

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

24 ~~(1) STAY OF CLAIMS.—Notwithstanding any~~
25 ~~other provision of this Act, any asbestos claim pend-~~

1 ing as of the date of enactment of this Act, other
2 than a claim to which section 403(d)(2)(A) applies,
3 shall be subject to a stay.

4 (2) EXIGENT HEALTH CLAIMS.—

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

7 (i) IN GENERAL.—Any person that
8 has filed a timely exigent health claim
9 seeking a judgment or order for monetary
10 damages in any Federal or State court be-
11 fore or after the date of enactment of this
12 Act, may immediately seek an offer of
13 judgment of such claim in accordance with
14 this subparagraph.

15 (ii) FILING.—

16 (I) IN GENERAL.—The claimant
17 shall file with the Administrator and
18 serve upon all defendants in the pend-
19 ing court action an election to pursue
20 an offer of judgment—

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

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

7 (H) STAY.—If the claimant fails
8 to file and serve a timely election
9 under this clause, the stay under sub-
10 paragraph (B) shall remain in effect.

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

15 (I) the amount received or due to
16 be received as a result of all settle-
17 ments that would qualify as a collat-
18 eral source under section 134, to-
19 gether with copies of all settlement
20 agreements and related documents
21 sufficient to show the accuracy of that
22 amount;

23 (II) all information that the
24 claimant would be required to provide
25 to the Administrator in support of a

1 claim under sections 115 and 121;
2 and

3 (III) a certification by the claim-
4 ant that the information provided is
5 true and complete.

6 (iv) CERTIFICATION.—The certifi-
7 cation provided under clause (iii) shall be
8 subject to the same penalties for false or
9 misleading statements that would be appli-
10 cable with regard to information provided
11 to the Administrator in support of a claim.

12 (v) OFFER OF JUDGMENT.—Within
13 30 days after service of a complete set of
14 the information described in clause (iii),
15 any defendant may file and serve on all
16 parties a good faith offer of judgment in
17 an aggregate amount not to exceed the
18 total amount to which the claimant may be
19 entitled under section 131 after adjust-
20 ment for collateral sources under section
21 134. If the aggregate amount offered by all
22 defendants exceeds the limitation in this
23 clause, all offers shall be deemed reduced
24 pro-rata until the aggregate amount equals
25 the amount provided under section 131.

1 (vi) ACCEPTANCE OR REJECTION.—
2 Within 20 days after the service of the last
3 offer of judgment, the claimant shall either
4 accept or reject such offers. If the amount
5 of the offer made by any defendant individ-
6 ually, or by any defendants jointly, equals
7 or exceeds 100 percent of what the claim-
8 ant would receive under the Fund, the
9 claimant shall accept such offer and re-
10 lease any outstanding asbestos claims.

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

15 (viii) RECOVERY OF COSTS.—Any de-
16 fendant whose offer of judgment is accept-
17 ed and has settled an asbestos claim under
18 clauses (vi) and (vii) may recover the cost
19 of such settlement by deducting from its
20 next and subsequent contributions to the
21 Fund for the full amount of the payment
22 made by such defendant to the exigent
23 health claimant, unless the Administrator
24 finds, on the basis of clear and convincing
25 evidence, that—

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

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

6 (ix) INDEMNIFICATION.—In any case
7 in which the Administrator refuses to
8 grant full indemnification under clause
9 (viii), the Administrator may provide such
10 partial indemnification as may be fair and
11 just in the circumstances. If Administrator
12 denies indemnification, the defendant may
13 seek contribution from other non-settling
14 defendants, as well as reimbursement
15 under the defendant's applicable insurance
16 policies. If the Administrator refuses to
17 grant full or partial indemnification based
18 on collusive action, the defendant may pur-
19 sue any available remedy against the
20 claimant.

21 (x) REFUSAL TO MAKE OFFER.—If a
22 defendant refuses to make an offer of
23 judgment, the claimant may continue to
24 seek a judgment or order for monetary
25 damages from the court where the case is

1 currently pending in an amount not to ex-
2 ceed 150 percent of what the claimant
3 would receive if the claimant had filed a
4 claim with the Fund. Such a judgment or
5 order may also provide an award for claim-
6 ant's attorneys' fees and the costs of litiga-
7 tion.

8 (xi) REJECTION OF OFFER.—If the
9 claimant rejects the offer as less than what
10 the claimant would qualify to receive under
11 section 131, the claimant may immediately
12 pursue the claim in court where the claim-
13 ant shall demonstrate, in addition to all
14 other essential elements of the claimant's
15 claim against any defendant, that the
16 claimant meets the requirements of section
17 121.

18 (B) PURSUAL OF EXIGENT HEALTH
19 CLAIMS.—

20 (i) STAY.—If a claimant does not
21 elect to seek an offer of judgment under
22 subparagraph (A), the pending claim is
23 stayed for 9 months after the date of en-
24 actment of this Act.

1 (ii) DEFENDANT OFFER.—If a claim-
2 ant does not elect to seek an offer of judg-
3 ment under subparagraph (A), the defend-
4 ant may elect to make an offer according
5 to the provisions of this paragraph, except
6 that a claimant shall not be required to ac-
7 cept that offer. The claimant shall accept
8 or reject the offer within 20 days.

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

14 (iv) CONTINUANCE OF CLAIMS.—If,
15 after 9 months after the date of enactment
16 of this Act, the Administrator cannot cer-
17 tify to Congress that the Fund is oper-
18 ational and paying exigent health claims at
19 a reasonable rate, each person that has
20 filed an exigent health claim before such
21 date of enactment and stayed under this
22 paragraph may continue their exigent
23 health claims in the court where the case
24 was pending on the date of enactment of
25 this Act. For exigent claims filed after the

1 date of enactment of this Act, by claimants
2 who do not elect to seek an offer of judge-
3 ment under subparagraph (A); the pending
4 claim is stayed for 9 months after the date
5 the claim is filed, unless during that period
6 the Administrator can certify to Congress
7 that the Fund is operational and paying
8 valid claims at a reasonable rate.

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

15 ~~(3) PURSUAL OF ASBESTOS CLAIMS IN FED-~~
16 ~~ERAL OR STATE COURT.—~~

17 (A) IN GENERAL.—Notwithstanding any
18 other provision of this Act, if, not later than 24
19 months after the date of enactment of this Act,
20 the Administrator cannot certify to Congress
21 that the Fund is operational and paying all
22 valid claims at a reasonable rate, any person
23 with a non-exigent asbestos claim stayed under
24 this paragraph, except for any person whose
25 claim does not exceed a Level I claim, may pur-

1 sue that claim in the Federal district court or
2 State court located within—

3 (i) the State of residence of the claim-
4 ant; or

5 (ii) the State in which the asbestos ex-
6 posure arose.

7 (B) DEFENDANTS NOT FOUND.—If any
8 defendant cannot be found in the State de-
9 scribed in clause (i) or (ii) of subparagraph (A),
10 the claim may be pursued in the Federal dis-
11 trict court or State court located within any
12 State in which the defendant may be found.

13 (C) DETERMINATION OF MOST APPRO-
14 PRIATE FORUM.—If a person alleges that the
15 asbestos exposure occurred in more than 1
16 county (or Federal district), the trial court shall
17 determine which State and county (or Federal
18 district) is the most appropriate forum for the
19 claim. If the court determines that another
20 forum would be the most appropriate forum for
21 a claim, the court shall dismiss the claim. Any
22 otherwise applicable statute of limitations shall
23 be tolled beginning on the date the claim was
24 filed and ending on the date the claim is dis-
25 missed under this subparagraph.

1 (D) STATE VENUE REQUIREMENTS.—

2 Nothing in this paragraph shall preempt or su-
3 persede any State's law relating to venue re-
4 quirements within that State which are more
5 restrictive.

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

8 (i) CREDIT OF CLAIM.—If an asbestos
9 claim is pursued in Federal or State court
10 in accordance with this paragraph, any re-
11 covery by the claimant shall be a collateral
12 source compensation for purposes of sec-
13 tion 134.

14 (ii) OPERATIONAL FUND.—If the Ad-
15 ministrator subsequently certifies to Con-
16 gress that the Fund has become oper-
17 ational and paying all valid asbestos claims
18 at a reasonable rate, any claim in a civil
19 action in Federal or State court that is not
20 actually on trial before a jury which has
21 been impaneled and presentation of evi-
22 dence has commenced, but before its delib-
23 eration, or before a judge and is at the
24 presentation of evidence, may, at the op-
25 tion of the claimant, be deemed a rein-

1 stated claim against the Fund and the civil
2 action before the Federal or State court
3 shall be null and void.

4 (iii) **NONOPERATIONAL FUND.**—Not-
5 withstanding any other provision of this
6 Act, if the Administrator subsequently cer-
7 tifies to Congress that the Fund cannot be-
8 come operational and paying all valid as-
9 bestos claims at a reasonable rate, all as-
10 bestos claims that have a stay may be filed
11 or reinstated.

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

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

18 (2) *EXIGENT HEALTH CLAIMS.*—

19 (A) *PROCEDURES FOR SETTLEMENT OF EXI-*
20 *GENENT HEALTH CLAIMS.*—

21 (i) *IN GENERAL.*—Any person that has
22 filed an exigent health claim, as provided
23 under subsection (c)(2), seeking a judgment
24 or order for monetary damages in any Fed-
25 eral or State court before the date of the en-

1 *actment of this Act, may seek a settlement*
2 *in accordance with this paragraph. Any*
3 *person with an exigent health claim, as pro-*
4 *vided under subsection (c)(2), that arises*
5 *after such date of enactment may seek a set-*
6 *tlement offer in accordance with this para-*
7 *graph.*

8 *(ii) FILING.—*

9 *(I) IN GENERAL.—At any time be-*
10 *fore the Fund or claims facility being*
11 *certified as operational and paying ex-*
12 *igent health claims at a reasonable*
13 *rate, any person with an exigent health*
14 *claim as described under clause (i)*
15 *shall file a notice of their intent to seek*
16 *a settlement or shall file their exigent*
17 *health claim with the Administrator or*
18 *claims facility. Filing of an exigent*
19 *health claim with the Administrator or*
20 *claims facility may serve as notice of*
21 *intent to seek a settlement.*

22 *(II) STAY.—If the claimant fails*
23 *to file under this clause, the stay shall*
24 *remain in effect except as provided*
25 *under subparagraph (B).*

1 (iii) *EXIGENT HEALTH CLAIM INFOR-*
2 *MATION.—To file an exigent health claim,*
3 *each individual shall provide all of the fol-*
4 *lowing information:*

5 (I) *The amount received or enti-*
6 *tled to be received as a result of all set-*
7 *tlements that would qualify as a collat-*
8 *eral source under section 134, and cop-*
9 *ies of all settlement agreements and re-*
10 *lated documents sufficient to show the*
11 *accuracy of that amount.*

12 (II) *All information that the*
13 *claimant would be required to provide*
14 *to the Administrator in support of a*
15 *claim under sections 113 and 121.*

16 (III) *A certification by the claim-*
17 *ant that the information provided is*
18 *true and complete. The certification*
19 *provided under this subclause shall be*
20 *subject to the same penalties for false*
21 *or misleading statements that would be*
22 *applicable with regard to information*
23 *provided to the Administrator or*
24 *claims facility in support of a claim.*

1 (IV) *For exigent health claims*
2 *arising after the date of enactment of*
3 *this Act, the claimant shall identify*
4 *each defendant that would be an ap-*
5 *propriate defendant in a civil action*
6 *seeking damages for the asbestos claim*
7 *of the claimant. The identification of a*
8 *defendant under this subclause shall be*
9 *required to comply with rule 11 of the*
10 *Federal Rules of Civil Procedure.*

11 (iv) *TIMING.—A claimant who has*
12 *filed a notice of their intent to seek a settle-*
13 *ment under clause (ii) shall within 60 days*
14 *after filing notice provide to the Adminis-*
15 *trator or claims facility, and all affected de-*
16 *fendants the information required under*
17 *clause (iii). If a claimant has filed an exi-*
18 *gent health claim under clause (ii) the Ad-*
19 *ministrator shall provide all affected de-*
20 *fendants the information required under*
21 *clause (iii).*

22 (v) *ADMINISTRATOR OR CLAIMS FACIL-*
23 *ITY CERTIFICATION OF SETTLEMENT.—*

24 (I) *DETERMINATION.—Within 60*
25 *days after the information under*

1 *clause (iii) is provided, the Adminis-*
2 *trator or claims facility shall deter-*
3 *mine whether or not the claim meets*
4 *the requirements of an exigent health*
5 *claim.*

6 (II) *REQUIREMENTS MET.—If the*
7 *Administrator or claims facility deter-*
8 *mines that the claim meets the require-*
9 *ments of an exigent health claim, the*
10 *Administrator or claims facility shall*
11 *immediately—*

12 *(aa) issue and serve on all*
13 *parties a certification of eligi-*
14 *bility of such claim;*

15 *(bb) determine the value of*
16 *such claim under the Fund by*
17 *subtracting from the amount in*
18 *section 131 the total amount of*
19 *collateral source compensation re-*
20 *ceived by the claimant; and*

21 *(cc) pay the award of com-*
22 *penetration to the claimant under*
23 *clause (xi).*

24 (III) *REQUIREMENTS NOT MET.—*
25 *If the requirements under clause (iii)*

1 are not met, the claimant shall have 30
2 days to perfect the claim. If the claim-
3 ant fails to perfect the claim within
4 that 30-day period or the Adminis-
5 trator or claims facility determines
6 that the claim does not meet the re-
7 quirements of an exigent health claim,
8 the claim shall not be eligible to pro-
9 ceed under this paragraph. A claimant
10 may appeal any decision issued by a
11 claims facility with the Administrator
12 in accordance with section 114.

13 (vi) *FAILURE TO CERTIFY.*—If the Ad-
14 ministrators or claims facility is unable to
15 process the claim and does not make a de-
16 termination regarding the certification of
17 the claim as required under clause (v), the
18 Administrator or claims facility shall with-
19 in 10 days after the end of the 60-day pe-
20 riod referred to under clause (v)(I) provide
21 notice of the failure to act to the claimant
22 and the defendants in the pending Federal
23 or State court action or the defendants
24 identified under clause (iii)(IV). If the Ad-
25 ministrators or claims facility fails to pro-

1 *vide such notice within 10 days, the claim-*
2 *ant may elect to provide the notice to the*
3 *affected defendants to prompt a settlement*
4 *offer.*

5 *(vii) FAILURE TO PAY.—If the Admin-*
6 *istrator or claims facility does not pay the*
7 *award as required under clause (xi), the*
8 *Administrator shall refer the certified claim*
9 *within 10 days as a certified exigent health*
10 *claim to the defendants in the pending Fed-*
11 *eral and State court action or to the poten-*
12 *tial defendants identified under clause*
13 *(iii)(IV) for exigent claims arising after the*
14 *date of enactment of this Act.*

15 *(viii) SETTLEMENT OFFER.—Any de-*
16 *fendant or defendants may, within 30 days*
17 *after receipt of such notice as provided*
18 *under clause (vi) or (vii), file and serve on*
19 *all parties and the Administrator a good*
20 *faith settlement offer in an aggregate*
21 *amount not to exceed the total amount to*
22 *which the claimant may be entitled under*
23 *section 131. If the aggregate amount offered*
24 *by all defendants exceeds the award deter-*
25 *mined by the Administrator, all offers shall*

1 *be deemed reduced pro-rata until the aggregate amount equals the award amount. An*
2 *acceptance of such settlement offer in a*
3 *pending court action 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 exigent health claim was certified by the Administrator or claims facility under clause (v).*

14 *(ix) OPPORTUNITY TO CURE.—If the settlement offer is rejected for being less than what the claimant was entitled to under the Fund, the defendants 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 is entitled to under the Fund or if defendants fail to make an amended offer,*

1 *the claimant shall be entitled to recover 150*
2 *percent of what the claimant would receive*
3 *under the Fund before the stay being lifted*
4 *under subparagraph (B). If the amount of*
5 *the amended settlement offer made by the*
6 *Administrator, claims facility, or defend-*
7 *ants equals 150 percent of what the claim-*
8 *ant would receive under the Fund, the*
9 *claimant shall accept such settlement in*
10 *writing.*

11 *(x) ACCEPTANCE OR REJECTION.—*

12 *Within 20 days after receipt of the settle-*
13 *ment offer, or the amended settlement offer,*
14 *the claimant shall either accept or reject*
15 *such offer in writing. If the amount of the*
16 *settlement offer made by the Administrator,*
17 *claims facility, or defendants equals 100*
18 *percent of what the claimant would receive*
19 *under the Fund, the claimant shall accept*
20 *such settlement in writing.*

21 *(xi) PAYMENT SCHEDULE.—*

22 *(I) MESOTHELIOMA CLAIMANTS.—*

23 *For mesothelioma claimants—*

24 *(aa) an initial payment of*
25 *50 percent shall be made within*

1 30 days after the date the settle-
2 ment is accepted and the second
3 and final payment shall be made
4 6 months after date the settlement
5 is accepted; or

6 (bb) if the Administrator de-
7 termines that the payment sched-
8 ule would impose a severe finan-
9 cial hardship on the Fund, or if
10 the court determines that the set-
11 tlement offer would impose a se-
12 vere financial hardship on the de-
13 fendant, the payments may be ex-
14 tended 50 percent in 6 months
15 and 50 percent 11 months after
16 the date the settlement offer is ac-
17 cepted.

18 (II) OTHER EXIGENT CLAIM-
19 ANTS.—For other exigent claimants, as
20 defined under section 106(c)(2)(B and
21 (C)—

22 (aa) the initial payment of
23 50 percent shall be made within 6
24 months after the date the settle-
25 ment is accepted and the second

1 and final payment shall be made
2 12 months after date the settle-
3 ment is accepted; or

4 (bb) if the Administrator de-
5 termines that the payment sched-
6 ule would impose a severe finan-
7 cial hardship on the Fund, or if
8 the court determines that the set-
9 tlement offer would impose a se-
10 vere financial hardship on the de-
11 fendants, the payments may be ex-
12 tended 50 percent within 1 year
13 after the date the settlement offer
14 is accepted and 50 percent in 2
15 years after date the settlement
16 offer is accepted.

17 (III) *RELEASE*.—Once a claimant
18 has received final payment of the ac-
19 cepted settlement offer the claimant
20 shall release any outstanding asbestos
21 claims.

22 (xii) *RECOVERY OF COSTS*.—

23 (I) *IN GENERAL*.—Any defendant
24 whose settlement offer is accepted may
25 recover the cost of such settlement by

1 deducting from the defendant's next
2 and subsequent contributions to the
3 Fund the full amount of the payment
4 made by such defendant to the exigent
5 health claimant, unless the Adminis-
6 trator finds, on the basis of clear and
7 convincing evidence, that the defend-
8 ant's offer is not in good faith. Any
9 such payment shall be considered a
10 payment to the Fund for purposes of
11 section 404(e)(1) and in response to the
12 payment obligations imposed on de-
13 fendant and insurer participants in
14 title II.

15 (II) REIMBURSEMENT.—Notwith-
16 standing subclause (I), if the deduc-
17 tions from the defendant participant's
18 next and subsequent contributions to
19 the Fund do not fully recover the cost
20 of such payments on or before its third
21 annual contribution to the Fund, the
22 Fund shall reimburse such defendant
23 for such remaining cost not later than
24 6 months after the date of the third
25 scheduled Fund contribution.

1 (xiii) *FAILURE TO MAKE OFFER.*—If
2 defendants fail to make a settlement offer
3 within the 30-day period described under
4 clause (viii) or make amended offers within
5 the 10 business day cure period described
6 under clause (ix), the claimant shall be en-
7 titled to recover 150 percent of what the
8 claimant would receive under the Fund be-
9 fore the stay being lifted under subpara-
10 graph (B).

11 (xiv) *FAILURE TO PAY.*—If defendants
12 fail to pay an accepted settlement offer
13 within the payment schedule under clause
14 (xi), the claimant shall be entitled to recover
15 150 percent of what the claimant would re-
16 ceive under the Fund before the stay being
17 lifted under subparagraph (B). If the stay
18 is lifted under subparagraph (B) the claim-
19 ant may seek a judgment or order for mone-
20 tary damages from the court where the case
21 is currently pending or the appropriate
22 Federal or State court for claims arising
23 after the date of enactment of this Act.

24 (B) *CONTINUATION OF EXIGENT HEALTH*
25 *CLAIMS.*—If 9 months after an exigent health

1 *claim has been filed under subparagraph (A)(ii),*
2 *a claimant has not received a settlement under*
3 *subparagraph (A)(xi) and the Administrator has*
4 *not certified to Congress that the Fund or claims*
5 *facility is operational and paying exigent health*
6 *claims at a reasonable rate, such exigent health*
7 *claimant, may seek a judgment or order for*
8 *monetary damages from the court where the case*
9 *is currently pending or the appropriate Federal*
10 *or State court for claims arising after the date*
11 *of enactment of this Act.*

12 (C) *CREDIT OF CLAIM AND EFFECT OF*
13 *OPERATIONAL FUND.—*

14 (i) *COLLATERAL SOURCE.—If an asbes-*
15 *tos claim is pursued in Federal or State*
16 *court in accordance with this paragraph,*
17 *any recovery by the claimant shall be a col-*
18 *lateral source compensation for purposes of*
19 *section 134.*

20 (ii) *RECOVERY OF COSTS.—Any de-*
21 *fendant may recover the cost of any claim*
22 *continued in court for up to the amount the*
23 *claimant would receive under the Fund by*
24 *deducting from the defendant's next and*
25 *subsequent contributions to the Fund for the*

1 *full amount of the payment made by such*
2 *defendant to the exigent health claimant.*

3 (3) *PURSUAL OF NON-EXIGENT ASBESTOS CLAIMS*
4 *IN FEDERAL OR STATE COURT.—*

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

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

18 (ii) *the State in which the asbestos ex-*
19 *posure occurred.*

20 (B) *DEFENDANTS NOT FOUND.—If any de-*
21 *fendant cannot be found in the State described*
22 *under subparagraph (A) (i) or (ii), the claim*
23 *may be pursued in the Federal district court or*
24 *State court located within any State in which*
25 *the defendant may be found.*

1 (C) *DETERMINATION OF MOST APPROPRIATE*
2 *FORUM.*—*If a person alleges that the asbestos ex-*
3 *posure occurred in more than 1 county (or Fed-*
4 *eral district), the trial court shall determine*
5 *which State and county (or Federal district) is*
6 *the most appropriate forum for the claim. If the*
7 *court determines that another forum would be*
8 *the most appropriate forum for a claim, the*
9 *court shall dismiss the claim. Any otherwise ap-*
10 *plicable statute of limitations shall be tolled be-*
11 *ginning on the date the claim was filed and end-*
12 *ing on the date the claim is dismissed under this*
13 *subparagraph.*

14 (D) *STATE VENUE REQUIREMENTS.*—*Noth-*
15 *ing in this paragraph shall preempt or supersede*
16 *any State law relating to venue requirements*
17 *within that State which are more restrictive.*

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

20 (i) *CREDIT OF CLAIM.*—*If an asbestos*
21 *claim is pursued in Federal or State court*
22 *in accordance with this paragraph, any re-*
23 *covery by the claimant shall be a collateral*
24 *source compensation for purposes of section*
25 *134.*

1 (ii) *OPERATIONAL CERTIFICATION.*—
2 Operational certification shall be a filing in
3 the *Federal Register* confirming that the
4 Fund is operational and paying all valid
5 asbestos claims at a reasonable rate.

6 (iii) *OPERATIONAL PRECONDITIONS.*—
7 (I) *The Administrator may not*
8 *issue a operational certification*
9 *until—*

10 (aa) *60 days after the fund-*
11 *ing allocation information re-*
12 *quired under section 221(e) has*
13 *been published in the Federal Reg-*
14 *ister; and*

15 (bb) *insurers subject to sec-*
16 *tion 212(a)(3) submit their names*
17 *and information to the Adminis-*
18 *trator within 30 days after the*
19 *date of enactment of this Act and*
20 *60 days after the Administrator*
21 *publishes such information in the*
22 *Federal Register.*

23 (iv) *OPERATIONAL FUND.*—*If the Ad-*
24 *ministrator issues an operational certifi-*
25 *cation and notifies Congress that the Fund*

1 *has become operational and paying all*
2 *valid asbestos claims at a reasonable rate,*
3 *any nonexigent asbestos claim in a civil ac-*
4 *tion in Federal or State court that is not on*
5 *trial before a jury which has been*
6 *impaneled and presentation of evidence has*
7 *commenced, but before its deliberation, or*
8 *before a judge and is at the presentation of*
9 *evidence shall be deemed a reinstated claim*
10 *against the Fund and the civil action before*
11 *the Federal or State court shall be null and*
12 *void.*

13 *(v) NONOPERATIONAL FUND.—Notwith-*
14 *standing any other provision of this Act, if*
15 *the Administrator subsequently issues a*
16 *nonoperational certification and notifies*
17 *Congress that the Fund is unable to become*
18 *operational and pay all valid asbestos*
19 *claims at a reasonable rate, all asbestos*
20 *claims that have a stay may be filed or re-*
21 *instated.*

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

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

- 1 (1) issue subpoenas for and compel the attend-
 2 ance of witnesses within a radius of 200 miles;
 3 (2) administer oaths;
 4 (3) examine witnesses;
 5 (4) require the production of books, papers,
 6 documents, and other evidence; and
 7 (5) request assistance from other Federal agen-
 8 cies with the performance of the duties of the Ad-
 9 ministrator under this Act.

10 **Subtitle B—Asbestos Disease**
 11 **Compensation Procedures**

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

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

- 15 (1) file a claim in a timely manner in accord-
 16 ance with section 113; and
 17 (2) prove, by a preponderance of the evidence,
 18 that the claimant suffers from an eligible disease or
 19 condition, as demonstrated by evidence that meets
 20 the requirements established under subtitle C.

21 **SEC. 112. GENERAL RULE CONCERNING NO-FAULT COM-**
 22 **PENSATION.**

23 An asbestos claimant shall not be required to dem-
 24 onstrate that the asbestos-related injury for which the

1 claim is being made resulted from the negligence or other
2 fault of any other person.

3 **SEC. 113. FILING OF CLAIMS.**

4 (a) WHO MAY SUBMIT.—

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

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

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

19 (4) *EFFECT OF MULTIPLE INJURIES.*—

20 (A) *IN GENERAL.*—*A claimant who receives*
21 *an award for an eligible disease or condition*
22 *shall not be precluded from submitting claims for*
23 *and receiving additional awards under this title*
24 *for any higher disease level for which the claim-*

1 *ant becomes eligible, subject to appropriate*
2 *setoffs as provided under section 134.*

3 *(B) LIBBY, MONTANA CLAIMS.—*

4 *(i) IN GENERAL.—Notwithstanding*
5 *subparagraph (A), if a Libby, Montana*
6 *claimant worsens in condition, as measured*
7 *by pulmonary function tests, such that a*
8 *claimant qualifies for a higher nonmalignant*
9 *level, the claimant shall be eligible for*
10 *an additional award, at the appropriate*
11 *level, offset by any award previously paid*
12 *under this Act, such that a claimant would*
13 *qualify for Level IV if the claimant satisfies*
14 *section 121(f)(8), and would qualify for*
15 *Level V if the claimant provides—*

16 *(I) a diagnosis of bilateral asbes-*
17 *tos related nonmalignant disease;*

18 *(II) evidence of TLC or FVC less*
19 *than 60 percent; and*

20 *(III) supporting medical docu-*
21 *mentation establishing asbestos expo-*
22 *sure as a substantial contributing fac-*
23 *tor in causing the pulmonary condi-*
24 *tion in question, and excluding more*

1 *likely causes of that pulmonary condi-*
 2 *tion.*

3 *(ii) SUBSEQUENT MALIGNANT DIS-*
 4 *EASE.—If a Libby, Montana, claimant de-*
 5 *velops malignant disease, such that the*
 6 *claimant qualifies for Level VI, VII, VIII,*
 7 *or IX, subparagraph (A) shall apply.*

8 (b) STATUTE OF LIMITATIONS.—

9 (1) IN GENERAL.—~~Except as otherwise pro-~~
 10 ~~vided in this subsection, if an individual fails to file~~
 11 ~~a claim with the Office under this section within 5~~
 12 ~~years after the date on which the individual first—~~

13 ~~(A) received a medical diagnosis of an eli-~~
 14 ~~gible disease or condition as provided for under~~
 15 ~~this subtitle and subtitle C; or~~

16 ~~(B) discovered facts that would have led a~~
 17 ~~reasonable person to obtain a medical diagnosis~~
 18 ~~with respect to an eligible disease or condition,~~
 19 ~~any claim relating to that injury, and any other as-~~
 20 ~~bestos claim related to that injury, *If a claim is not*~~
 21 ~~*filed with the Office within the limitations period*~~
 22 ~~*specified in this subsection for that category of claim,*~~
 23 ~~*such claim shall be extinguished, and any recovery*~~
 24 ~~thereon shall be prohibited.~~

1 (2) *INITIAL CLAIMS.*—*An initial claim for an*
2 *award under this Act shall be filed within 5 years*
3 *after the date on which the claimant first received a*
4 *medical diagnosis and medical test results sufficient*
5 *to satisfy the criteria for the disease level for which*
6 *the claimant is seeking compensation.*

7 (3) *CLAIMS FOR ADDITIONAL AWARDS.*—

8 (A) *NON-MALIGNANT DISEASES.*—*If a*
9 *claimant has previously filed a timely initial*
10 *claim for compensation for any non-malignant*
11 *disease level, there shall be no limitations period*
12 *applicable to the filing of claims by the claimant*
13 *for additional awards for higher disease levels*
14 *based on the progression of the non-malignant*
15 *disease.*

16 (B) *MALIGNANT DISEASES.*—*Regardless of*
17 *whether the claimant has previously filed a*
18 *claim for compensation for any other disease*
19 *level, a claim for compensation for a malignant*
20 *disease level shall be filed within 5 years after*
21 *the claimant first obtained a medical diagnosis*
22 *and medical test results sufficient to satisfy the*
23 *criteria for the malignant disease level for which*
24 *the claimant is seeking compensation.*

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

5 (3)(4) EFFECT ON PENDING CLAIMS.—

6 (A) IN GENERAL.—If, on the date of en-
7 actment of this Act, an asbestos claimant has
8 any timely filed asbestos claim that is pre-
9 empted under section 403(e), such claimant
10 shall file a claim under this section within 5
11 years after such date of enactment, or any
12 claim relating to that injury, and any other as-
13 bestos claim related to that injury shall be ex-
14 tinguished, and recovery there shall be prohib-
15 ited.

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

22 (i) a non-contingent right to the pay-
23 ment of future installments of a fixed
24 award; or

1 (ii) a contingent right to recover some
2 additional amount from the trust on the
3 occurrence of a future event, such as the
4 reevaluation of the trust's funding ade-
5 quacy or projected claims experience.

6 ~~(4) EFFECT OF MULTIPLE INJURIES.—~~

7 ~~(A) IN GENERAL.—~~An asbestos claimant
8 who receives an award under this title for an el-
9 igible disease or condition, and who subse-
10 quently develops another such injury, shall be
11 eligible for additional awards under this title
12 (subject to appropriate setoffs for such prior re-
13 covery of any award under this title and from
14 any other collateral source) and the statute of
15 limitations under paragraph ~~(1)~~ shall not begin
16 to run with respect to such subsequent injury
17 until such claimant obtains a medical diagnosis
18 of such other injury or discovers facts that
19 would have led a reasonable person to obtain
20 such a diagnosis.

21 ~~(B) SETOFFS.—~~Except as provided in sub-
22 paragraph ~~(C)~~, any amounts paid or to be paid
23 for a prior award under this Act shall be de-
24 ducted as a setoff against amounts payable for
25 the second injury claim.

1 (C) ~~EXCEPTION.~~—Any amounts paid or to
2 be paid for a prior claim for a nonmalignant
3 disease (Levels I through V) filed against the
4 Fund shall not be deducted as a setoff against
5 amounts payable for the second injury claim for
6 a malignant disease (Levels VI through IX),
7 unless the malignancy was diagnosed, or the as-
8 bestos claimant had discovered facts that would
9 have led a reasonable person to obtain such a
10 diagnosis, before the date on which the non-
11 malignancy claim was compensated.

12 (c) ~~REQUIRED INFORMATION.~~—A claim filed under
13 subsection (a) shall be in such form, and contain such in-
14 formation in such detail, as the Administrator shall by
15 regulation prescribe. At a minimum, a claim shall in-
16 clude—

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

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

22 (3) an employment history sufficient to estab-
23 lish required asbestos exposure, accompanied by so-
24 cial security or other payment records or a signed
25 release permitting access to such records;

1 (4) a description of the asbestos exposure of the
2 claimant, including, to the extent known, informa-
3 tion on the site, or location of exposure, and dura-
4 tion and intensity of exposure;

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

8 (6) an identification and description of the as-
9 bestos-related diseases or conditions of the claimant,
10 accompanied by a written report by the claimant's
11 physician with medical diagnoses and x-ray films,
12 and other test results necessary to establish eligi-
13 bility for an award under this Act;

14 (7) a description of any prior or pending civil
15 action or other claim brought by the claimant for as-
16 bestos-related injury or any other pulmonary, paren-
17 chymal, or pleural injury, including an identification
18 of any recovery of compensation or damages through
19 settlement, judgment, or otherwise; and

20 (8) for any claimant who asserts that he or she
21 is a nonsmoker or an ex-smoker, as defined in sec-
22 tion 131, for purposes of an award under Malignant
23 Level VI, Malignant Level VII, or Malignant Level
24 VIII, evidence to support the assertion of non-

1 smoking or ex-smoking, including relevant medical
2 records.

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

8 (e) INCOMPLETE CLAIMS.—If a claim filed under
9 subsection (a) is incomplete, the Administrator shall notify
10 the claimant of the information necessary to complete the
11 claim and inform the claimant of such services as may
12 be available through the Claimant Assistance Program es-
13 tablished under section 104 to assist the claimant in com-
14 pleting the claim. Any time periods for the processing of
15 the claim shall be suspended until such time as the claim-
16 ant submits the information necessary to complete the
17 claim. If such information is not received within 1 year
18 after the date of such notification, the claim shall be dis-
19 missed.

20 **SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM**
21 **AWARDS.**

22 (a) IN GENERAL.—

23 (1) REVIEW OF CLAIMS.—The Administrator
24 shall, in accordance with this section, determine
25 whether each claim filed under the Fund or claims

1 facility satisfies the requirements for eligibility for
2 an award under this Act and, if so, the value of the
3 award. In making such determinations, the Adminis-
4 trator shall consider the claim presented by the
5 claimant, the factual and medical evidence submitted
6 by the claimant in support of the claim, the medical
7 determinations of any Physicians Panel to which a
8 claim is referred under section 121, and the results
9 of such investigation as the Administrator may deem
10 necessary to determine whether the claim satisfies
11 the criteria for eligibility established by this Act.

12 (2) ADDITIONAL EVIDENCE.—The Adminis-
13 trator may request the submission of medical evi-
14 dence in addition to the minimum requirements of
15 section 113(c) if necessary or appropriate to make
16 a determination of eligibility for an award, in which
17 case the cost of obtaining such additional informa-
18 tion or testing shall be borne by the Office.

19 (b) PROPOSED DECISIONS.—Not later than 90 days
20 after the filing of a claim, the Administrator shall provide
21 to the claimant (and the claimant's representative) a pro-
22 posed decision accepting or rejecting the claim in whole
23 or in part and specifying the amount of the proposed
24 award, if any. The proposed decision shall be in writing,
25 shall contain findings of fact and conclusions of law, and

1 shall contain an explanation of the procedure for obtaining
2 review of the proposed decision.

3 (c) PAYMENTS IF NO TIMELY PROPOSED DECI-
4 SION.—If the Administrator has received a complete claim
5 and has not provided a proposed decision to the claimant
6 under subsection (b) within 180 days after the filing of
7 the claim, the claim shall be deemed accepted and the
8 claimant shall be entitled to payment under section
9 133(a)(2). If the Administrator subsequently rejects the
10 claim the claimant shall receive no further payments under
11 section 133. If the Administrator subsequently rejects the
12 claim in part, the Administrator shall adjust future pay-
13 ments due the claimant under section 133 accordingly. In
14 no event may the Administrator recover amounts properly
15 paid under this section from a claimant.

16 (d) REVIEW OF PROPOSED DECISIONS.—

17 (1) RIGHT TO HEARING.—

18 (A) IN GENERAL.—Any claimant not satis-
19 fied with a proposed decision of the Adminis-
20 trator under subsection (b) shall be entitled, on
21 written request made within 90 days after the
22 date of the issuance of the decision, to a hear-
23 ing on the claim of that claimant before a rep-
24 resentative of the Administrator. At the hear-
25 ing, the claimant shall be entitled to present

1 oral evidence and written testimony in further
2 support of that claim.

3 (B) CONDUCT OF HEARING.—When prac-
4 ticable, the hearing will be set at a time and
5 place convenient for the claimant. In conducting
6 the hearing, the representative of the Adminis-
7 trator shall not be bound by common law or
8 statutory rules of evidence, by technical or for-
9 mal rules of procedure, or by section 554 of
10 title 5, United States Code, except as provided
11 by this Act, but shall conduct the hearing in
12 such manner as to best ascertain the rights of
13 the claimant. For this purpose, the representa-
14 tive shall receive such relevant evidence as the
15 claimant adduces and such other evidence as
16 the representative determines necessary or use-
17 ful in evaluating the claim.

18 (C) REQUEST FOR SUBPOENAS.—

19 (i) IN GENERAL.—A claimant may re-
20 quest a subpoena but the decision to grant
21 or deny such a request is within the discre-
22 tion of the representative of the Adminis-
23 trator. The representative may issue sub-
24 poenas for the attendance and testimony of
25 witnesses, and for the production of books,

1 records, correspondence, papers, or other
2 relevant documents. Subpoenas are issued
3 for documents only if such documents are
4 relevant and cannot be obtained by other
5 means, and for witnesses only where oral
6 testimony is the best way to ascertain the
7 facts.

8 (ii) REQUEST.—A claimant may re-
9 quest a subpoena only as part of the hear-
10 ing process. To request a subpoena, the re-
11 quester shall—

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

17 (II) explain why the testimony or
18 evidence is directly relevant to the
19 issues at hand, and a subpoena is the
20 best method or opportunity to obtain
21 such evidence because there are no
22 other means by which the documents
23 or testimony could have been ob-
24 tained.

1 (iii) FEES AND MILEAGE.—Any per-
2 son required by such subpoena to attend as
3 a witness shall be allowed and paid the
4 same fees and mileage as are paid wit-
5 nesses in the district courts of the United
6 States. Such fees and mileage shall be paid
7 from the Fund.

8 (2) REVIEW OF WRITTEN RECORD.—In lieu of
9 a hearing under paragraph (1), any claimant not
10 satisfied with a proposed decision of the Adminis-
11 trator shall have the option, on written request made
12 within 90 days after the date of the issuance of the
13 decision, of obtaining a review of the written record
14 by a representative of the Administrator. If such re-
15 view is requested, the claimant shall be afforded an
16 opportunity to submit any written evidence or argu-
17 ment which the claimant believes relevant.

18 (e) FINAL DECISIONS.—

19 (1) IN GENERAL.—If the period of time for re-
20 questing review of the proposed decision expires and
21 no request has been filed, or if the claimant waives
22 any objections to the proposed decision, the Admin-
23 istrator shall issue a final decision. If such decision
24 materially differs from the proposed decision, the

1 claimant shall be entitled to review of the decision
2 under subsection (d).

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

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

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

16 (a) IN GENERAL.—

17 (1) DEVELOPMENT.—The Administrator shall
18 develop methods for auditing and evaluating the
19 medical evidence submitted as part of ~~a claim~~ *the*
20 *claims process*. The Administrator may develop addi-
21 tional methods for auditing and evaluating other
22 types of evidence or information received by the Ad-
23 ministrator.

24 (2) REFUSAL TO CONSIDER CERTAIN EVI-
25 DENCE.—

1 (A) IN GENERAL.—If the Administrator
2 determines that an audit conducted in accord-
3 ance with the methods developed under para-
4 graph (1) demonstrates that the medical evi-
5 dence submitted by a specific physician or med-
6 ical facility is not consistent with prevailing
7 medical practices or the applicable requirements
8 of this Act, any medical evidence from such
9 physician or facility shall be unacceptable for
10 purposes of establishing eligibility for an award
11 under this Act.

12 (B) NOTIFICATION.—Upon a determina-
13 tion by the Administrator under subparagraph
14 (A), the Administrator shall notify the physi-
15 cian or medical facility involved of the results of
16 the audit. Such physician or facility shall have
17 a right to appeal such determination under pro-
18 cedures issued by the Administrator.

19 (b) REVIEW OF CERTIFIED B-READERS.—

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

1 (1) *IN GENERAL.*—*The Administrator shall pre-*
2 *scribe procedures to randomly evaluate the x-rays*
3 *submitted in support of a statistically significant*
4 *number of claims by independent certified B-readers,*
5 *the cost of which shall be paid by the Fund.*

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

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

19 (4) *CERTIFIED B-READERS.*—The Adminis-
20 trator shall maintain a list of a minimum of 50 cer-
21 tified B-readers eligible to participate in the inde-
22 pendent reviews, chosen from all certified B-readers.
23 When an x-ray is sent for independent review, the
24 Administrator shall choose the certified B-reader at
25 random from that list.

1 (c) SMOKING ASSESSMENT.—

2 (1) IN GENERAL.—

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

12 (i) records of past medical treatment
13 and evaluation;

14 (ii) affidavits of appropriate individ-
15 uals;

16 (iii) applications for insurance and
17 supporting materials; and

18 (iv) employer records of medical ex-
19 aminations.

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

23 (2) REVIEW.—The frequency of review of
24 records and documents submitted under paragraph
25 (1)(A) shall be at the discretion of the Adminis-

1 trator, but shall address at least 5 percent of the
 2 claimants asserting status as nonsmokers or ex-
 3 smokers.

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

12 *(3) CONSENT.—*

13 *(A) IN GENERAL.—The Administrator may*
 14 *require the performance of blood tests or any*
 15 *other appropriate medical test, where claimants*
 16 *assert they are nonsmokers or ex-smokers for*
 17 *purposes of an award under Malignant Level VI,*
 18 *VII, or VIII, or as an exceptional medical claim,*
 19 *the cost of which shall be paid by the Fund.*

20 *(B) SERUM COTININE SCREENING.—The Ad-*
 21 *ministrator shall require the performance of*
 22 *serum cotinine screening on all claimants who*
 23 *assert they are nonsmokers or ex-smokers for*
 24 *purposes of an award under Malignant Level VI,*

1 *VII, or VIII, or as an exceptional medical claim,*
 2 *the cost of which shall be paid by the Fund.*

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

9 (d) *PULMONARY FUNCTION TESTING.*—*The Adminis-*
 10 *trator shall develop auditing procedures for pulmonary*
 11 *function test results submitted as part of a claim, to ensure*
 12 *that such tests are conducted in accordance with American*
 13 *Thoracic Society Criteria, as defined under section*
 14 *121(a)(13).*

15 **Subtitle C—Medical Criteria**

16 **SEC. 121. MEDICAL CRITERIA REQUIREMENTS.**

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

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

1 (2) BILATERAL ASBESTOS-RELATED NONMALIGNANT
2 DISEASE.—The term “bilateral asbestos-re-
3 lated nonmalignant disease” means a diagnosis of
4 bilateral asbestos-related nonmalignant disease
5 based on—

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

8 (B) bilateral pleural plaques;

9 (C) bilateral pleural thickening; or

10 (D) bilateral pleural calcification.

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

16 (4) CERTIFIED B-READER.—The term “cer-
17 tified B-reader” means an individual who is certified
18 by the National Institute of Occupational Safety and
19 Health and whose certification by the National Insti-
20 tute of Occupational Safety and Health is up to
21 date.

22 (5) DIFFUSE PLEURAL THICKENING.—The
23 term “diffuse pleural thickening” means blunting of
24 either costophrenic angle and bilateral pleural plaque
25 or bilateral pleural thickening.

1 (6) DLCO.—The term “DLCO” means the sin-
2 gle-breath diffusing capacity of the lung (carbon
3 monoxide) technique used to measure the volume of
4 carbon monoxide transferred from the alveoli to
5 blood in the pulmonary capillaries for each unit of
6 driving pressure of the carbon monoxide.

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

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

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

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

1 (11) NONSMOKER.—The term “nonsmoker”
2 means a claimant who—

3 (A) never smoked; or

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

7 (12) PO₂.—The term “PO₂” means the partial
8 pressure (tension) of oxygen, which measures the
9 amount of dissolved oxygen in the blood.

10 (13) PULMONARY FUNCTION TESTING.—The
11 term “pulmonary function testing” means
12 spirometry testing that is in material compliance
13 with the quality criteria established by the American
14 Thoracic Society and is performed on equipment
15 which is in material compliance with the standards
16 of the American Thoracic Society for technical qual-
17 ity and calibration.

18 (14) SUBSTANTIAL OCCUPATIONAL EXPOSURE
19 TO ASBESTOS.—

20 (A) IN GENERAL.—The term “substantial
21 occupational exposure” means employment in
22 an industry and an occupation where for a sub-
23 stantial portion of a normal work year for that
24 occupation, the claimant—

25 (i) handled raw asbestos fibers;

1 (ii) fabricated asbestos-containing
2 products so that the claimant in the fab-
3 rication process was exposed to raw asbes-
4 tos fibers;

5 (iii) altered, repaired, or otherwise
6 worked with an asbestos-containing prod-
7 uct such that the claimant was exposed on
8 a regular basis to asbestos fibers; or

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

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

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

20 (16) WEIGHTED OCCUPATIONAL EXPOSURE.—

21 (A) IN GENERAL.—The term “weighted oc-
22 cupational exposure” means exposure for a pe-
23 riod of years calculated according to the expo-
24 sure weighting formula under subparagraphs
25 (B) through (E).

1 (B) MODERATE EXPOSURE.—Subject to
2 subparagraph (E), each year that a claimant’s
3 primary occupation, during a substantial por-
4 tion of a normal work year for that occupation,
5 involved working in areas immediate to where
6 asbestos-containing products were being in-
7 stalled, repaired, or removed under cir-
8 cumstances that involved regular airborne emis-
9 sions of asbestos fibers, shall count as 1 year
10 of substantial occupational exposure.

11 (C) HEAVY EXPOSURE.—Subject to sub-
12 paragraph (E), each year that a claimant’s pri-
13 mary occupation, during a substantial portion
14 of a normal work year for that occupation, in-
15 volved the direct installation, repair, or removal
16 of asbestos-containing products such that the
17 person was exposed on a regular basis to asbes-
18 tos fibers, shall count as 2 years of substantial
19 occupational exposure.

20 (D) VERY HEAVY EXPOSURE.—Subject to
21 subparagraph (E), each year that a claimant’s
22 primary occupation, during a substantial por-
23 tion of a normal work year for that occupation,
24 was in primary asbestos manufacturing, a
25 World War II shipyard, or the asbestos insula-

1 tion trades, such that the person was exposed
2 on a regular basis to asbestos fibers, shall count
3 as 4 years of substantial occupational exposure.

4 (E) DATES OF EXPOSURE.—Each year of
5 exposure calculated under subparagraphs (B),
6 (C), and (D) that occurred before 1976 shall be
7 counted at its full value. Each year from 1976
8 to 1986 shall be counted as $\frac{1}{2}$ of its value.
9 Each year after 1986 shall be counted as $\frac{1}{10}$
10 of its value.

11 (F) OTHER CLAIMS.—Individuals who do
12 not meet the provisions of subparagraphs (A)
13 through (E) and believe their post-1976 or
14 post-1986 exposures exceeded the Occupational
15 Safety and Health Administration standard
16 may submit evidence, documentation, work his-
17 tory, or other information to substantiate non-
18 compliance with the Occupational Safety and
19 Health Administration standard (such as lack
20 of engineering or work practice controls, or pro-
21 tective equipment) such that exposures would
22 be equivalent to exposures before 1976 or 1986,
23 or to documented exposures in similar jobs or
24 occupations where control measures had not
25 been implemented. Claims under this subpara-

1 graph shall be evaluated on an individual basis
2 by a Physicians Panel.

3 (b) MEDICAL EVIDENCE.—

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

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

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

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

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

22 (i) a physical examination of the
23 claimant by the physician providing the di-
24 agnosis;

1 (ii) an evaluation of smoking history
2 and exposure history before making a diag-
3 nosis;

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

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

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

13 (i) pathological evidence of the non-
14 malignant asbestos-related disease; or

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

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

20 (i) a physical examination by the
21 claimant's physician providing the diag-
22 nosis; or

23 (ii) a diagnosis of such a malignant
24 asbestos-related disease, as described in

1 this section, by a board-certified patholo-
2 gist; and

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

6 (i) a diagnosis of such a malignant as-
7 bestos-related disease, as described in this
8 section, by a board-certified pathologist;
9 and

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

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

18 (A) x-rays or computerized tomography;

19 (B) detailed results of pulmonary function
20 tests;

21 (C) laboratory tests;

22 (D) tissue samples;

23 (E) results of medical examinations;

24 (F) reviews of other medical evidence; and

1 (G) medical evidence that complies with
2 recognized medical standards regarding equip-
3 ment, testing methods, and procedure to ensure
4 the reliability of such evidence as may be sub-
5 mitted.

6 (c) EXPOSURE EVIDENCE.—

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

9 (A) a minimum exposure to asbestos or as-
10 bestos-containing products;

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

19 (C) any additional asbestos exposure re-
20 quirement under this section.

21 (2) PROOF OF EXPOSURE.—

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

- 1 (i) the claimant; or
2 (ii) if the claimant is deceased, a co-
3 worker or a family member, if the affidavit
4 of the claimant, co-worker, or family mem-
5 ber is found in proceedings under this title
6 to be reasonably reliable, attesting to the
7 claimant's exposure; and is credible and is
8 not contradicted by other evidence.

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

13 (3) TAKE-HOME EXPOSURE.—

14 (A) IN GENERAL.—A claimant may alter-
15 natively satisfy the medical criteria require-
16 ments of this section where a claim is filed by
17 a person who alleges their exposure to asbestos
18 was the result of living with a person who, if
19 the claim had been filed by that person, would
20 have met the exposure criteria for the given dis-
21 ease level, and the claimant lived with such per-
22 son for the time period necessary to satisfy the
23 exposure requirement, for the claimed disease
24 level.

1 (B) REVIEW.—Except for claims for dis-
2 ease Level IX (mesothelioma), all claims alleg-
3 ing take-home exposure shall be submitted as
4 an exceptional medical claim under section
5 121(~~f~~)(g) for review by a Physicians Panel.

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

18 (5) EXPOSURE PRESUMPTIONS.—

19 (A) IN GENERAL.—The Administrator
20 shall prescribe rules identifying specific indus-
21 tries, occupations within such industries, and
22 time periods in which workers employed in
23 those industries or occupations typically had
24 substantial occupational exposure to asbestos as
25 defined under section 121(a). Until 5 years

1 after the Administrator certifies that the Fund
2 is paying claims at a reasonable rate, the indus-
3 tries, occupations and time periods identified by
4 the Administrator shall at a minimum include
5 those identified in the 2002 Trust Distribution
6 Process of the Manville Personal Injury Settle-
7 ment Trust as of January 1, 2005, as indus-
8 tries, occupations and time periods in which
9 workers were presumed to have had significant
10 occupational exposure to asbestos. Thereafter,
11 the Administrator may by rule modify or elimi-
12 nate those exposure presumptions required to
13 be adopted from the Manville Personal Injury
14 Settlement Trust, if there is evidence that dem-
15 onstrates that the typical exposure for workers
16 in such industries and occupations during such
17 time periods did not constitute substantial occu-
18 pational exposure in asbestos.

19 (B) CLAIMANTS ENTITLED TO PRESUMP-
20 TIONS.—Any claimant who demonstrates
21 through meaningful and credible evidence that
22 such claimant was employed during relevant
23 time periods in industries or occupations identi-
24 fied under subparagraph (A) shall be entitled to
25 a presumption that the claimant had substan-

1 tial occupational exposure to asbestos during
2 those time periods. That presumption shall not
3 be conclusive, and the Administrator may find
4 that the claimant does not have substantial oc-
5 cupational exposure if other information dem-
6 onstrates that the claimant did not in fact have
7 substantial occupational exposure during any
8 part of the relevant time periods.

9 (C) *CRITERIA REQUIREMENTS.*—*Nothing in*
10 *subparagraphs (A) or (B) shall negate the expo-*
11 *sure or medical criteria requirements in section*
12 *121, for the purpose of receiving compensation*
13 *from the Fund.*

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

18 (d) *ASBESTOS DISEASE LEVELS.*—

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

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

23 (B) evidence of 5 years cumulative occupa-
24 tional exposure to asbestos.

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

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

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

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

19 (D) supporting medical documentation,
20 *such as a written opinion by the examining or*
21 *diagnosing physician, according to the diag-*
22 *nostic guidelines in section 121(b)(2), estab-*
23 *lishing asbestos exposure as a substantial con-*
24 *tributing factor in causing the pulmonary con-*
25 *dition in question.*

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

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

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

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

22 (D) supporting medical documentation,
23 *such as a written opinion by the examining or*
24 *diagnosing physician, according to the diag-*
25 *nostic guidelines in section 121(b)(2)—*

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

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

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

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

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

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

22 (D) supporting medical documentation,
23 *such as a written opinion by the examining or*
24 *diagnosing physician, according to the diag-*
25 *nostic guidelines in section 121(b)(2)—*

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

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

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

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

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

19 (ii) DLCO less than 40 percent of pre-
20 dicted, plus a FEV1/FVC ratio not less than 65
21 percent; or

22 (iii) PO₂ less than 55 mm/Hg, plus a
23 FEV1/FVC ratio not less than 65 percent;

1 (C) evidence of 5 or more weighted years
2 of substantial occupational exposure to asbes-
3 tos; and

4 (D) supporting medical documentation,
5 *such as a written opinion by the examining or*
6 *diagnosing physician, according to the diag-*
7 *nostic guidelines in section 121(b)(2)—*

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

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

13 (6) MALIGNANT LEVEL VI.—

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

16 (i) a diagnosis of a primary colorectal,
17 laryngeal, esophageal, pharyngeal, or stom-
18 ach cancer on the basis of findings by a
19 board certified pathologist;

20 (ii) evidence of a bilateral asbestos-re-
21 lated nonmalignant disease;

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

1 (iv) supporting medical documenta-
2 tion, *such as a written opinion by the ex-*
3 *amining or diagnosing physician, according*
4 *to the diagnostic guidelines in section*
5 *121(b)(2)*, establishing asbestos exposure as
6 a substantial contributing factor in causing
7 the cancer in question.

8 (B) REFERRAL TO PHYSICIANS PANEL.—

9 All claims filed with respect to Level VI under
10 this paragraph shall be referred to a Physicians
11 Panel for a determination that it is more prob-
12 able than not that asbestos exposure was a sub-
13 stantial contributing factor in causing the other
14 cancer in question. If the claimant meets the
15 requirements of subparagraph (A), there shall
16 be a presumption of eligibility for the scheduled
17 value of compensation unless there is evidence
18 determined by the Physicians Panel that rebuts
19 that presumption. In making its determination
20 under this subparagraph, the Physicians Panel
21 shall consider the intensity and duration of ex-
22 posure, smoking history, and the quality of evi-
23 dence relating to exposure and smoking. Claim-
24 ants shall bear the burden of producing mean-

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

3 (7) MALIGNANT LEVEL VII.—

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

6 (i) a diagnosis of a primary lung can-
7 cer disease on the basis of findings by a
8 board certified pathologist;

9 (ii) evidence of bilateral pleural
10 plaques or bilateral pleural thickening or
11 bilateral pleural calcification *by chest x-ray*
12 *or such diagnostic methodology supported*
13 *by the findings of the Institute of Medicine*
14 *under subsection (f);*

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

18 (iv) supporting medical documenta-
19 tion, *such as a written opinion by the ex-*
20 *amining or diagnosing physician, according*
21 *to the diagnostic guidelines in section*
22 *121(b)(2), establishing asbestos exposure as*
23 a substantial contributing factor in causing
24 the lung cancer in question.

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

15 (8) MALIGNANT LEVEL VIII.—

16 (A) IN GENERAL.—To receive Level VIII
17 compensation, a claimant shall provide a diag-
18 nosis—

19 (i) of a primary lung cancer disease
20 on the basis of findings by a board cer-
21 tified pathologist;

22 (ii)(I) of—

23 (aa) asbestosis based on a chest
24 x-ray of at least 1/0 on the ILO scale
25 and showing small irregular opacities

1 of shape or size, either ss, st, or tt,
2 and present in both lower lung zones;
3 and

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

7 (II) of—

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

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

17 (III) asbestosis determined by pathol-
18 ogy and 10 or more weighted years of sub-
19 stantial occupational exposure to asbestos;
20 or

21 (IV) asbestosis as determined by CT
22 Scan, the cost of which shall not be borne
23 by the Fund. The CT Scan must be inter-
24 preted by a board certified radiologist and

1 confirmed by a board certified radiologist;

2 and

3 (iii) supporting medical documenta-
4 tion, *such as a written opinion by the ex-*
5 *amining or diagnosing physician, according*
6 *to the diagnostic guidelines in section*
7 *121(b)(2)*, establishing asbestos exposure as
8 a substantial contributing factor in causing
9 the lung cancer in question; and 10 or
10 more weighted years of substantial occupa-
11 tional exposure to asbestos.

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

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

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

6 (B) credible evidence of identifiable expo-
7 sure to asbestos resulting from—

8 (i) occupational exposure to asbestos;

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

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

20 (iv) other identifiable exposure to as-
21 bestos fibers, in which case the claim shall
22 be reviewed by a Physicians Panel under
23 ~~section 121(f)~~ *subsection (g)* for a deter-
24 mination of eligibility.

1 (e) INSTITUTE OF MEDICINE STUDY.—Not later
2 than April 1, 2006, the Institute of Medicine of the Na-
3 tional Academy of Sciences shall complete a study con-
4 tracted with the National Institutes of Health ~~of the~~ *to*
5 *determine whether there is a* causal link between asbestos
6 exposure and other cancers, including colorectal, laryn-
7 geal, esophageal, pharyngeal, and stomach cancers, except
8 for mesothelioma and lung cancers. The Institute of Medi-
9 cine shall issue a report on its findings on causation, which
10 shall be transmitted to Congress, the Administrator, the
11 Advisory Committee on Asbestos Disease Compensation or
12 the Medical Advisory Committee, and the Physicians Pan-
13 els. The Institute of Medicine report shall be binding on
14 the Administrator and the Physicians Panels for purposes
15 of determining whether asbestos exposure is a substantial
16 contributing factor ~~under section 121(d)(6)(B).~~ *in causing*
17 *the other cancerous disease in question under subsection*
18 *(d)(6). If asbestos is not a substantial contributing factor*
19 *to the particular cancerous disease under subsection (d)(6),*
20 *subsection (d)(6) shall not apply with respect to that disease*
21 *and no claim may be filed with, or award paid from, the*
22 *Fund with respect to that disease under malignant Level*
23 *VI.*

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

1 (1) *IN GENERAL.*—Not later than April 1, 2006,
2 the Institute of Medicine of the National Academy of
3 Sciences shall complete a study contracted with the
4 National Institutes of Health of the use of CT scans
5 as a diagnostic tool for bilateral pleural plaques, bi-
6 lateral pleural thickening, or bilateral pleural calcifi-
7 cation.

8 (2) *FINDINGS.*—The Institute of Medicine shall
9 make and issue findings based on the study required
10 under paragraph (1) on whether—

11 (A) *CT scans are generally accepted in the*
12 *medical profession to detect bilateral pleural*
13 *plaques, bilateral pleural thickening, or bilateral*
14 *pleural calcification; and*

15 (B) *professional standards of practice exist*
16 *to allow for the Administrator’s reasonable reli-*
17 *ance on such as evidence of bilateral pleural*
18 *plaques, bilateral pleural thickening, or bilateral*
19 *pleural calcification under the Fund.*

20 (3) *REPORT.*—The Institute of Medicine shall
21 issue a report on the findings required under para-
22 graph (2), which shall be transmitted to Congress, the
23 Administrator, the Advisory Committee on Asbestos
24 Disease Compensation or the Medical Advisory Com-
25 mittee, and the Physicians Panels.

1 (4) *REPORT BINDING ON THE ADMINISTRATOR.*—
 2 *The Institute of Medicine report required under para-*
 3 *graph (3) shall be binding on the Administrator and*
 4 *the Physicians Panels for purposes of determining re-*
 5 *liable and acceptable evidence that may be submitted*
 6 *for a Level VII claim under subsection (d)(7).*

7 ~~(f)~~(g) *EXCEPTIONAL MEDICAL CLAIMS.*—

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

12 (2) *APPLICATION.*—When submitting an appli-
 13 cation for review of an exceptional medical claim, the
 14 claimant shall—

15 (A) state that the claim does not meet the
 16 medical criteria requirements under this sec-
 17 tion; or

18 (B) seek designation as an exceptional
 19 medical claim within 60 days after a determina-
 20 tion that the claim is ineligible solely for failure
 21 to meet the medical criteria requirements under
 22 subsection (d).

23 (3) *REPORT OF PHYSICIAN.*—

24 (A) *IN GENERAL.*—Any claimant applying
 25 for designation of a claim as an exceptional

1 medical claim shall support an application filed
2 under paragraph (1) with a report from a phy-
3 sician meeting the requirements of this section.

4 (B) CONTENTS.—A report filed under sub-
5 paragraph (A) shall include—

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

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

11 and

12 (iii) a detailed explanation as to why
13 the claim meets the requirements of para-
14 graph (4)(B).

15 (4) REVIEW.—

16 (A) IN GENERAL.—The Administrator
17 shall refer all applications and supporting docu-
18 mentation submitted under paragraph (2) to a
19 Physicians Panel for review for eligibility as an
20 exceptional medical claim.

21 (B) STANDARD.—A claim shall be des-
22 ignated as an exceptional medical claim if the
23 claimant, for reasons beyond the control of the
24 claimant, cannot satisfy the requirements under
25 this section, but is able, through comparably re-

1 liable evidence that meets the standards under
2 this section, to show that the claimant has an
3 asbestos-related condition that is substantially
4 comparable to that of a medical condition that
5 would satisfy the requirements of a category
6 under this section.

7 (C) ADDITIONAL INFORMATION.—A Physi-
8 cians Panel may request additional reasonable
9 testing to support the claimant’s application.

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

12 (5) APPROVAL.—

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

20 (B) REFERRAL.—Upon the issuance of a
21 certificate under subparagraph (A), the Physi-
22 cians Panel shall submit the claim to the Ad-
23 ministrators, who shall give due consideration to
24 the recommendation of the Physicians Panel in

1 determining whether the claimant meets the re-
2 quirements for compensation under this Act.

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

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

12 (8) LIBBY, MONTANA.—

13 (A) IN GENERAL.—A Libby, Montana;
14 claimant may elect to have the claimant's
15 claims designated as exceptional medical claims
16 and referred to a Physicians Panel for review.
17 In reviewing the medical evidence submitted by
18 a Libby, Montana claimant in support of that
19 claim, the Physicians Panel shall take into con-
20 sideration the unique and serious nature of as-
21 bestos exposure in Libby, Montana, including
22 the nature of the pleural disease related to as-
23 bestos exposure in Libby, Montana.

24 (B) CLAIMS.—For all claims for Levels II
25 through IV filed by Libby, Montana claimants,

1 as described under subsection (c)(4), once the
2 Administrator or the Physicians Panel issues a
3 certificate of medical eligibility to a Libby,
4 Montana claimant, and notwithstanding the dis-
5 ease category designated in the certificate or
6 the eligible disease or condition established in
7 accordance with this section, or the value of the
8 award determined in accordance with section
9 114, the Libby, Montana claimant shall be enti-
10 tled to an award that is not less than that
11 awarded to claimants who suffer from asbes-
12 tosis, Level IV. For all malignant claims filed
13 by Libby, Montana claimants, the Libby, Mon-
14 tana claimant shall be entitled to an award that
15 corresponds to the malignant disease category
16 designated by the Administrator or the Physi-
17 cians Panel.

18 (C) *EVALUATION OF CLAIMS.*—*For purposes*
19 *of evaluating exceptional medical claims from*
20 *Libby, Montana, a claimant shall be deemed to*
21 *have a comparable asbestos-related condition to*
22 *an asbestos disease category Level IV, and shall*
23 *be deemed to qualify for compensation at Level*
24 *IV, if the claimant provides—*

- 1 (i) a diagnosis of bilateral asbestos re-
2 lated nonmalignant disease;
3 (ii) evidence of TLC or FVC less than
4 80 percent; and
5 (iii) supporting medical documenta-
6 tion establishing asbestos exposure as a sub-
7 stantial contributing factor in causing the
8 pulmonary condition in question, and ex-
9 cluding more likely causes of that pul-
10 monary condition.

11 (9) *STUDY OF VERMICULITE PROCESSING FACILI-*
12 *TIES.*—

13 (A) *IN GENERAL.*—As part of the ongoing
14 National Asbestos Exposure Review (in this sec-
15 tion referred to as “NAER”) being conducted by
16 the Agency for Toxic Substances and Disease
17 Registry (in this section referred to as
18 “ATSDR”) of facilities that received vermiculite
19 ore from Libby, Montana, the ATSDR shall con-
20 duct a study of all Phase 1 sites where—

- 21 (i) the Environmental Protection
22 Agency has mandated further action at the
23 site on the basis of current contamination;
24 or

1 (ii) the site was an exfoliation facility
2 that processed roughly 100,000 tons or more
3 of vermiculite from the Libby mine.

4 (B) STUDY BY ATSDR.—The study by the
5 ATSDR shall evaluate the facilities identified
6 under subparagraph (A) and compare—

7 (i) the levels of asbestos emissions from
8 such facilities;

9 (ii) the resulting asbestos contamina-
10 tion in areas surrounding such facilities;

11 (iii) the levels of exposure to residents
12 living in the vicinity of such facilities;

13 (iv) the risks of asbestos-related disease
14 to the residents living in the vicinity of
15 such facilities; and

16 (v) the risk of asbestos-related mor-
17 tality to residents living in the vicinity of
18 such facilities,

19 to the emissions, contamination, exposures, and
20 risks resulting from the mining of vermiculite
21 ore in Libby, Montana.

22 (C) RESULTS OF STUDY.—The results of the
23 study required under this paragraph shall be
24 transmitted to the Administrator. If the ATSDR
25 finds as a result of such study that, for any par-

1 *particular facility, the levels of emissions from, the*
2 *resulting contamination caused by, the levels of*
3 *exposure to nearby residents from, and the risks*
4 *of asbestos-related disease and asbestos-related*
5 *mortality to nearby residents from such facility*
6 *are substantially equivalent to those of Libby,*
7 *Montana, then the Administrator shall treat*
8 *claims from residents surrounding such facilities*
9 *the same as claims of residents of Libby, Mon-*
10 *tana, and such residents shall have all the rights*
11 *of residents of Libby, Montana, under this Act.*
12 *As part of the results of its study, the ATSDR*
13 *shall prescribe for any such facility the relevant*
14 *geographic and temporal criteria under which*
15 *the exposures and risks to the surrounding resi-*
16 *dents are substantially equivalent to those of*
17 *residents of Libby, Montana, and therefore qual-*
18 *ify for treatment under this paragraph.*

19 *(10) NATURALLY OCCURRING ASBESTOS.—A*
20 *claimant who has been exposed to naturally occurring*
21 *asbestos may file an exceptional medical claim with*
22 *the Fund.*

23 *(h) GUIDELINES FOR CT SCANS.—The Administrator*
24 *shall commission the American College of Radiology to de-*
25 *velop, in consultation with the American Thoracic Society,*

1 *American College of Chest Physicians, and Institute of Med-*
 2 *icine, guidelines and a methodology for the use of CT scans*
 3 *as a diagnostic tool for bilateral pleural plaques, bilateral*
 4 *pleural thickening, or bilateral pleural calcification under*
 5 *the Fund. After development, such guidelines and method-*
 6 *ology shall be used for diagnostic purposes under the Fund.*

7 **Subtitle D—Awards**

8 **SEC. 131. AMOUNT.**

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

13 (b) BENEFIT TABLE.—

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

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

VI	Other Cancer	\$200,000
VII	Lung Cancer With Pleural Disease	smokers, \$300,000; ex-smokers, \$725,000; non-smokers, \$800,000
VIII	Lung Cancer With As- bestosis	smokers, \$600,000; ex-smokers, \$975,000; non-smokers, \$1,100,000
IX	Mesothelioma	\$1,100,000

1 (2) DEFINITIONS.—In this section—

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

4 (i) never smoked; or

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

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

13 (3) LEVEL IX ADJUSTMENTS.—

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

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

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

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

10 (4) SPECIAL ADJUSTMENT FOR FELA CASES.—

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

17 (B) REGULATIONS.—

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

23 (ii) JOINT PROPOSAL.—Not later than
24 45 days after the date of enactment of this
25 Act, representatives of railroad manage-

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

9 (iii) ABSENCE OF JOINT PROPOSAL.—

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

18 (iv) REVIEW.—The parties partici-

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

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

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

21 (D) AMOUNT.—

22 (i) IN GENERAL.—The amount of the
23 special adjustment shall be based on the
24 type and severity of asbestos disease, and
25 shall be 110 percent of the average amount

1 an injured individual with a disease caused
2 by asbestos, as described in section 121(d)
3 of this Act, would have received, during
4 the 5-year period before the enactment of
5 this Act, adjusted for inflation. This ad-
6 justment shall be in addition to any other
7 award for which the claimant is eligible
8 under this Act. The amount of the special
9 adjustment shall be reduced by an amount
10 reasonably calculated to take into account
11 all expenses of litigation normally borne by
12 plaintiffs, including attorney's fees.

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

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

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

1 litigation in Federal or State court. The nature
2 of the information submitted to the arbitrator
3 shall be within the sole discretion of the submit-
4 ting party, and the arbitrator may not require
5 a party to submit any particular information,
6 including information subject to a prior con-
7 fidentiality agreement.

8 (F) DEMONSTRATION OF ELIGIBILITY.—

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

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

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

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

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

24 (5) MEDICAL MONITORING.—An asbestos claim-
25 ant with asymptomatic exposure, based on the cri-

1 teria under section 121(d)(1), shall only be eligible
2 for medical monitoring reimbursement as provided
3 under section 132.

4 (6) COST-OF-LIVING ADJUSTMENT.—

5 (A) IN GENERAL.—Beginning January 1,
6 2007, award amounts under paragraph (1)
7 shall be annually increased by an amount equal
8 to such dollar amount multiplied by the cost-of-
9 living adjustment, rounded to the nearest
10 \$1,000 increment.

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

18 (C) CONSUMER PRICE INDEX.—

19 (i) IN GENERAL.—For the purposes of
20 subparagraph (B), the consumer price
21 index for any calendar year is the average
22 of the consumer price index as of the close
23 of the 12-month period ending on August
24 31 of such calendar year.

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

13 **SEC. 132. MEDICAL MONITORING.**

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

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

24 (c) REGULATIONS.—The Administrator shall promul-
25 gate regulations that establish—

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

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

5 **SEC. 133. PAYMENT.**

6 (a) STRUCTURED PAYMENTS.—

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

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

16 (A) 40 percent of the total amount in year
17 1;

18 (B) 30 percent of the total amount in year
19 2; and

20 (C) 30 percent of the total amount in year
21 3.

22 (3) EXTENSION OF PAYMENT PERIOD.—

23 (A) IN GENERAL.—The Administrator
24 shall develop guidelines to provide for the pay-
25 ment period of an award under subsection (a)

1 to be extended to a 4-year period if such action
 2 is warranted in order to preserve the overall sol-
 3 vency of the Fund. Such guidelines shall include
 4 reference to the number of claims made to the
 5 Fund and the awards made and scheduled to be
 6 paid from the Fund as provided under section
 7 405.

8 (B) LIMITATIONS.—In no event shall less
 9 than 50 percent of an award be paid in the first
 10 2 years of the payment period under this sub-
 11 section.

12 (4) ~~ACCELERATED~~ *LUMP-SUM* payments.—

13 (A) *IN GENERAL*.—The Administrator shall
 14 develop guidelines to provide for ~~accelerated~~
 15 ~~payments~~ *1 lump-sum payment* to asbestos
 16 claimants who are mesothelioma victims and
 17 who are alive on the date on which the Admin-
 18 istrator receives notice of the eligibility of the
 19 claimant. ~~Such payments shall be credited~~
 20 ~~against the first regular payment under the~~
 21 ~~structured payment plan for the claimant.~~

22 (B) *TIMING OF PAYMENTS*.—*Lump-sum*
 23 *payments shall be made within the shorter of—*

1 (i) not later than 30 days after the
2 date the claim is approved by the Adminis-
3 trator; or

4 (ii) not later than 6 months after the
5 date the claim is filed.

6 (C) *TIMING OF PAYMENTS TO BE ADJUSTED*
7 *WITH RESPECT TO SOLVENCY OF THE FUND.*—If
8 the Administrator determines that solvency of the
9 Fund would be severely harmed by the timing of
10 the payments required under subparagraph (B),
11 the time for such payments may be extended to
12 the shorter of—

13 (i) not later than 6 months after the
14 date the claim is approved by the Adminis-
15 trator; or

16 (ii) not later than 11 months after the
17 date the claim is filed.

18 (5) *EXPEDITED PAYMENTS.*—

19 (A) *IN GENERAL.*—The Administrator shall
20 develop guidelines to provide for expedited pay-
21 ments to asbestos claimants in cases of exigent
22 circumstances or extreme hardship caused by
23 asbestos-related injury. health claims as de-
24 scribed under section 106(c)(2)(B) and (C).

1 (B) *TIMING OF PAYMENTS.*—*Total pay-*
2 *ments shall be made within the shorter of—*

3 (i) *not later than 6 months after the*
4 *date the claim is approved by the Adminis-*
5 *trator; or*

6 (ii) *not later than 1 year after the date*
7 *the claim is filed.*

8 (C) *TIMING OF PAYMENTS TO BE ADJUSTED*
9 *WITH RESPECT TO SOLVENCY OF THE FUND.*—*If*
10 *the Administrator determines that solvency of the*
11 *Fund would be severely harmed by the timing of*
12 *the payments required under subparagraph (B),*
13 *the time for such payments may be extended to*
14 *the shorter of—*

15 (i) *not later than 1 year after the date*
16 *the claim is approved by the Administrator;*
17 *or*

18 (ii) *not later than 2 years after the*
19 *date the claim is filed.*

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

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

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

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

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

16 (f) *EFFECT OF PAYMENT.*—*The full payment of an as-*
17 *bestos claim under this section shall be in full satisfaction*
18 *of such claim and shall be deemed to operate as a release*
19 *to such claim. No claimant with an asbestos claim that has*
20 *been fully paid under this section may proceed in the tort*
21 *system with respect to such claim.*

1 **SEC. 134. REDUCTION IN BENEFIT PAYMENTS FOR COLLAT-**
2 **ERAL SOURCES. SETOFFS FOR COLLATERAL**
3 **SOURCE COMPENSATION AND PRIOR**
4 **AWARDS.**

5 (a) IN GENERAL.—The amount of an award other-
6 wise available to an asbestos claimant under this title shall
7 be reduced by the amount of *any* collateral source com-
8 pensation *and by any amounts paid or to be paid to the*
9 *claimant for a prior award under this Act.*

10 (b) EXCLUSIONS.—

11 (1) *COLLATERAL SOURCE COMPENSATION.*—In
12 no case shall statutory benefits under workers' com-
13 pensation laws, special adjustments made under sec-
14 tion 131(b)(3), occupational or total disability bene-
15 fits under the Railroad Retirement Act (45 U.S.C.
16 201 et seq.), sickness benefits under the Railroad
17 Unemployment Insurance Act (45 U.S.C 351 et
18 seq.), and veterans' benefits programs be deemed as
19 collateral source compensation for purposes of this
20 section.

21 (2) *PRIOR AWARD PAYMENTS.*—*Any amounts*
22 *paid or to be paid for a prior claim for a nonmalign-*
23 *ant disease (Levels I through V) filed against the*
24 *Fund shall not be deducted as a setoff against*
25 *amounts payable for the second injury claims for a*
26 *malignant disease (Levels VI through IX), unless the*

1 **TITLE II—ASBESTOS INJURY**
2 **CLAIMS RESOLUTION FUND**
3 **Subtitle A—Asbestos Defendants**
4 **Funding Allocation**

5 **SEC. 201. DEFINITIONS.**

6 In this subtitle, the following definitions shall apply:

7 (1) **AFFILIATED GROUP.**—The term “affiliated
8 group”—

9 (A) means a defendant participant that is
10 an ultimate parent and any person whose entire
11 beneficial interest is directly or indirectly owned
12 by that ultimate parent on the date of enact-
13 ment of this Act; and

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

17 (2) **CLASS ACTION TRUST.**—The term “class ac-
18 tion trust” means a trust or similar entity estab-
19 lished to hold assets for the payment of asbestos
20 claims asserted against a debtor or participating de-
21 fendant, under a settlement that—

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

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

4 (3) DEBTOR.—The term “debtor”—

5 (A) means—

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

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

19 (B) shall not include an entity—

20 (i) subject to chapter 7 of title 11,
21 United States Code, if a final decree clos-
22 ing the estate shall have been entered be-
23 fore the date of enactment of this Act; or

24 (ii) subject to chapter 11 of title 11,
25 United States Code, if a plan of reorga-

1 nization for such entity shall have been
2 confirmed by a duly entered order or judg-
3 ment of a court that is no longer subject
4 to any appeal or judicial review, and the
5 substantial consummation, as such term is
6 defined in section 1101(2) of title 11,
7 United States Code, of such plan of reor-
8 ganization has occurred.

9 (4) INDEMNIFIABLE COST.—The term
10 “indemnifiable cost” means a cost, expense, debt,
11 judgment, or settlement incurred with respect to an
12 asbestos claim that, at any time before December
13 31, 2002, was or could have been subject to indem-
14 nification, contribution, surety, or guaranty.

15 (5) INDEMNITEE.—The term “indemnitee”
16 means a person against whom any asbestos claim
17 has been asserted before December 31, 2002, who
18 has received from any other person, or on whose be-
19 half a sum has been paid by such other person to
20 any third person, in settlement, judgment, defense,
21 or indemnity in connection with an alleged duty with
22 respect to the defense or indemnification of such
23 person concerning that asbestos claim, other than
24 under a policy of insurance or reinsurance.

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

13 (7) PRIOR ASBESTOS EXPENDITURES.—The
14 term “prior asbestos expenditures”—

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

20 (B) includes payments made by insurance
21 carriers to or for the benefit of such person or
22 on such person’s behalf with respect to such as-
23 bestos claims, except as provided in section
24 204(g);

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

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

16 (8) TRUST.—The term “trust” means any
17 trust, as described in sections 524(g)(2)(B)(i) or
18 524(h) of title 11, United States Code, or estab-
19 lished in conjunction with an order issued under sec-
20 tion 105 of title 11, United States Code, established
21 or formed under the terms of a chapter 11 plan of
22 reorganization, which in whole or in part provides
23 compensation for asbestos claims.

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

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

4 (B) whose entire beneficial interest was not
5 owned, on December 31, 2002, directly or indi-
6 rectly, by any other single person (other than a
7 natural person).

8 **SEC. 202. AUTHORITY AND TIERS.**

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

10 (1) IN GENERAL.—Defendant participants shall
11 be liable for payments to the Fund in accordance
12 with this section based on tiers and subtiers as-
13 signed to defendant participants.

14 (2) AGGREGATE PAYMENT OBLIGATIONS
15 LEVEL.—The total payments required of all defend-
16 ant participants over the life of the Fund shall not
17 exceed a sum equal to \$90,000,000,000 less any
18 bankruptcy trust credits under section 222(e)(d).
19 The Administrator shall have the authority to allo-
20 cate the payments required of the defendant partici-
21 pants among the tiers as provided in this title.

22 (3) ABILITY TO ENTER REORGANIZATION.—
23 Notwithstanding any other provision of this Act, all
24 debtors that, together with all of their direct or indi-
25 rect majority-owned subsidiaries, have prior asbestos

1 expenditures less than \$1,000,000 may proceed with
2 the filing, solicitation, and confirmation of a plan of
3 reorganization that does not comply with the re-
4 quirements of this Act, including a trust and chan-
5 neling injunction under section 524(g) of title 11,
6 United States Code. Any asbestos claim made in
7 conjunction with a plan of reorganization allowable
8 under the preceding sentence shall be subject to sec-
9 tion 403(d) of this Act.

10 (b) TIER I.—Tier I shall include all debtors that, to-
11 gether with all of their direct or indirect majority-owned
12 subsidiaries, have prior asbestos expenditures greater than
13 \$1,000,000.

14 (c) TREATMENT OF TIER I BUSINESS ENTITIES IN
15 BANKRUPTCY.—

16 (1) DEFINITION.—

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

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

23 (ii) has not substantially con-
24 summated, as such term is defined under
25 section 1101(2) of title 11, United States

1 Code, a plan of reorganization as of the
2 date of enactment of this Act; and

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

11 (B) MOTION AND RELATED MATTERS.—A
12 motion under subparagraph (A)(iii) shall be
13 supported by—

14 (i) an affidavit or declaration of the
15 chief executive officer, chief financial offi-
16 cer, or chief legal officer of the business
17 entity; and

18 (ii) copies of the entity's public state-
19 ments and securities filings made in con-
20 nection with the entity's filing for chapter
21 11 protection.

22 Notice of such motion shall be as directed by
23 the bankruptcy court, and the hearing shall be
24 limited to consideration of the question of
25 whether or not asbestos liability was the sole or

1 precipitating cause of the entity's chapter 11
2 filing. The bankruptcy court shall hold a hear-
3 ing and make its determination with respect to
4 the motion within 60 days after the date the
5 motion is filed. In making its determination,
6 the bankruptcy court shall take into account
7 the affidavits, public statements, and securities
8 filings, and other information, if any, submitted
9 by the entity and all other facts and cir-
10 cumstances presented by an objecting party.
11 Any review of this determination shall be an ex-
12 pedited appeal and limited to whether the deci-
13 sion was against the weight of the evidence.
14 Any appeal of a determination shall be an expe-
15 dited review to the United States Circuit Court
16 of Appeals for the circuit in which the bank-
17 ruptcy is filed.

18 (2) PROCEEDING WITH REORGANIZATION
19 PLAN.—A bankrupt business entity may proceed
20 with the filing, solicitation, confirmation, and con-
21 summation of a plan of reorganization that does not
22 comply with the requirements of this Act, including
23 a trust and channeling injunction described in sec-
24 tion 524(g) of title 11, United States Code, notwith-
25 standing any other provisions of this Act, if the

1 bankruptcy court makes a favorable determination
2 under paragraph (1)(B), unless the bankruptcy
3 court's determination is overruled on appeal and all
4 appeals are final. Such a bankrupt business entity
5 may continue to so proceed, if—

6 (A) on request of a party in interest or on
7 a motion of the court, and after a notice and
8 a hearing, the bankruptcy court presiding over
9 the chapter 11 case of the bankrupt business
10 entity determines that—

11 (i) ~~confirmation is necessary to permit~~
12 ~~the reorganization of that entity and as-~~
13 ~~sure that all creditors and that entity are~~
14 ~~treated fairly and equitably; and~~

15 (ii) ~~confirmation is clearly favored by~~
16 ~~the balance of the equities; and~~

17 *such confirmation is required to avoid the liq-*
18 *uidation or the need for further financial reorga-*
19 *nization of that entity; and*

20 (B) an order confirming the plan of reor-
21 ganization is entered by the bankruptcy court
22 within 9 months after the date of enactment of
23 this Act or such longer period of time approved
24 by the bankruptcy court for cause shown.

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

15 (4) OFFSETS.—

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

1 amount otherwise payable by that insurer under
2 this Act to the Fund.

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

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

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

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

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

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

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

22 (e) TIER PLACEMENT AND COSTS.—

23 (1) PERMANENT TIER PLACEMENT.—After a
24 defendant participant or affiliated group is assigned
25 to a tier and subtier under section 204(i)(6), the

1 participant or affiliated group shall remain in that
2 tier and subtier throughout the life of the Fund, re-
3 gardless of subsequent events, including—

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

6 (B) a discharge of debt in bankruptcy;

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

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

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

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

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

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

7 (f) SUPERSEDING PROVISIONS.—

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

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

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

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

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

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

16 **SEC. 203. SUBTIERS.**

17 (a) IN GENERAL.—

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

24 (2) REVENUES.—

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

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

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

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

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

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

23 (b) TIER I SUBTIERS.—

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

4 (2) SUBTIER 1.—

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

9 (B) PAYMENT.—

10 (i) *IN GENERAL.*—Each debtor in-
11 cluded in Subtier 1 shall pay on an annual
12 basis 1.67024 percent of the debtor's 2002
13 revenues.

14 (ii) *EXCEPTION TO PAYMENT PERCENT-*
15 *AGE.*—*Notwithstanding clause (i), a debtor*
16 *in Subtier 1 shall pay, on an annual basis,*
17 *\$500,000 if—*

18 *(I) such debtor, including its di-*
19 *rect or indirect majority-owned sub-*
20 *subsidiaries, has less than \$10,000,000 in*
21 *prior asbestos expenditures;*

22 *(II) at least 95 percent of such*
23 *debtors revenues derive from the provi-*
24 *sion of engineering and construction*
25 *services; and*

1 (III) such debtor, including its di-
2 rect or indirect majority-owned sub-
3 sidiaries, never manufactured, sold, or
4 distributed asbestos-containing prod-
5 ucts in the stream of commerce.

6 (C) OTHER ASSETS.—The Administrator,
7 at the sole discretion of the Administrator, may
8 allow a Subtier 1 debtor to satisfy its funding
9 obligation under this paragraph with assets
10 other than cash if the Administrator determines
11 that requiring an all-cash payment of the debt-
12 or’s funding obligation would render the debt-
13 or’s reorganization infeasible.

14 (D) LIABILITY.—

15 (i) IN GENERAL.—If a person who is
16 subject to a case pending under a chapter
17 of title 11, United States Code, as defined
18 in section 201(3)(A)(i), does not pay when
19 due any payment obligation for the debtor,
20 the Administrator shall have the right to
21 seek payment of all or any portion of the
22 entire amount due (as well as any other
23 amount for which the debtor may be liable
24 under sections 223 and 224) from any of

1 the direct or indirect majority-owned sub-
2 sidiaries under section 201(3)(A)(ii).

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

9 (iii) RIGHT OF CONTRIBUTION.—

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

1 vency proceedings), the debtor partici-
2 pant shall have a claim against such
3 foreign subsidiary or the estate of
4 such foreign subsidiary in an amount
5 equal to the greater of—

6 (aa) the estimated amount
7 of all current and future asbestos
8 liabilities against such foreign
9 subsidiary; or

10 (bb) the foreign subsidiary's
11 allocable share of the debtor par-
12 ticipant's funding obligations to
13 the Fund as determined by such
14 foreign subsidiary's allocable
15 share of the debtor participant's
16 2002 gross revenue.

17 (II) DETERMINATION OF CLAIM
18 AMOUNT.—The claim amount under
19 subclause (I) (aa) or (bb) shall be de-
20 termined by a court of competent ju-
21 risdiction in the United States.

22 (III) EFFECT ON PAYMENT OBLI-
23 GATION.—The right to, or recovery
24 under, any such claim shall not re-
25 duce, limit, delay, or otherwise affect

1 the debtor participant's payment obli-
2 gations under this Act.

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

10 (3) SUBTIER 2.—

11 (A) IN GENERAL.—Notwithstanding para-
12 graph (2), all persons that are debtors that
13 have no material continuing business operations
14 , *other than class action trusts under paragraph*
15 *(6)*, but hold cash or other assets that have
16 been allocated or earmarked for the settlement
17 of asbestos claims shall be included in Subtier
18 2.

19 (B) ASSIGNMENT OF ASSETS.—Not later
20 than 90 days after the date of enactment of
21 this Act, each person included in Subtier 2 shall
22 assign all of its *unencumbered* assets to the
23 Fund.

24 (4) SUBTIER 3.—

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

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

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

17 (i) all allowable administrative ex-
 18 penses;

19 (ii) allowable priority claims under
 20 section 507 of title 11, United States
 21 Code; and

22 (iii) allowable secured claims.

23 (5) *CALCULATION OF UNENCUMBERED ASSETS.—*
 24 *Unencumbered assets shall be calculated as the*
 25 *Subtier 3 person's total assets, excluding insurance-*

1 *related assets, jointly held, in trust or otherwise, with*
 2 *a defendant participant, less—*

3 *(A) all allowable administrative expenses;*

4 *(B) allowable priority claims under section*
 5 *507 of title 11, United States Code; and*

6 *(C) allowable secured claims.*

7 ~~(5)~~(6) CLASS ACTION TRUST.—The assets of
 8 any class action trust that has been established in
 9 respect of the liabilities for asbestos claims of any
 10 person included within a debtor and affiliated group
 11 that has been included in Tier I (exclusive of any as-
 12 sets needed to pay previously incurred expenses and
 13 asbestos claims within the meaning of section
 14 403(d)(1), before the date of enactment of this Act)
 15 shall be transferred to the Fund not later than ~~6~~
 16 ~~months~~ *60 days* after the date of enactment of this
 17 Act.

18 (c) TIER II SUBTIERS.—

19 (1) IN GENERAL.—Each person or affiliated
 20 group in Tier II shall be included in 1 of the 5
 21 subtiers of Tier II, based on the person's or affli-
 22 ated group's revenues. Such subtiers shall each con-
 23 tain as close to an equal number of total persons
 24 and affiliated groups as possible, with—

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

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

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

7 (D) those persons or affiliated groups with
8 the next lowest revenues included in Subtier 4;
9 and

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

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

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

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

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

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

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

20 (d) TIER III SUBTIERS.—

21 (1) IN GENERAL.—Each person or affiliated
22 group in Tier III shall be included in 1 of the 5
23 subtiers of Tier III, based on the person's or affili-
24 ated group's revenues. Such subtiers shall each con-

1 tain as close to an equal number of total persons
2 and affiliated groups as possible, with—

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

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

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

9 (D) those persons or affiliated groups with
10 the next lowest revenues included in Subtier 4;

11 and

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

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

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

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

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

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

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

22 (e) TIER IV SUBTIERS.—

23 (1) IN GENERAL.—Each person or affiliated
24 group in Tier IV shall be included in 1 of the 4
25 subtiers of Tier IV, based on the person's or affli-

1 ated group's revenues. Such subtiers shall each con-
2 tain as close to an equal number of total persons
3 and affiliated groups as possible, with those persons
4 or affiliated groups with the highest revenues in
5 Subtier 1, those with the lowest revenues in Subtier
6 4. Those persons or affiliated groups with the high-
7 est revenues among those remaining will be included
8 in Subtier 2 and the rest in Subtier 3.

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

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

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

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

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

16 (f) TIER V SUBTIERS.—

17 (1) IN GENERAL.—Each person or affiliated
18 group in Tier V shall be included in 1 of the 3
19 subtiers of Tier V, based on the person's or affili-
20 ated group's revenues. Such subtiers shall each con-
21 tain as close to an equal number of total persons
22 and affiliated groups as possible, with those persons
23 or affiliated groups with the highest revenues in
24 Subtier 1, those with the lowest revenues in Subtier
25 3, and those remaining in Subtier 2.

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

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

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

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

7 (g) TIER VI SUBTIERS.—

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

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

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

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

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

23 (3) *OTHER PAYMENT FOR CERTAIN PERSONS AND*
24 *AFFILIATED GROUPS.*—

1 (A) *IN GENERAL.*—Notwithstanding any
2 other provision of this subsection, and if an ad-
3 justment authorized by this subsection does not
4 impair the overall solvency of the Fund, any per-
5 son or affiliated group within Tier VI whose re-
6 quired subtier payment in any given year would
7 exceed such person’s or group’s average annual
8 expenditure on settlements, and judgments of as-
9 bestos disease-related claims over the 8 years be-
10 fore the date of enactment of this Act shall make
11 the payment required of the immediately lower
12 subtier or, if the person’s or group’s average an-
13 nual expenditures on settlements and judgments
14 over the 8 years before the date of enactment of
15 this Act is less than \$100,000, shall not be re-
16 quired to make a payment under this Act.

17 (B) *NO FURTHER ADJUSTMENT.*—Any per-
18 son or affiliated group that receives an adjust-
19 ment under this paragraph shall not be eligible
20 to receive any further adjustment under section
21 204(d).

22 (h) *TIER VII.*—

23 (1) *IN GENERAL.*—Notwithstanding prior as-
24 bestos expenditures that might qualify a person or
25 affiliated group to be included in Tiers II, III, IV,

1 V, or VI, a person or affiliated group shall also be
2 included in Tier VII, if the person or affiliated
3 group—

4 (A) is or has at any time been subject to
5 asbestos claims brought under the Act of April
6 22, 1908 (45 U.S.C. 51 et seq.), commonly
7 known as the Employers' Liability Act, as a re-
8 sult of operations as a common carrier by rail-
9 road; and

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

15 (2) ADDITIONAL AMOUNT.—The payment re-
16 quirement for persons or affiliated groups included
17 in Tier VII shall be in addition to any payment re-
18 quirement applicable to such person or affiliated
19 group under Tiers II through VI.

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

24 (4) SUBTIER 2.—Each person or affiliated
25 group in Tier VII with revenues of less than

1 \$6,000,000,000, but not less than \$4,000,000,000 is
2 included in Subtier 2 and shall make annual pay-
3 ments of \$5,500,000 to the Fund.

4 (5) SUBTIER 3.—Each person or affiliated
5 group in Tier VII with revenues of less than
6 \$4,000,000,000, but not less than \$500,000,000 is
7 included in Subtier 3 and shall make annual pay-
8 ments of \$550,000 to the Fund.

9 (6) JOINT VENTURE REVENUES AND LIABIL-
10 ITY.—

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

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

1 be responsible for a payment amount under this
2 provision.

3 **SEC. 204. ASSESSMENT ADMINISTRATION.**

4 (a) IN GENERAL.—Each defendant participant or af-
5 filiated group shall pay to the Fund in the amounts pro-
6 vided under this subtitle as appropriate for its tier and
7 subtier each year until the earlier to occur of the following:

8 (1) The participant or affiliated group has sat-
9 isfied its obligations under this subtitle during the
10 30 annual payment cycles of the operation of the
11 Fund.

12 (2) The amount received by the Fund from de-
13 fendant participants, excluding any amounts rebated
14 to defendant participants under ~~subsection (d)~~ *sub-*
15 *sections (d) and (m)*, equals the maximum aggregate
16 payment obligation of section 202(a)(2).

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

24 (c) PROCEDURES.—The Administrator shall pre-
25 scribe procedures on how amounts payable under this sub-

1 title are to be paid, including, to the extent the Adminis-
2 trator determines appropriate, procedures relating to pay-
3 ment in installments.

4 (d) ADJUSTMENTS.—

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

24 (2) FINANCIAL HARDSHIP ADJUSTMENTS.—

1 (A) IN GENERAL.—A defendant partici-
2 pant may apply for an adjustment based on fi-
3 nancial hardship at any time during the period
4 in which a payment obligation to the Fund re-
5 mains outstanding and may qualify for such ad-
6 justment by demonstrating that the amount of
7 its payment obligation under the statutory allo-
8 cation would constitute a severe financial hard-
9 ship.

10 (B) TERM.—Subject to the annual avail-
11 ability of funds in the defendant hardship and
12 inequity adjustment account established under
13 subsection (j), a financial hardship adjustment
14 under this subsection shall have a term of 3
15 years.

16 (C) RENEWAL.—After an initial hardship
17 adjustment is granted under this paragraph, a
18 defendant participant may renew its hardship
19 adjustment by demonstrating that it remains
20 justified.

21 (D) REINSTATEMENT.—Following the ex-
22 piration of the hardship adjustment period pro-
23 vided for under this section and during the
24 funding period prescribed under subsection (a),
25 the Administrator shall annually determine

1 whether there has been a material change in
2 the financial condition of the defendant partici-
3 pant such that the Administrator may, con-
4 sistent with the policies and legislative intent
5 underlying this Act, reinstate under terms and
6 conditions established by the Administrator any
7 part or all of the defendant participant's pay-
8 ment obligation under the statutory allocation
9 that was not paid during the hardship adjust-
10 ment term.

11 (3) INEQUITY ADJUSTMENTS.—

12 (A) IN GENERAL.—A defendant partici-
13 pant—

14 (i) may qualify for an adjustment
15 based on inequity by demonstrating that
16 the amount of its payment obligation
17 under the statutory allocation is exception-
18 ally inequitable—

19 (I) when measured against the
20 amount of the likely cost to the de-
21 fendant participant net of insurance
22 of its future liability in the tort sys-
23 tem in the absence of the Fund;

1 (II) when compared to the me-
2 dian payment rate for all defendant
3 participants in the same tier; or

4 (III) when measured against the
5 percentage of the prior asbestos ex-
6 penditures of the defendant that were
7 incurred with respect to claims that
8 neither resulted in an adverse judg-
9 ment against the defendant, nor were
10 the subject of a settlement that re-
11 quired a payment to a plaintiff by or
12 on behalf of that defendant;

13 (ii) shall qualify for a two-tier main
14 tier and a two-tier subtier adjustment re-
15 ducing the defendant participant's pay-
16 ment obligation based on inequity by dem-
17 onstrating that not less than 95 percent of
18 such person's prior asbestos expenditures
19 arose from claims related to the manufac-
20 ture and sale of railroad locomotives and
21 related products, so long as such person's
22 manufacture and sale of railroad loco-
23 motives and related products is temporally
24 and causally remote, and for purposes of
25 this clause, a person's manufacture and

1 sale of railroad locomotives and related
2 products shall be deemed to be temporally
3 and causally remote if the asbestos claims
4 historically and generally filed against such
5 person relate to the manufacture and sale
6 of railroad locomotives and related prod-
7 ucts by an entity dissolved more than 25
8 years before the date of enactment of this
9 Act; and

10 (iii) shall be granted a two-tier adjust-
11 ment reducing the defendant participant's
12 payment obligation based on inequity by
13 demonstrating that not less than 95 per-
14 cent of such participant's prior asbestos
15 expenditures arose from asbestos claims
16 based on successor liability arising from a
17 merger to which the participant or its
18 predecessor was a party that occurred at
19 least 30 years before the date of enactment
20 of this Act, and that such prior asbestos
21 expenditures exceed the inflation-adjusted
22 value of the assets of the company from
23 which such liability was derived in such
24 merger, and upon such demonstration the
25 Administrator shall grant such adjustment

1 for the life of the Fund and amounts paid
2 by such defendant participant prior to such
3 adjustment in excess of its adjusted pay-
4 ment obligation under this clause shall be
5 credited against next succeeding required
6 payment obligations.

7 (B) PAYMENT RATE.—For purposes of
8 subparagraph (A), the payment rate of a de-
9 fendant participant is the payment amount of
10 the defendant participant as a percentage of
11 such defendant participant's gross revenues for
12 the year ending December 31, 2002.

13 (C) TERM.—Subject to the annual avail-
14 ability of funds in the defendant hardship and
15 inequity adjustment account established under
16 subsection (j), an inequity adjustment under
17 this subsection shall have a term of 3 years.

18 (D) RENEWAL.—A defendant participant
19 may renew an inequity adjustment every 3
20 years by demonstrating that the adjustment re-
21 mains justified.

22 (E) REINSTATEMENT.—

23 (i) IN GENERAL.—Following the ter-
24 mination of an inequity adjustment under
25 subparagraph (A), and during the funding

1 period prescribed under subsection (a), the
2 Administrator shall annually determine
3 whether there has been a material change
4 in conditions which would support a find-
5 ing that the amount of the defendant par-
6 ticipant's payment under the statutory al-
7 location was not inequitable. Based on this
8 determination, the Administrator may,
9 consistent with the policies and legislative
10 intent underlying this Act, reinstate any or
11 all of the payment obligations of the de-
12 fendant participant as if the inequity ad-
13 justment had not been granted for that 3-
14 year period.

15 (ii) TERMS AND CONDITIONS.—In the
16 event of a reinstatement under clause (i),
17 the Administrator may require the defend-
18 ant participant to pay any part or all of
19 amounts not paid due to the inequity ad-
20 justment on such terms and conditions as
21 established by the Administrator.

22 (4) LIMITATION ON ADJUSTMENTS.—The ag-
23 gregate total of financial hardship adjustments
24 under paragraph (2) and inequity adjustments under

1 paragraph (3) in effect in any given year shall not
2 exceed \$300,000,000, except to the extent *that*—

3 (A) additional monies are available for
4 such adjustments as a result of carryover of
5 prior years' funds under subsection (j)(3) or as
6 a result of monies being made available in that
7 year under subsection (k)(1)(A); *or*

8 (B) *the Administrator determines that the*
9 *\$300,000,000 is insufficient and additional ad-*
10 *justments as provided under paragraph (5) are*
11 *needed to address situations in which a defend-*
12 *ant participant would otherwise be rendered in-*
13 *solvent by its payment obligations without such*
14 *adjustment.*

15 (5) *BANKRUPTCY RELIEF.*—

16 (A) *IN GENERAL.*—*Any defendant partici-*
17 *pant may apply for an adjustment under this*
18 *paragraph at any time during the period in*
19 *which a payment obligation to the Fund remains*
20 *outstanding and may qualify for such adjust-*
21 *ment by demonstrating, to a reasonable degree of*
22 *certainty, evidence that the amount of its pay-*
23 *ment obligation would render the defendant par-*
24 *ticipant insolvent, as defined under section 101*

1 *of title 11, United States Code, and unable to*
2 *pay its debts as they become due.*

3 *(B) INFORMATION REQUIRED.—Any defend-*
4 *ant participant seeking an adjustment or re-*
5 *newal of an adjustment under this paragraph*
6 *shall provide the Administrator with the infor-*
7 *mation required under section 521(1) of title 11*
8 *of the United States Code.*

9 *(C) LIMITATION.—Any adjustment granted*
10 *by the Administrator under subparagraph (A)*
11 *shall be limited to the extent reasonably nec-*
12 *essary to prevent insolvency of a defendant par-*
13 *ticipant.*

14 *(D) TERM.—To the extent the Adminis-*
15 *trator grants any relief under this paragraph,*
16 *such adjustments shall have a term of 1 year. An*
17 *adjustment may be renewed or modified on an*
18 *annual basis upon the defendant participant*
19 *demonstrating that the adjustment or modifica-*
20 *tion remains justified under this paragraph.*

21 *(E) REINSTATEMENT.—During the funding*
22 *period prescribed under subparagraph (A), the*
23 *Administrator shall annually determine whether*
24 *there has been a material change in the financial*
25 *condition of any defendant participant granted*

1 *an adjustment under this paragraph such that*
 2 *the Administrator may, consistent with the poli-*
 3 *cies and legislative intent underlying this Act,*
 4 *reinstate under terms and conditions established*
 5 *by the Administrator any part or all of the de-*
 6 *fendant participant's payment obligation under*
 7 *the statutory allocation that was not paid dur-*
 8 *ing the adjustment term.*

9 ~~(5)~~(6) ADVISORY PANELS.—

10 (A) APPOINTMENT.—The Administrator
 11 shall appoint a Financial Hardship Adjustment
 12 Panel and an Inequity Adjustment Panel to ad-
 13 vise the Administrator in carrying out this sub-
 14 section.

15 (B) MEMBERSHIP.—The membership of
 16 the panels appointed under subparagraph (A)
 17 may overlap.

18 (C) COORDINATION.—The panels ap-
 19 pointed under subparagraph (A) shall coordi-
 20 nate their deliberations and advice.

21 (e) LIMITATION ON LIABILITY.—The liability of each
 22 defendant participant to pay to the Fund shall be limited
 23 to the payment obligations under this Act, and, except as
 24 provided in subsection (f) and section 203(b)(2)(D), no

1 defendant participant shall have any liability for the pay-
2 ment obligations of any other defendant participant.

3 (f) CONSOLIDATION OF PAYMENTS.—

4 (1) IN GENERAL.—For purposes of determining
5 the payment levels of defendant participants, any af-
6 filiated group including 1 or more defendant partici-
7 pants may irrevocably elect, as part of the submis-
8 sions to be made under paragraphs (1) and (3) of
9 subsection (i), to report on a consolidated basis all
10 of the information necessary to determine the pay-
11 ment level under this subtitle and pay to the Fund
12 on a consolidated basis.

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

15 (A) for purposes of this Act other than
16 this subsection, the affiliated group shall be
17 treated as if it were a single participant, includ-
18 ing with respect to the assessment of a single
19 annual payment under this subtitle for the en-
20 tire affiliated group;

21 (B) the ultimate parent of the affiliated
22 group shall prepare and submit each submission
23 to be made under subsection (i) on behalf of the
24 entire affiliated group and shall be solely liable,
25 as between the Administrator and the affiliated

1 group only, for the payment of the annual
2 amount due from the affiliated group under this
3 subtitle, except that, if the ultimate parent does
4 not pay when due any payment obligation for
5 the affiliated group, the Administrator shall
6 have the right to seek payment of all or any
7 portion of the entire amount due (as well as
8 any other amount for which the affiliated group
9 may be liable under sections 223 and 224) from
10 any member of the affiliated group;

11 (C) all members of the affiliated group
12 shall be identified in the submission under sub-
13 section (i) and shall certify compliance with this
14 subsection and the Administrator's regulations
15 implementing this subsection; and

16 (D) the obligations under this subtitle shall
17 not change even if, after the date of enactment
18 of this Act, the beneficial ownership interest be-
19 tween any members of the affiliated group shall
20 change.

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

1 (g) DETERMINATION OF PRIOR ASBESTOS EXPENDI-
2 TURES.—

3 (1) IN GENERAL.—For purposes of determining
4 a defendant participant's prior asbestos expendi-
5 tures, the Administrator shall prescribe such rules
6 as may be necessary or appropriate to assure that
7 payments by indemnitors before December 31, 2002,
8 shall be counted as part of the indemnitor's prior as-
9 bestos expenditures, rather than the indemnitee's
10 prior asbestos expenditures, in accordance with this
11 subsection.

12 (2) INDEMNIFIABLE COSTS.—If an indemnitor
13 has paid or reimbursed to an indemnitee any
14 indemnifiable cost or otherwise made a payment on
15 behalf of or for the benefit of an indemnitee to a
16 third party for an indemnifiable cost before Decem-
17 ber 31, 2002, the amount of such indemnifiable cost
18 shall be solely for the account of the indemnitor for
19 purposes under this Act.

20 (3) INSURANCE PAYMENTS.—When computing
21 the prior asbestos expenditures with respect to an
22 asbestos claim, any amount paid or reimbursed by
23 insurance shall be solely for the account of the
24 indemnitor, even if the indemnitor would have no di-
25 rect right to the benefit of the insurance, if—

1 (A) such insurance has been paid or reim-
2 bursed to the indemnitor or the indemnitee, or
3 paid on behalf of or for the benefit of the
4 indemnitee; and

5 (B) the indemnitor has either, with respect
6 to such asbestos claim or any similar asbestos
7 claim, paid or reimbursed to its indemnitee any
8 indemnifiable cost or paid to any third party on
9 behalf of or for the benefit of the indemnitee
10 any indemnifiable cost.

11 (4) TREATMENT OF CERTAIN EXPENDI-
12 TURES.—Notwithstanding any other provision of
13 this Act, where—

14 (A) an indemnitor entered into a stock
15 purchase agreement in 1988 that involved the
16 sale of the stock of businesses that produced
17 friction and other products; and

18 (B) the stock purchase agreement provided
19 that the indemnitor indemnified the indemnitee
20 and its affiliates for losses arising from various
21 matters, including asbestos claims—

22 (i) asserted before the date of the
23 agreement; and

1 (ii) filed after the date of the agree-
2 ment and prior to the 10-year anniversary
3 of the stock sale,

4 then the prior asbestos expenditures arising from the
5 asbestos claims described in clauses (i) and (ii) shall
6 not be for the account of either the indemnitor or
7 indemnitee.

8 (h) MINIMUM ANNUAL PAYMENTS.—

9 (1) IN GENERAL.—The aggregate annual pay-
10 ments of defendant participants to the Fund shall be
11 at least \$3,000,000,000 for each calendar year in
12 the first 30 years of the Fund, or until such shorter
13 time as the condition set forth in subsection (a)(2)
14 is attained.

15 (2) GUARANTEED PAYMENT ACCOUNT.—To the
16 extent payments in accordance with sections 202
17 and 203 (~~as modified by subsections (b), (d), (f) and~~
18 ~~(g) of this section~~) (*as modified by subsections (b),*
19 *(d), (f), (g), and (m) of this section*) fail in any year
20 to raise at least \$3,000,000,000 ~~net of any adjust-~~
21 ~~ments under subsection (d)~~ , *after applicable reduc-*
22 *tions or adjustments have been taken according to*
23 *subsections (d) and (m)*, the balance needed to meet
24 this required minimum aggregate annual payment

1 shall be obtained from the defendant guaranteed
 2 payment account established under subsection (k).

3 (3) GUARANTEED PAYMENT SURCHARGE.—To
 4 the extent the procedure set forth in paragraph (2)
 5 is insufficient to satisfy the required minimum ag-
 6 gregate annual payment ~~net of any adjustments~~
 7 ~~under subsection (d)~~, *after applicable reductions or*
 8 *adjustments have been taken according to subsections*
 9 *(d) and (m)*, the Administrator ~~may~~ *shall unless the*
 10 *Administrator implements a funding holiday under*
 11 *section 205(b)*, assess a guaranteed payment sur-
 12 charge under subsection (l).

13 (i) PROCEDURES FOR MAKING PAYMENTS.—

14 (1) INITIAL YEAR: TIERS II–VI.—

15 (A) IN GENERAL.—Not later than ~~120~~ 90
 16 days after enactment of this Act, each defend-
 17 ant participant that is included in Tiers II, III,
 18 IV, V, or VI shall file with the Administrator—

19 (i) a statement of whether the defend-
 20 ant participant irrevocably elects to report
 21 on a consolidated basis under subsection
 22 (f);

23 (ii) a good-faith estimate of its prior
 24 asbestos expenditures;

1 (iii) a statement of its 2002 revenues,
2 determined in accordance with section
3 203(a)(2); ~~and~~

4 (iv) payment in the amount specified
5 in section 203 for the lowest subtier of the
6 tier within which the defendant participant
7 falls, except that if the defendant partici-
8 pant, or the affiliated group including the
9 defendant participant, had 2002 revenues
10 exceeding \$3,000,000,000, it or its affili-
11 ated group shall pay the amount specified
12 for Subtier 3 of Tiers II, III, or IV or
13 Subtier 2 of Tiers V or VI, depending on
14 the applicable Tier; *and*

15 (v) *a signature page personally*
16 *verifying the truth of the statements and es-*
17 *timates described under this subparagraph,*
18 *as required under section 404 of the Sar-*
19 *banes-Oxley Act of 2002 (15 U.S.C. 7201 et*
20 *seq.).*

21 (B) RELIEF.—

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

1 payment obligation if the participant shows
2 that—

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

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

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

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

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

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

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

1 (D) in the case of debtors falling within
2 Subtier 1 of Tier I—

3 (i) a statement of the debtor's 2002
4 revenues, determined in accordance with
5 section 203(a)(2); ;

6 (ii) *for those debtors subject to the pay-*
7 *ment requirement of section*
8 *203(b)(2)(B)(ii), a statement whether its*
9 *prior asbestos expenditures do not exceed*
10 *\$10,000,000, and a description of its busi-*
11 *ness operations sufficient to show the re-*
12 *quirements of that section are met; and*

13 (iii) a payment under section
14 203(b)(2)(B);

15 (E) in the case of debtors falling within
16 Subtier 2 of Tier I, an assignment of its assets
17 under section 203(b)(3)(B); ~~and~~

18 (F) in the case of debtors falling within
19 Subtier 3 of Tier I, a payment under section
20 203(b)(4)(B), and a statement of how such
21 payment was calculated; and

22 (G) *a signature page personally verifying*
23 *the truth of the statements and estimates de-*
24 *scribed under this paragraph, as required under*

1 *section 404 of the Sarbanes-Oxley Act of 2002*
2 *(15 U.S.C. 7201 et seq.).*

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

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

10 (B) a statement of revenues calculated in
11 accordance with sections 203(a)(2) and 203(h);
12 and

13 (C) payment in the amount specified in
14 section 203(h).

15 (4) NOTICE TO PARTICIPANTS.—Not later than
16 240 days after enactment of this Act, the Adminis-
17 trator shall—

18 (A) directly notify all reasonably identifi-
19 able defendant participants of the requirement
20 to submit information necessary to calculate the
21 amount of any required payment to the Fund;
22 and

23 (B) publish in the Federal Register a no-
24 tice—

1 (i) setting forth the criteria in this
2 Act, and as prescribed by the Adminis-
3 trator in accordance with this Act, for pay-
4 ing under this subtitle as a defendant par-
5 ticipant and requiring any person who may
6 be a defendant participant to submit such
7 information; and

8 (ii) that includes a list of all defend-
9 ant participants notified by the Adminis-
10 trator under subparagraph (A), and pro-
11 vides for 30 days for the submission by the
12 public of comments or information regard-
13 ing the completeness and accuracy of the
14 list of identified defendant participants.

15 (5) RESPONSE REQUIRED.—

16 (A) IN GENERAL.—Any person who re-
17 ceives notice under paragraph (4)(A), and any
18 other person meeting the criteria specified in
19 the notice published under paragraph (4)(B),
20 shall provide the Administrator with an address
21 to send any notice from the Administrator in
22 accordance with this Act and all the informa-
23 tion required by the Administrator in accord-
24 ance with this subsection no later than the ear-
25 lier of—

1 (i) 30 days after the receipt of direct
2 notice; or

3 (ii) 30 days after the publication of
4 notice in the Federal Register.

5 (B) CERTIFICATION.—The response sub-
6 mitted under subparagraph (A) shall be signed
7 by a responsible corporate officer, general part-
8 ner, proprietor, or individual of similar author-
9 ity, who shall certify under penalty of law the
10 completeness and accuracy of the information
11 submitted.

12 (C) CONSENT TO AUDIT AUTHORITY.—The
13 response submitted under subparagraph (A)
14 shall include, on behalf of the defendant partici-
15 pant or affiliated group, a consent to the Ad-
16 ministrator's audit authority under section
17 221(d).

18 (6) NOTICE OF INITIAL DETERMINATION.—

19 (A) IN GENERAL.—

20 (i) NOTICE TO INDIVIDUAL.—Not
21 later than 60 days after receiving a re-
22 sponse under paragraph (5), the Adminis-
23 trator shall send the person a notice of ini-
24 tial determination identifying the tier and
25 subtier, if any, into which the person falls

1 and the annual payment obligation, if any,
2 to the Fund, which determination shall be
3 based on the information received from the
4 person under this subsection and any other
5 pertinent information available to the Ad-
6 ministrator and identified to the defendant
7 participant.

8 (ii) PUBLIC NOTICE.—Not later than
9 7 days after sending the notification of ini-
10 tial determination to defendant partici-
11 pants, the Administrator shall publish in
12 the Federal Register a notice listing the
13 defendant participants that have been sent
14 such notification, and the initial deter-
15 mination identifying the tier and subtier
16 assignment and annual payment obligation
17 of each identified participant.

18 (B) NO RESPONSE; INCOMPLETE RE-
19 SPONSE.—If no response in accordance with
20 paragraph (5) is received from a defendant par-
21 ticipant, or if the response is incomplete, the
22 initial determination shall be based on the best
23 information available to the Administrator.

24 (C) PAYMENTS.—Within 30 days of receiv-
25 ing a notice of initial determination requiring

1 payment, the defendant participant shall pay
2 the Administrator the amount required by the
3 notice, after deducting any previous payment
4 made by the participant under this subsection.
5 If the amount that the defendant participant is
6 required to pay is less than any previous pay-
7 ment made by the participant under this sub-
8 section, the Administrator shall credit any ex-
9 cess payment against the future payment obli-
10 gations of that defendant participant. The
11 pendency of a petition for rehearing under
12 paragraph (10) shall not stay the obligation of
13 the participant to make the payment specified
14 in the Administrator's notice.

15 (7) EXEMPTIONS FOR INFORMATION RE-
16 QUIRED.—

17 (A) PRIOR ASBESTOS EXPENDITURES.—In
18 lieu of submitting information related to prior
19 asbestos expenditures as may be required for
20 purposes of this subtitle, a non-debtor defend-
21 ant participant may consent to be assigned to
22 Tier II.

23 (B) REVENUES.—In lieu of submitting in-
24 formation related to revenues as may be re-
25 quired for purposes of this subtitle, a non-debt-

1 or defendant participant may consent to be as-
2 signed to Subtier 1 of the defendant partici-
3 pant's applicable tier.

4 (8) NEW INFORMATION.—

5 (A) EXISTING PARTICIPANT.—The Admin-
6 istrator shall adopt procedures for requiring ad-
7 ditional payment, or refunding amounts already
8 paid, based on new information received.

9 (B) ADDITIONAL PARTICIPANT.—If the
10 Administrator, at any time, receives information
11 that an additional person may qualify as a de-
12 fendant participant, the Administrator shall re-
13 quire such person to submit information nec-
14 essary to determine whether that person is re-
15 quired to make payments, and in what amount,
16 under this subtitle and shall make any deter-
17 mination or take any other act consistent with
18 this Act based on such information or any other
19 information available to the Administrator with
20 respect to such person.

21 (9) SUBPOENAS.—The Administrator may re-
22 quest the Attorney General to subpoena persons to
23 compel testimony, records, and other information
24 relevant to its responsibilities under this section. The
25 Attorney General may enforce such subpoena in ap-

1 appropriate proceedings in the United States district
2 court for the district in which the person to whom
3 the subpoena was addressed resides, was served, or
4 transacts business.

5 (10) REHEARING.—A defendant participant has
6 a right to obtain rehearing of the Administrator’s
7 determination under this subsection of the applicable
8 tier or subtier ~~and~~, of the Administrator’s deter-
9 mination under subsection (d) of a financial hard-
10 ship or inequity adjustment, *and of the Administra-*
11 *tor’s determination under subsection (m) of a dis-*
12 *tributor’s adjustment*, if the request for rehearing is
13 filed within 30 days after the defendant participant’s
14 receipt of notice from the Administrator of the de-
15 termination. A defendant participant may not file an
16 action under section 303 unless the defendant par-
17 ticipant requests a rehearing under this paragraph.
18 The Administrator shall publish a notice in the Fed-
19 eral Register of any change in a defendant partici-
20 pant’s tier or subtier assignment or payment obliga-
21 tion as a result of a rehearing.

22 (j) DEFENDANT HARDSHIP AND INEQUITY ADJUST-
23 MENT ACCOUNT.—

24 (1) IN GENERAL.—To the extent the total pay-
25 ments by defendant participants in any given year

1 exceed the minimum aggregate annual payments *re-*
2 *quired* under subsection (h), excess monies up to a
3 maximum of \$300,000,000 in any such year shall be
4 placed in a defendant hardship and inequity adjust-
5 ment account established within the Fund by the
6 Administrator.

7 (2) USE OF ACCOUNT MONIES.—Monies from
8 the defendant hardship and inequity adjustment ac-
9 count shall be preserved and administered like the
10 remainder of the Fund, but shall be reserved and
11 may be used only—

12 (A) to make up for any relief granted to a
13 defendant participant for severe financial hard-
14 ship or demonstrated inequity under subsection
15 (d) or to reimburse any defendant participant
16 granted such relief after its payment of the
17 amount otherwise due; and

18 (B) if the condition set forth in subsection
19 (a)(2) is met, for any purpose that the Fund
20 may serve under this Act.

21 (3) CARRYOVER OF UNUSED FUNDS.—To the
22 extent the Administrator does not, in any given year,
23 use all of the funds allocated to the account under
24 paragraph (1) for adjustments granted under sub-
25 section (d), remaining funds in the account shall be

1 carried forward for use by the Administrator for ad-
 2 justments in subsequent years.

3 (k) DEFENDANT GUARANTEED PAYMENT AC-
 4 COUNT.—

5 (1) IN GENERAL.—Subject to subsections (h)
 6 and (j), if there are excess monies paid by defendant
 7 participants in any given year, including any bank-
 8 ruptcy trust credits that may be due under section
 9 222~~(e)~~(d), such monies—

10 (A) at the discretion of the Administrator,
 11 may be used to provide additional adjustments
 12 under subsection (d), up to a maximum aggre-
 13 gate of \$50,000,000 in such year; and

14 (B) to the extent not used under subpara-
 15 graph (A), shall be placed in a defendant guar-
 16 anteed payment account established within the
 17 Fund by the Administrator.

18 (2) USE OF ACCOUNT MONIES.—Monies from
 19 the defendant guaranteed payment account shall be
 20 preserved and administered like the remainder of the
 21 Fund, but shall be reserved and may be used only—

22 (A) to ensure the minimum aggregate an-
 23 nual payment ~~set forth in~~ *required under* sub-
 24 section (h) ~~net of any adjustments under sub-~~
 25 section ~~(d)~~, *after applicable reductions or adjust-*

1 *ments have been taken according to subsections*
 2 *(d) and (m) is reached each year; and*

3 (B) if the condition set forth in subsection
 4 (a)(2) is met, for any purpose that the Fund
 5 may serve under this Act.

6 (1) GUARANTEED PAYMENT SURCHARGE.—

7 (1) IN GENERAL.—To the extent there are in-
 8 sufficient monies in the defendant guaranteed pay-
 9 ment account established in subsection (k) to attain
 10 the minimum aggregate annual payment *required*
 11 *under subsection (h) net of any adjustments under*
 12 ~~subsection (d)~~ in any given year, the Administrator
 13 ~~may~~ *shall, unless the Administrator implements a*
 14 *funding holiday under section 205(b), impose on each*
 15 defendant participant a surcharge as necessary to
 16 raise the balance required to attain the minimum
 17 aggregate annual payment *required under subsection*
 18 *(h) net of any adjustments under subsection (d)* as
 19 provided in this subsection. Any such surcharge shall
 20 be imposed on a pro rata basis, in accordance with
 21 each defendant participant's relative annual liability
 22 under sections 202 and 203 ~~(as modified by sub-~~
 23 ~~sections (b), (d), (f), and (g) of this section)~~ *(as*
 24 *modified by subsections (b), (d), (f), (g), and (m) of*
 25 *this section).*

1 (2) *LIMITATION.*—

2 (A) *IN GENERAL.*—*In no case shall the Ad-*
 3 *ministrator impose a surcharge under this sub-*
 4 *section on any defendant participant included in*
 5 *Subtier 3 of Tiers V or VI as described under*
 6 *section 203.*

7 (B) *REALLOCATION.*—*Any amount not im-*
 8 *posed under subparagraph (A) shall be reallo-*
 9 *cated on a pro-rata basis, in accordance with*
 10 *each defendant participant's (other than a de-*
 11 *fendant participant described under subpara-*
 12 *graph (A)) relative annual liability under sec-*
 13 *tions 202 and 203 (as modified by subsections*
 14 *(b), (d), (f), and (g) of this section).*

15 ~~(2)~~(3) *CERTIFICATION.*—

16 (A) *IN GENERAL.*—*Before imposing a*
 17 *guaranteed payment surcharge under this sub-*
 18 *section, the Administrator shall certify that he*
 19 *or she has used all reasonable efforts to collect*
 20 *mandatory payments for all defendant partici-*
 21 *pants, including by using the authority in sub-*
 22 *section (i)(9) of this section and section 223.*

23 (B) *NOTICE AND COMMENT.*—*Before mak-*
 24 *ing a final certification under subparagraph*
 25 *(C), the Administrator shall publish a notice in*

1 the Federal Register of a proposed certification
2 and provide in such notice for a public comment
3 period of 30 days.

4 (C) FINAL CERTIFICATION.—

5 (i) IN GENERAL.—The Administrator
6 shall publish a notice of the final certifi-
7 cation in the Federal Register after consid-
8 eration of all comments submitted under
9 subparagraph (B).

10 (ii) WRITTEN NOTICE.—Not later
11 than 30 days after publishing any final
12 certification under clause (i), the Adminis-
13 trator shall provide each defendant partici-
14 pant with written notice of that defendant
15 participant’s payment, including the
16 amount of any surcharge.

17 (m) ADJUSTMENTS FOR DISTRIBUTORS.—

18 (1) DEFINITION.—*In this subsection, the term*
19 *“distributor” means a person—*

20 (A) *whose prior asbestos expenditures arise*
21 *exclusively from the sale of products manufac-*
22 *tured by others;*

23 (B) *who did not prior to December 31,*
24 *2002, sell raw asbestos or a product containing*
25 *more than 95 percent asbestos by weight;*

1 (C) whose prior asbestos expenditures did
2 not arise out of—

3 (i) the manufacture, installation, re-
4 pair, reconditioning, maintaining, serv-
5 icing, constructing, or remanufacturing of
6 any product;

7 (ii) the control of the design, specifica-
8 tion, or manufacture of any product; or

9 (iii) the sale or resale of any product
10 under, as part of, or under the auspices of,
11 its own brand, trademark, or service mark;
12 and

13 (D) who is not subject to assignment under
14 section 202 to Tier I, II, III or VII.

15 (2) TIER REASSIGNMENT FOR DISTRIBUTORS.—

16 (A) IN GENERAL.—Notwithstanding section
17 202, the Administrator shall assign a distributor
18 to a Tier for purposes of this title under the pro-
19 cedures set forth in this paragraph.

20 (B) DESIGNATION.—After a final deter-
21 mination by the Administrator under section
22 204(i), any person who is, or any affiliated
23 group in which every member is, a distributor
24 may apply to the Administrator for adjustment
25 of its Tier assignment under this subsection.

1 *Such application shall be prepared in accord-*
2 *ance with such procedures as the Administrator*
3 *shall promulgate by rule. Once the Adminis-*
4 *trator designates a person or affiliated group as*
5 *a distributor under this subsection, such designa-*
6 *tion and the adjustment of tier assignment under*
7 *this subsection are final.*

8 *(C) PAYMENTS.—Any person or affiliated*
9 *group that seeks adjustment of its Tier assign-*
10 *ment under this subsection shall pay all amounts*
11 *required of it under this title until a final deter-*
12 *mination by the Administrator is made under*
13 *this subsection. Such payments may not be*
14 *stayed pending any appeal. The Administrator*
15 *shall grant any person or affiliated group a re-*
16 *fund or credit of any payments made if such ad-*
17 *justment results in a lower payment obligation.*

18 *(D) ADJUSTMENT.—Subject to paragraph*
19 *(3), any person or affiliated group that the Ad-*
20 *ministrator has designated as a distributor*
21 *under this subsection shall be given an adjust-*
22 *ment of Tier assignment as follows:*

23 *(i) A distributor that but for this sub-*
24 *section would be assigned to Tier IV shall be*
25 *deemed assigned to Tier V.*

1 (ii) A distributor that but for this sub-
2 section would be assigned to Tier V shall be
3 deemed assigned to Tier VI.

4 (iii) A distributor that but for this
5 subsection would be assigned to Tier VI
6 shall be deemed assigned to no Tier and
7 shall have no obligation to make any pay-
8 ment to the Fund under this Act.

9 (E) EXCLUSIVE TO INEQUITY ADJUST-
10 MENT.—Any person or affiliated group des-
11 ignated by the Administrator as a distributor
12 under this subsection shall not be eligible for an
13 inequity adjustment under subsection 204(d).

14 (3) LIMITATION ON ADJUSTMENTS.—The aggre-
15 gate total of distributor adjustments under this sub-
16 section in effect in any given year shall not exceed
17 \$50,000,000. If the aggregate total of distributors ad-
18 justments under this subsection would otherwise ex-
19 ceed \$50,000,000, then each distributor's adjustment
20 shall be reduced pro rata until the aggregate of all ad-
21 justments equals \$50,000,000.

22 (4) REHEARING.—A defendant participant has a
23 right to obtain a rehearing of the Administrator's de-
24 termination on an adjustment under this subsection
25 under the procedures prescribed in subsection (i)(10).

1 **SEC. 205. STEPDOWN AND FUNDING HOLIDAYS.**

2 (a) STEPDOWN.—

3 (1) IN GENERAL.—Subject to paragraph (2),
4 the minimum aggregate annual funding obligation
5 under section 204(h) shall be reduced by 10 percent
6 of the initial minimum aggregate funding obligation
7 at the end of the tenth, fifteenth, twentieth, and
8 twenty-fifth years after the date of enactment of this
9 Act. The reductions under this paragraph shall be
10 applied on an equal pro rata basis to the funding ob-
11 ligations of all defendant participants, except with
12 respect to defendant participants in Tier 1, Subtiers
13 2 and 3, and class action trusts.

14 (2) LIMITATION.—The Administrator shall sus-
15 pend, cancel, reduce, or delay any reduction under
16 paragraph (1) if at any time the Administrator
17 finds, in accordance with subsection (c), that such
18 action is necessary and appropriate to ensure that
19 the assets of the Fund and expected future pay-
20 ments remain sufficient to satisfy the Fund's antici-
21 pated obligations.

22 (b) FUNDING HOLIDAYS.—

23 (1) IN GENERAL.—If the Administrator deter-
24 mines, at any time after 10 years following the date
25 of enactment of this Act, that the assets of the Fund
26 at the time of such determination and expected fu-

1 ture payments, taking into consideration any reduc-
2 tions under subsection (a), are sufficient to satisfy
3 the Fund's anticipated obligations without the need
4 for all, or any portion of, that year's payment other-
5 wise required under this subtitle, the Administrator
6 shall reduce or waive all or any part of the payments
7 required from defendant participants for that year.

8 (2) ANNUAL REVIEW.—The Administrator shall
9 undertake the review required by this subsection and
10 make the necessary determination under paragraph
11 (1) every year.

12 (3) LIMITATIONS ON FUNDING HOLIDAYS.—Any
13 reduction or waiver of the defendant participants'
14 funding obligations shall—

15 (A) be made only to the extent the Admin-
16 istrator determines that the Fund will still be
17 able to satisfy all of its anticipated obligations;
18 and

19 (B) be applied on an equal pro rata basis
20 to the funding obligations of all defendant par-
21 ticipants, except with respect to defendant par-
22 ticipants in Subtiers 2 and 3 of Tier I and class
23 action trusts, for that year.

24 (4) NEW INFORMATION.—If at any time the
25 Administrator determines that a reduction or waiver

1 under this section may cause the assets of the Fund
2 and expected future payments to decrease to a level
3 at which the Fund may not be able to satisfy all of
4 its anticipated obligations, the Administrator shall
5 revoke all or any part of such reduction or waiver
6 to the extent necessary to ensure that the Fund's
7 obligations are met. Such revocations shall be ap-
8 plied on an equal pro rata basis to the funding obli-
9 gations of all defendant participants, except defend-
10 ant participants in Subtiers 2 and 3 of Tier I and
11 class action trusts, for that year.

12 (c) CERTIFICATION.—

13 (1) IN GENERAL.—Before suspending, can-
14 celing, reducing, or delaying any reduction under
15 subsection (a) or granting or revoking a reduction or
16 waiver under subsection (b), the Administrator shall
17 certify that the requirements of this section are sat-
18 isfied.

19 (2) NOTICE AND COMMENT.—Before making a
20 final certification under this subsection, the Admin-
21 istrator shall publish a notice in the Federal Reg-
22 ister of a proposed certification and a statement of
23 the basis therefor and provide in such notice for a
24 public comment period of 30 days.

25 (3) FINAL CERTIFICATION.—

1 (A) IN GENERAL.—The Administrator
 2 shall publish a notice of the final certification in
 3 the Federal Register after consideration of all
 4 comments submitted under paragraph (2).

5 (B) WRITTEN NOTICE.—Not later than 30
 6 days after publishing any final certification
 7 under subparagraph (A), the Administrator
 8 shall provide each defendant participant with
 9 written notice of that defendant’s funding obli-
 10 gation for that year.

11 **SEC. 206. ACCOUNTING TREATMENT.**

12 *Defendant participants payment obligations to the*
 13 *Fund shall be subject to discounting under the applicable*
 14 *accounting guidelines for generally accepted accounting*
 15 *purposes and statutory accounting purposes for each de-*
 16 *fendant participant. This section shall in no way reduce*
 17 *the amount of monetary payments to the Fund by defendant*
 18 *participants as required under section 202(a)(2).*

19 **Subtitle B—Asbestos Insurers**
 20 **Commission**

21 **SEC. 210. DEFINITION.**

22 In this subtitle, the term “captive insurance com-
 23 pany” means a company—

24 (1) whose entire beneficial interest is owned on
 25 the date of enactment of this Act, directly or indi-

1 rectly, by a defendant participant or by the ultimate
2 parent or the affiliated group of a defendant partici-
3 pant;

4 (2) whose primary commercial business during
5 the period from calendar years 1940 through 1986
6 was to provide insurance to its ultimate parent or
7 affiliated group, or any portion of the affiliated
8 group or a combination thereof; and

9 (3) that was incorporated or operating no later
10 than December 31, 2003.

11 **SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COM-**
12 **MISSION.**

13 (a) ESTABLISHMENT.—There is established the As-
14 bestos Insurers Commission (referred to in this subtitle
15 as the “Commission”) to carry out the duties described
16 in section 212.

17 (b) MEMBERSHIP.—

18 (1) APPOINTMENT.—The Commission shall be
19 composed of 5 members who shall be appointed by
20 the President, by and with the advice and consent
21 of the Senate.

22 (2) QUALIFICATIONS.—

23 (A) EXPERTISE.—Members of the Com-
24 mission shall have sufficient expertise to fulfill
25 their responsibilities under this subtitle.

1 (B) CONFLICT OF INTEREST.—

2 (i) IN GENERAL.—No member of the
3 Commission appointed under paragraph
4 (1) may be an employee or immediate fam-
5 ily member of an employee of an insurer
6 participant. No member of the Commission
7 shall be a shareholder of any insurer par-
8 ticipant. No member of the Commission
9 shall be a former officer or director, or a
10 former employee or former shareholder of
11 any insurer participant who was such an
12 employee, shareholder, officer, or director
13 at any time during the 2-year period end-
14 ing on the date of the appointment, unless
15 that is fully disclosed before consideration
16 in the Senate of the nomination for ap-
17 pointment to the Commission.

18 (ii) DEFINITION.—In clause (i), the
19 term “shareholder” shall not include a
20 broadly based mutual fund that includes
21 the stocks of insurer participants as a por-
22 tion of its overall holdings.

23 (C) FEDERAL EMPLOYMENT.—A member
24 of the Commission may not be an officer or em-

1 ployee of the Federal Government, except by
2 reason of membership on the Commission.

3 (3) PERIOD OF APPOINTMENT.—Members shall
4 be appointed for the life of the Commission.

5 (4) VACANCIES.—Any vacancy in the Commis-
6 sion shall be filled in the same manner as the origi-
7 nal appointment.

8 (5) CHAIRMAN.—The President shall select a
9 Chairman from among the members of the Commis-
10 sion.

11 (c) MEETINGS.—

12 (1) INITIAL MEETING.—Not later than 30 days
13 after the date on which all members of the Commis-
14 sion have been appointed, the Commission shall hold
15 its first meeting.

16 (2) SUBSEQUENT MEETINGS.—The Commission
17 shall meet at the call of the Chairman, as necessary
18 to accomplish the duties under section 212.

19 (3) QUORUM.—No business may be conducted
20 or hearings held without the participation of a ma-
21 jority of the members of the Commission.

22 **SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.**

23 (a) DETERMINATION OF INSURER PAYMENT OBLIGA-
24 TIONS.—

25 (1) IN GENERAL.—

1 (A) DEFINITIONS.—For the purposes of
2 this Act, the terms “insurer” and “insurer par-
3 ticipant” shall, unless stated otherwise, include
4 direct insurers and reinsurers, as well as any
5 run-off entity established, in whole or in part,
6 to review and pay asbestos claims.

7 (B) PROCEDURES FOR DETERMINING IN-
8 SURER PAYMENTS.—The Commission shall de-
9 termine the amount that each insurer partici-
10 pant shall be required to pay into the Fund
11 under the procedures described in this section.
12 The Commission shall make this determination
13 by first promulgating a rule establishing a
14 methodology for allocation of payments among
15 insurer participants and then applying such
16 methodology to determine the individual pay-
17 ment for each insurer participant. The method-
18 ology may include 1 or more allocation formulas
19 to be applied to all insurer participants or
20 groups of similarly situated participants. The
21 Commission’s rule shall include a methodology
22 for adjusting payments by insurer participants
23 to make up, during any applicable payment
24 year, any amount by which aggregate insurer
25 payments fall below the level required in para-

1 ~~graph (3)(C).~~ *to make up, during the first 5*
2 *years of the life of the Fund and any subsequent*
3 *years as provided in section 405(e) for any re-*
4 *duction in an insurer participant's annual allo-*
5 *cated amount caused by the granting of a finan-*
6 *cial hardship or exceptional circumstance adjust-*
7 *ment under this section, and any amount by*
8 *which aggregate insurer payments fall below the*
9 *level required under paragraph (3)(C) by reason*
10 *of the failure or refusal of any insurer partici-*
11 *part to make a required payment, or for any*
12 *other reason that causes such payments to fall*
13 *below the level required under paragraph (3)(C).*

14 The Commission shall conduct a thorough study
15 (within the time limitations under this subpara-
16 graph) of the accuracy of the reserve allocation
17 of each insurer participant, and may request in-
18 formation from the Securities and Exchange
19 Commission or any State regulatory agency.
20 Under this procedure, not later than 120 days
21 after the initial meeting of the Commission, the
22 Commission shall commence a rulemaking pro-
23 ceeding under section 213(a) to propose and
24 adopt a methodology for allocating payments
25 among insurer participants. In proposing an al-

1 location methodology, the Commission may con-
2 sult with such actuaries and other experts as it
3 deems appropriate. After hearings and public
4 comment on the proposed allocation method-
5 ology, the Commission shall as promptly as pos-
6 sible promulgate a final rule establishing such
7 methodology. After promulgation of the final
8 rule, the Commission shall determine the indi-
9 vidual payment of each insurer participant
10 under the procedures set forth in subsection
11 (b).

12 (C) SCOPE.—Every insurer, reinsurer, and
13 runoff entity with asbestos-related obligations
14 in the United States shall be subject to the
15 Commission’s and Administrator’s authority
16 under this Act, including allocation determina-
17 tions, and shall be required to fulfill its pay-
18 ment obligation without regard as to whether it
19 is licensed in the United States. Every insurer
20 participant not licensed or domiciled in the
21 United States shall, upon the first payment to
22 the Fund, submit a written consent to the Com-
23 mission’s and Administrator’s authority under
24 this Act, and to the jurisdiction of the courts of
25 the United States for purposes of enforcing this

1 Act, in a form determined by the Adminis-
2 trator. Any insurer participant refusing to pro-
3 vide a written consent shall be subject to fines
4 and penalties as provided in section 223.

5 (D) ISSUERS OF FINITE RISK POLICIES.—

6 (i) IN GENERAL.—The issuer of any
7 policy of *retrospective* reinsurance pur-
8 chased by an insurer participant or its af-
9 filiate after 1990 that provides for a *risk*
10 *or* loss transfer to insure for ~~incurred~~ as-
11 bestos losses and other losses (both known
12 and unknown), including those policies
13 commonly referred to as “finite risk”, “ag-
14 gregate stop loss”, “aggregate excess of
15 loss”, or “loss portfolio transfer” policies,
16 shall be obligated to make payments re-
17 quired under this Act directly to the Fund
18 on behalf of the insurer participant who is
19 the beneficiary of such policy, subject to
20 the underlying retention and the limits of
21 liability applicable to such policy.

22 (ii) PAYMENTS.—Payments to the
23 Fund required under this Act shall be
24 treated as loss payments for asbestos bod-
25 ily injury (as if such payments were in-

1 curred as liabilities imposed in the tort
2 system) and shall not be subject to exclu-
3 sion under policies described under clause
4 (i) as a liability with respect to tax or as-
5 sessment. Within 90 days after the sched-
6 uled date to make an annual payment to
7 the Fund, the insurer participant shall, at
8 its discretion, direct the reinsurer issuing
9 such policy to pay all or a portion of the
10 annual payment directly to the Fund up to
11 the full applicable limits of liability under
12 the policy. The reinsurer issuing such pol-
13 icy shall be obligated to make such pay-
14 ments directly to the Fund and shall be
15 subject to the enforcement provisions
16 under section 223. The insurer participant
17 shall remain obligated to make payment to
18 the Fund of that portion of the annual
19 payment not directed to the issuer of such
20 reinsurance policy.

21 (2) AMOUNT OF PAYMENTS.—

22 (A) AGGREGATE PAYMENT OBLIGATION.—

23 The total payment required of all insurer par-
24 ticipants over the life of the Fund shall be

1 equal to \$46,025,000,000, *less any bankruptcy*
2 *trust credits under section 222(d).*

3 (B) ACCOUNTING STANDARDS.—In deter-
4 mining the payment obligations of participants
5 that are not licensed or domiciled in the United
6 States or that are runoff entities, the Commis-
7 sion shall use accounting standards required for
8 United States licensed direct insurers.

9 (C) CAPTIVE INSURANCE COMPANIES.—No
10 payment to the Fund shall be required from a
11 captive insurance company, unless and only to
12 the extent a captive insurance company, on the
13 date of enactment of this Act, has liability, di-
14 rectly or indirectly, for any asbestos claim of a
15 person or persons other than and unaffiliated
16 with its ultimate parent or affiliated group or
17 pool in which the ultimate parent participates
18 or participated, or unaffiliated with a person
19 that was its ultimate parent or a member of its
20 affiliated group or pool at the time the relevant
21 insurance or reinsurance was issued by the cap-
22 tive insurance company.

23 (D) SEVERAL LIABILITY.—Unless other-
24 wise provided under this Act, each insurer par-
25 ticipant's obligation to make payments to the

1 Fund is several. Unless otherwise provided
2 under this Act, there is no joint liability, and
3 the future insolvency by any insurer participant
4 shall not affect the payment required of any
5 other insurer participant.

6 (3) PAYMENT OF CRITERIA.—

7 (A) INCLUSION IN INSURER PARTICIPANT
8 CATEGORY.—

9 (i) IN GENERAL.—Insurers that have
10 paid, or been assessed by a legal judgment
11 or settlement, at least \$1,000,000 in de-
12 fense and indemnity costs before the date
13 of enactment of this Act in response to
14 claims for compensation for asbestos inju-
15 ries arising from a policy of liability insur-
16 ance or contract of liability reinsurance or
17 retrocessional reinsurance shall be insurer
18 participants in the Fund. Other insurers
19 shall be exempt from mandatory payments.

20 (ii) INAPPLICABILITY OF SECTION
21 202.—Since insurers may be subject in cer-
22 tain jurisdictions to direct action suits, and
23 it is not the intent of this Act to impose
24 upon an insurer, due to its operation as an
25 insurer, payment obligations to the Fund

1 in situations where the insurer is the sub-
 2 ject of a direct action, no insurer subject
 3 to mandatory payments under *this* section
 4 ~~212~~ shall also be liable for payments to the
 5 Fund as a defendant participant under
 6 section 202.

7 (B) INSURER PARTICIPANT ALLOCATION
 8 METHODOLOGY.—

9 (i) IN GENERAL.—The Commission
 10 shall establish the payment obligations of
 11 individual insurer participants to reflect,
 12 on an equitable basis, the relative tort sys-
 13 tem liability of the participating insurers in
 14 the absence of this Act, considering and
 15 weighting, as appropriate (but exclusive of
 16 workers' compensation), such factors as—

17 (I) historic premium for lines of
 18 insurance associated with asbestos ex-
 19 posure over relevant periods of time;

20 (II) recent loss experience for as-
 21 bestos liability;

22 (III) amounts reserved for asbes-
 23 tos liability;

24 (IV) the likely cost to each in-
 25 surer participant of its future liabil-

1 ities under applicable insurance poli-
2 cies; and

3 (V) any other factor the Commis-
4 sion may determine is relevant and
5 appropriate.

6 (ii) DETERMINATION OF RESERVES.—

7 The Commission may establish procedures
8 and standards for determination of the as-
9 bestos reserves of insurer participants. The
10 reserves of a United States licensed rein-
11 surer that is wholly owned by, or under
12 common control of, a United States li-
13 censed direct insurer shall be included as
14 part of the direct insurer's reserves when
15 the reinsurer's financial results are in-
16 cluded as part of the direct insurer's
17 United States operations, as reflected in
18 footnote 33 of its filings with the National
19 Association of Insurance Commissioners or
20 in published financial statements prepared
21 in accordance with generally accepted ac-
22 counting principles.

23 (C) PAYMENT SCHEDULE.—The aggregate
24 annual amount of payments by insurer partici-

1 pants over the life of the Fund shall be as fol-
2 lows:

3 (i) For years 1 and 2, \$2,700,000,000
4 annually.

5 (ii) For years 3 through 5,
6 \$5,075,000,000 annually.

7 (iii) For years 6 through 27,
8 \$1,147,000,000 annually.

9 (iv) For year 28, \$166,000,000.

10 (D) CERTAIN RUNOFF ENTITIES.—

11 (i) ~~IN GENERAL.~~—Whenever the Com-
12 mission requires payments by a runoff en-
13 tity that has assumed asbestos-related li-
14 abilities from a Lloyd's syndicate or names
15 that are members of such a syndicate, the
16 Commission shall not require payments
17 from such syndicates and names to the ex-
18 tent that the runoff entity makes its re-
19 quired payments. In addition, such syn-
20 dicates and names shall be required to
21 make payments to the Fund in the amount
22 of any adjustment granted to the runoff
23 entity for severe financial hardship or ex-
24 ceptional circumstances.

1 (ii) ~~INCLUDED RUNOFF ENTITIES.~~—

2 Subject to clause (i), a A runoff entity
3 shall include any direct insurer or rein-
4 surer whose asbestos liability reserves have
5 been transferred, directly or indirectly, to
6 the runoff entity and on whose behalf the
7 runoff entity handles or adjusts and, where
8 appropriate, pays asbestos claims.

9 (E) FINANCIAL HARDSHIP AND EXCEP-
10 TIONAL CIRCUMSTANCE ADJUSTMENTS.—

11 (i) IN GENERAL.—Under the proce-
12 dures established in subsection (b), an in-
13 surer participant may seek adjustment of
14 the amount of its payments based on ex-
15 ceptional circumstances or severe financial
16 hardship.

17 (ii) FINANCIAL ADJUSTMENTS.—An
18 insurer participant may qualify for an ad-
19 justment based on severe financial hard-
20 ship by demonstrating that payment of the
21 amounts required by the Commission's
22 methodology would jeopardize the solvency
23 of such participant.

24 (iii) EXCEPTIONAL CIRCUMSTANCE
25 ADJUSTMENT.—An insurer participant

1 may qualify for an adjustment based on
2 exceptional circumstances by dem-
3 onstrating—

4 (I) that the amount of its pay-
5 ments under the Commission’s alloca-
6 tion methodology is exceptionally in-
7 equitable when measured against the
8 amount of the likely cost to the par-
9 ticipant of its future liability in the
10 tort system in the absence of the
11 Fund;

12 (II) an offset credit as described
13 in subparagraphs (A) and (C) of sub-
14 section (b)(4); or

15 (III) other exceptional cir-
16 cumstances.

17 The Commission may determine whether
18 to grant an adjustment and the size of any
19 such adjustment, but adjustments shall not
20 reduce the aggregate payment obligations
21 such adjustment, but except as provided
22 under paragraph (1)(B), subsection (f)(3),
23 and section 405(e), any such adjustment
24 shall not affect the aggregate payment obli-
25 gations of insurer participants specified in

1 paragraph (2)(A) and subparagraph (C) of
2 this paragraph.

3 (iv) TIME PERIOD OF ADJUSTMENT.—

4 Except for adjustments for offset credits,
5 adjustments granted under this subsection
6 shall have a term not to exceed 3 years. An
7 insurer participant may renew its adjust-
8 ment by demonstrating to the Adminis-
9 trator that it remains justified.

10 (F) FUNDING HOLIDAYS.—

11 (i) *IN GENERAL.*—*If the Administrator*
12 *determines, at any time after 10 years fol-*
13 *lowing the date of enactment of this Act,*
14 *that the assets of the Fund at the time of*
15 *such determination and expected future*
16 *payments are sufficient to satisfy the*
17 *Fund's anticipated obligations without the*
18 *need for all, or any portion of, that year's*
19 *payment otherwise required under this sub-*
20 *title, the Administrator shall reduce or*
21 *waive all or any part of the payments re-*
22 *quired from insurer participants for that*
23 *year.*

24 (ii) *ANNUAL REVIEW.*—*The Adminis-*
25 *trator shall undertake the review required*

1 by this subsection and make the necessary
2 determination under clause (i) every year.

3 (iii) *LIMITATIONS OF FUNDING HOLI-*
4 *DAYS.—Any reduction or waiver of the in-*
5 *surer participants' funding obligations*
6 *shall—*

7 (I) *be made only to the extent the*
8 *Administrator determines that the*
9 *Fund will still be able to satisfy all of*
10 *its anticipated obligations; and*

11 (II) *be applied on an equal pro*
12 *rata basis to the funding obligations of*
13 *all insurer participants for that year.*

14 (iv) *NEW INFORMATION.—If at any*
15 *time the Administrator determines that a*
16 *reduction or waiver under this section may*
17 *cause the assets of the Fund and expected*
18 *future payments to decrease to a level at*
19 *which the Fund may not be able to satisfy*
20 *all of its anticipated obligations, the Ad-*
21 *ministrator shall revoke all or any part of*
22 *such reduction or waiver to the extent nec-*
23 *essary to ensure that the Fund's obligations*
24 *are met. Such revocations shall be applied*
25 *on an equal pro rata basis to the funding*

1 *obligations of all insurer participants for*
2 *that year.*

3 (b) PROCEDURE FOR NOTIFYING INSURER PARTICI-
4 PANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

5 (1) NOTICE TO PARTICIPANTS.—Not later than
6 30 days after promulgation of the final rule estab-
7 lishing an allocation methodology under subsection
8 (a)(1), the Commission shall—

9 (A) directly notify all reasonably identifi-
10 able insurer participants of the requirement to
11 submit information necessary to calculate the
12 amount of any required payment to the Fund
13 under the allocation methodology; and

14 (B) publish in the Federal Register a no-
15 tice—

16 (i) requiring any person who may be
17 an insurer participant (as determined by
18 criteria outlined in the notice) to submit
19 such information; and

20 (ii) that includes a list of all insurer
21 participants notified by the Commission
22 under subparagraph (A), and provides for
23 30 days for the submission of comments or
24 information regarding the completeness

1 and accuracy of the list of identified in-
2 surer participants.

3 (2) RESPONSE REQUIRED BY INDIVIDUAL IN-
4 SURER PARTICIPANTS.—

5 (A) IN GENERAL.—Any person who re-
6 ceives notice under paragraph (1)(A), and any
7 other person meeting the criteria specified in
8 the notice published under paragraph (1)(B),
9 shall respond by providing the Commission with
10 all the information requested in the notice
11 under a schedule or by a date established by
12 the Commission.

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

20 (3) NOTICE TO INSURER PARTICIPANTS OF INI-
21 TIAL PAYMENT DETERMINATION.—

22 (A) IN GENERAL.—

23 (i) NOTICE TO INSURERS.—Not later
24 than 120 days after receipt of the informa-
25 tion required by paragraph (2), the Com-

1 mission shall send each insurer participant
2 a notice of initial determination requiring
3 payments to the Fund, which shall be
4 based on the information received from the
5 participant in response to the Commis-
6 sion's request for information. An insurer
7 participant's payments shall be payable
8 over the schedule established in subsection
9 (a)(3)(C), in annual amounts proportionate
10 to the aggregate annual amount of pay-
11 ments for all insurer participants for the
12 applicable year.

13 (ii) PUBLIC NOTICE.—Not later than
14 7 days after sending the notification of ini-
15 tial determination to insurer participants,
16 the Commission shall publish in the Fed-
17 eral Register a notice listing the insurer
18 participants that have been sent such noti-
19 fication, and the initial determination on
20 the payment obligation of each identified
21 participant.

22 (B) NO RESPONSE; INCOMPLETE RE-
23 SPONSE.—If no response is received from an in-
24 surer participant, or if the response is incom-
25 plete, the initial determination requiring a pay-

1 ment from the insurer participant shall be
2 based on the best information available to the
3 Commission.

4 (4) COMMISSION REVIEW, REVISION, AND FI-
5 NALIZATION OF INITIAL PAYMENT DETERMINA-
6 TIONS.—

7 (A) COMMENTS FROM INSURER PARTICI-
8 PANTS.—Not later than 30 days after receiving
9 a notice of initial determination from the Com-
10 mission, an insurer participant may provide the
11 Commission with additional information to sup-
12 port adjustments to the required payments to
13 reflect severe financial hardship or exceptional
14 circumstances, including the provision of an off-
15 set credit for an insurer participant for the
16 amount of any asbestos-related payments it
17 made or was legally obligated to make, includ-
18 ing payments released from an escrow, as the
19 result of a bankruptcy judicially confirmed after
20 May 22, 2003, but before the date of enactment
21 of this Act.

22 (B) ADDITIONAL PARTICIPANTS.—If, be-
23 fore the final determination of the Commission,
24 the Commission receives information that an
25 additional person may qualify as an insurer

1 participant, the Commission shall require such
2 person to submit information necessary to de-
3 termine whether payments from that person
4 should be required, in accordance with the re-
5 quirements of this subsection.

6 (C) REVISION PROCEDURES.—The Com-
7 mission shall adopt procedures for revising ini-
8 tial payments based on information received
9 under subparagraphs (A) and (B), including a
10 provision requiring an offset credit for an in-
11 surer participant for the amount of any asbes-
12 tos-related payments it made or was legally ob-
13 ligated to make, including payments released
14 from an escrow, as the result of a bankruptcy
15 confirmed after May 22, 2003, but before the
16 date of enactment of this Act.

17 (5) EXAMINATIONS AND SUBPOENAS.—

18 (A) EXAMINATIONS.—The Commission
19 may conduct examinations of the books and
20 records of insurer participants to determine the
21 completeness and accuracy of information sub-
22 mitted, or required to be submitted, to the
23 Commission for purposes of determining partic-
24 ipant payments.

1 (B) SUBPOENAS.—The Commission may
2 request the Attorney General to subpoena per-
3 sons to compel testimony, records, and other in-
4 formation relevant to its responsibilities under
5 this section. The Attorney General may enforce
6 such subpoena in appropriate proceedings in
7 the United States district court for the district
8 in which the person to whom the subpoena was
9 addressed resides, was served, or transacts
10 business.

11 (6) ESCROW PAYMENTS.—Without regard to an
12 insurer participant’s payment obligation under this
13 section, any escrow or similar account established
14 before the date of enactment of this Act by an in-
15 surer participant in connection with an asbestos
16 trust fund that has not been judicially confirmed by
17 final order by the date of enactment of this Act shall
18 be the property of the insurer participant and re-
19 turned to that insurer participant.

20 (7) NOTICE TO INSURER PARTICIPANTS OF
21 FINAL PAYMENT DETERMINATIONS.—Not later than
22 60 days after the notice of initial determination is
23 sent to the insurer participants, the Commission
24 shall send each insurer participant a notice of final
25 determination.

1 (c) INSURER PARTICIPANTS VOLUNTARY ALLOCA-
2 TION AGREEMENT.—

3 (1) IN GENERAL.—Not later than 30 days after
4 the Commission proposes its rule establishing an al-
5 location methodology under subsection (a)(1), direct
6 insurer participants licensed or domiciled in the
7 United States, other direct insurer participants, re-
8 insurer participants licensed or domiciled in the
9 United States, or other reinsurer participants, may
10 submit an allocation agreement, approved by all of
11 the participants in the applicable group, to the Com-
12 mission.

13 (2) ALLOCATION AGREEMENT.—To the extent
14 the participants in any such applicable group volun-
15 tarily agree upon an allocation arrangement, any
16 such allocation agreement shall only govern the allo-
17 cation of payments within that group and shall not
18 determine the aggregate amount due from that
19 group.

20 (3) CERTIFICATION.—The Commission shall de-
21 termine whether an allocation agreement submitted
22 under subparagraph (A) meets the requirements of
23 this subtitle and, if so, shall certify the agreement
24 as establishing the allocation methodology governing
25 the individual payment obligations of the partici-

1 participants who are parties to the agreement. The author-
2 ity of the Commission under this subtitle shall, with
3 respect to participants who are parties to a certified
4 allocation agreement, terminate on the day after the
5 Commission certifies such agreement. Under sub-
6 section (f), the Administrator shall assume responsi-
7 bility, if necessary, for calculating the individual
8 payment obligations of participants who are parties
9 to the certified agreement.

10 (d) COMMISSION REPORT.—

11 (1) RECIPIENTS.—Until the work of the Com-
12 mission has been completed and the Commission ter-
13 minated, the Commission shall submit an annual re-
14 port, containing the information described under
15 paragraph (2), to—

16 (A) the Committee on the Judiciary of the

17 Senate;

18 (B) the Committee on the Judiciary of the

19 House of Representatives; and

20 (C) the Administrator.

21 (2) CONTENTS.—The report under paragraph
22 (1) shall state the amount that each insurer partici-
23 pant is required to pay to the Fund, including the
24 payment schedule for such payments.

25 (e) INTERIM PAYMENTS.—

1 (1) *AUTHORITY OF ADMINISTRATOR.*—During
2 the period between the date of enactment of this Act
3 and the date when the Commission issues its final
4 determinations of payments, the Administrator shall
5 have the authority to require insurer participants to
6 make interim payments to the Fund to assure ade-
7 quate funding by insurer participants during such
8 period.

9 (2) *AMOUNT OF INTERIM PAYMENTS.*—During
10 any applicable year, the Administrator may require
11 insurer participants to make aggregate interim pay-
12 ments not to exceed the annual aggregate amount
13 specified in subsection (a)(3)(C).

14 (3) *ALLOCATION OF PAYMENTS.*—Interim pay-
15 ments shall be allocated among individual insurer
16 participants on an equitable basis as determined by
17 the Administrator. All payments required under this
18 subparagraph shall be credited against the partici-
19 pant's ultimate payment obligation to the Fund es-
20 tablished by the Commission. If an interim payment
21 exceeds the ultimate payment, the Fund shall pay
22 interest on the amount of the overpayment at a rate
23 determined by the Administrator. If the ultimate
24 payment exceeds the interim payment, the partici-
25 pant shall pay interest on the amount of the under-

1 payment at the same rate. Any participant may seek
 2 an exemption from or reduction in any payment re-
 3 quired under this subsection under the financial
 4 hardship and exceptional circumstance standards es-
 5 tablished in subsection (a)(3)(D).

6 ~~(4) APPEAL OF INTERIM PAYMENT DECISIONS.—~~
 7 ~~A decision by the Administrator to establish~~
 8 ~~an interim payment obligation shall be considered~~
 9 ~~final agency action and reviewable under section~~
 10 ~~303, except that the reviewing court may not stay an~~
 11 ~~interim payment during the pendency of the appeal.~~

12 *(e) INTERIM PAYMENTS.—*

13 *(1) AMOUNT OF INTERIM PAYMENT.—Within 90*
 14 *days after the date of enactment of this Act, insurer*
 15 *participants shall make an aggregate payment to the*
 16 *Fund not to exceed 50 percent of the aggregate fund-*
 17 *ing obligation specified under subsection (a)(3)(C) for*
 18 *year 1.*

19 *(2) RESERVE INFORMATION.—Within 30 days*
 20 *after the date of enactment of this Act, each insurer*
 21 *participant shall submit to the Administrator a cer-*
 22 *tified statement of its net held reserves for asbestos li-*
 23 *abilities as of December 31, 2004.*

24 *(3) ALLOCATION OF INTERIM PAYMENT.—The*
 25 *Administrator shall allocate the interim payment*

1 among the individual insurer participants on an eq-
2 uitable basis using the net held asbestos reserve infor-
3 mation provided by insurer participants under sub-
4 section (a)(3)(B). Within 60 days after the date of en-
5 actment of this Act, the Administrator shall publish
6 in the Federal Register the name of each insurer par-
7 ticipant, and the amount of the insurer participant's
8 allocated share of the interim payment. The use of net
9 held asbestos reserves as the basis to determine an in-
10 terim allocation shall not be binding on the Adminis-
11 trator in the determination of an appropriate final
12 allocation methodology under this section. All pay-
13 ments required under this paragraph shall be credited
14 against the participant's ultimate payment obligation
15 to the Fund established by the Commission. If an in-
16 terim payment exceeds the ultimate payment, the
17 Fund shall pay interest on the amount of the over-
18 payment at a rate determined by the Administrator.
19 If the ultimate payment exceeds the interim payment,
20 the participant shall pay interest on the amount of
21 the underpayment at the same rate. Any participant
22 may seek an exemption from or reduction in any
23 payment required under this subsection under the fi-
24 nancial hardship and exceptional circumstance stand-
25 ards established under subsection (a)(3)(E).

1 (4) *APPEAL OF INTERIM PAYMENT DECISIONS.*—
2 *A decision by the Administrator to establish an in-*
3 *terim payment obligation shall be considered final*
4 *agency action and reviewable under section 303, ex-*
5 *cept that the reviewing court may not stay an in-*
6 *terim payment during the pendency of the appeal.*

7 (f) **TRANSFER OF AUTHORITY FROM THE COMMISS-**
8 **SION TO THE ADMINISTRATOR.**—

9 (1) **IN GENERAL.**—Upon termination of the
10 Commission under section 215, the Administrator
11 shall assume all the responsibilities and authority of
12 the Commission, except that the Administrator shall
13 not have the power to modify the allocation method-
14 ology established by the Commission or by certified
15 agreement or to promulgate a rule establishing any
16 such methodology.

17 (2) **FINANCIAL HARDSHIP AND EXCEPTIONAL**
18 **CIRCUMSTANCE ADJUSTMENTS.**—Upon termination
19 of the Commission under section 215, the Adminis-
20 trator shall have the authority, upon application by
21 any insurer participant, to make adjustments to an-
22 nual payments upon the same grounds as provided
23 in subsection (a)(3)(D). Adjustments granted under
24 this subsection shall have a term not to exceed 3
25 years. An insurer participant may renew its adjust-

1 ment by demonstrating that it remains justified.
2 Upon the grant of any adjustment, the Adminis-
3 trator shall increase the payments, *consistent with*
4 *subsection (a)(1)(B)*, required of all other insurer
5 participants so that there is no reduction in the ag-
6 gregate payment required of all insurer participants
7 for the applicable years. The increase in an insurer
8 participant's required payment shall be in proportion
9 to such participant's share of the aggregate payment
10 obligation of all insurer participants.

11 (3) *CREDITS FOR SHORTFALL ASSESSMENTS.—If*
12 *insurer participants are required during the first 5*
13 *years of the life of the Fund to make up any shortfall*
14 *in required insurer payments under subsection*
15 *(a)(1)(B), then, beginning in year 6, the Adminis-*
16 *trator shall grant each insurer participant a credit*
17 *against its annual required payments during the ap-*
18 *plicable years that in the aggregate equal the amount*
19 *of shortfall assessments paid by such insurer partici-*
20 *part during the first 5 years of the life of the Fund.*
21 *The credit shall be prorated over the same number of*
22 *years as the number of years during which the in-*
23 *surer participant paid a shortfall assessment. Insurer*
24 *participants which did not pay all required payments*
25 *to the Fund during the first 5 years of the life of the*

1 *Fund shall not be eligible for a credit. The Adminis-*
 2 *trator shall not grant a credit for shortfall assess-*
 3 *ments imposed under section 405(e).*

4 ~~(3)~~(4) FINANCIAL SECURITY REQUIREMENTS.—

5 Whenever an insurer participant's A.M. Best's
 6 claims payment rating or Standard and Poor's fi-
 7 nancial strength rating falls below A-, and until
 8 such time as either the insurer participant's A.M.
 9 Best's Rating or Standard and Poor's rating is
 10 equal to or greater than A-, the Administrator
 11 shall have the authority to require that the partici-
 12 pating insurer either—

13 (A) pay the present value of its remaining
 14 Fund payments at a discount rate determined
 15 by the Administrator; or

16 (B) provide an evergreen letter of credit or
 17 financial guarantee for future payments issued
 18 by an institution with an A.M. Best's claims
 19 payment rating or Standard & Poor's financial
 20 strength rating of at least A+.

21 (g) ACCOUNTING TREATMENT.—*Insurer participants'*
 22 *payment obligations to the Fund shall be subject to dis-*
 23 *counting under the applicable accounting guidelines for*
 24 *generally accepted accounting purposes and statutory ac-*
 25 *counting purposes for each insurer participant. This sub-*

1 *section shall in no way reduce the amount of monetary pay-*
 2 *ments to the Fund by insurer participants as required*
 3 *under subsection (a).*

4 ~~(g)~~(h) JUDICIAL REVIEW.—The Commission’s rule
 5 establishing an allocation methodology, its final deter-
 6 minations of payment obligations and other final action
 7 shall be judicially reviewable as provided in title III.

8 **SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.**

9 (a) RULEMAKING.—The Commission shall promul-
 10 gate such rules and regulations as necessary to implement
 11 its authority under this Act, including regulations gov-
 12 erning an allocation methodology. Such rules and regula-
 13 tions shall be promulgated after providing interested par-
 14 ties with the opportunity for notice and comment.

15 (b) HEARINGS.—The Commission may hold such
 16 hearings, sit and act at such times and places, take such
 17 testimony, and receive such evidence as the Commission
 18 considers advisable to carry out this Act. The Commission
 19 shall also hold a hearing on any proposed regulation estab-
 20 lishing an allocation methodology, before the Commis-
 21 sion’s adoption of a final regulation.

22 (c) INFORMATION FROM FEDERAL AND STATE
 23 AGENCIES.—The Commission may secure directly from
 24 any Federal or State department or agency such informa-
 25 tion as the Commission considers necessary to carry out

1 this Act. Upon request of the Chairman of the Commis-
2 sion, the head of such department or agency shall furnish
3 such information to the Commission.

4 (d) **POSTAL SERVICES.**—The Commission may use
5 the United States mails in the same manner and under
6 the same conditions as other departments and agencies of
7 the Federal Government.

8 (e) **GIFTS.**—The Commission may not accept, use, or
9 dispose of gifts or donations of services or property.

10 (f) **EXPERT ADVICE.**—In carrying out its responsibil-
11 ities, the Commission may enter into such contracts and
12 agreements as the Commission determines necessary to
13 obtain expert advice and analysis.

14 **SEC. 214. PERSONNEL MATTERS.**

15 (a) **COMPENSATION OF MEMBERS.**—Each member of
16 the Commission shall be compensated at a rate equal to
17 the daily equivalent of the annual rate of basic pay pre-
18 scribed for level IV of the Executive Schedule under sec-
19 tion 5315 of title 5, United States Code, for each day (in-
20 cluding travel time) during which such member is engaged
21 in the performance of the duties of the Commission.

22 (b) **TRAVEL EXPENSES.**—The members of the Com-
23 mission shall be allowed travel expenses, including per
24 diem in lieu of subsistence, at rates authorized for employ-
25 ees of agencies under subchapter I of chapter 57 of title

1 5, United States Code, while away from their homes or
2 regular places of business in the performance of services
3 for the Commission.

4 (c) STAFF.—

5 (1) IN GENERAL.—The Chairman of the Com-
6 mission may, without regard to the civil service laws
7 and regulations, appoint and terminate an executive
8 director and such other additional personnel as may
9 be necessary to enable the Commission to perform
10 its duties. The employment of an executive director
11 shall be subject to confirmation by the Commission.

12 (2) COMPENSATION.—The Chairman of the
13 Commission may fix the compensation of the execu-
14 tive director and other personnel without regard to
15 chapter 51 and subchapter III of chapter 53 of title
16 5, United States Code, relating to classification of
17 positions and General Schedule pay rates, except
18 that the rate of pay for the executive director and
19 other personnel may not exceed the rate payable for
20 level V of the Executive Schedule under section 5316
21 of such title.

22 (d) DETAIL OF GOVERNMENT EMPLOYEES.—Any
23 Federal Government employee may be detailed to the
24 Commission without reimbursement, and such detail shall

1 be without interruption or loss of civil service status or
2 privilege.

3 (e) **PROCUREMENT OF TEMPORARY AND INTERMIT-**
4 **TENT SERVICES.**—The Chairman of the Commission may
5 procure temporary and intermittent services under section
6 3109(b) of title 5, United States Code, at rates for individ-
7 uals which do not exceed the daily equivalent of the annual
8 rate of basic pay prescribed for level V of the Executive
9 Schedule under section 5316 of such title.

10 **SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMIS-**
11 **SION.**

12 The Commission shall terminate 90 days after the
13 last date on which the Commission makes a final deter-
14 mination of contribution under section 212(b) or 90 days
15 after the last appeal of any final action by the Commission
16 is exhausted, whichever occurs later.

17 **SEC. 216. EXPENSES AND COSTS OF COMMISSION.**

18 All expenses of the Commission shall be paid from
19 the Fund.

20 **Subtitle C—Asbestos Injury Claims**
21 **Resolution Fund**

22 **SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS**
23 **RESOLUTION FUND.**

24 (a) **ESTABLISHMENT.**—There is established in the
25 Office of Asbestos Disease Compensation the Asbestos In-

1 jury Claims Resolution Fund, which shall be available to
2 pay—

3 (1) claims for awards for an eligible disease or
4 condition determined under title I;

5 (2) claims for reimbursement for medical moni-
6 toring determined under title I;

7 (3) principal and interest on borrowings under
8 subsection (b);

9 (4) the remaining obligations to the asbestos
10 trust of a debtor and the class action trust under
11 section 405(f)(8); and

12 (5) administrative expenses to carry out the
13 provisions of this Act.

14 (b) BORROWING AUTHORITY.—

15 (1) IN GENERAL.—The Administrator is au-
16 thorized to borrow from time to time amounts as set
17 forth in this subsection, for purposes of enhancing li-
18 quidity available to the Fund for carrying out the
19 obligations of the Fund under this Act. The Admin-
20 istrator may authorize borrowing in such form, over
21 such term, with such necessary disclosure to its
22 lenders as will most efficiently enhance the Fund's
23 liquidity.

24 (2) FEDERAL FINANCING BANK.—In addition to
25 the general authority in paragraph (1), the Adminis-

1 trator may borrow from the Federal Financing Bank
 2 in accordance with section 6 of the Federal Financ-
 3 ing Bank Act of 1973 (12 U.S.C. 2285), as needed
 4 for performance of the Administrator's duties under
 5 this Act for the first 5 years.

6 (3) **BORROWING CAPACITY.**—The maximum
 7 amount that may be borrowed under this subsection
 8 at any given time is the amount that, taking into ac-
 9 count all payment obligations related to all previous
 10 amounts borrowed in accordance with this sub-
 11 section and all committed obligations of the Fund at
 12 the time of borrowing, can be repaid in full (with in-
 13 terest) in a timely fashion from—

14 (A) the available assets of the Fund as of
 15 the time of borrowing; and

16 (B) all amounts expected to be paid by
 17 participants during the subsequent 10 years.

18 ~~(4) **REPAYMENT OBLIGATIONS.**—Repayment of~~
 19 ~~monies borrowed by the Administrator under this~~
 20 ~~subsection is limited solely to amounts available in~~
 21 ~~the Asbestos Injury Claims Resolution Fund estab-~~
 22 ~~lished under this section.~~

23 (4) *REPAYMENT OBLIGATIONS.*—*Repayment of*
 24 *monies borrowed by the Administrator under this sub-*
 25 *section shall be repaid in full by the Fund contribu-*

1 *tors and is limited solely to amounts available,*
2 *present or future, in the Fund.*

3 (c) LOCKBOX FOR SEVERE ASBESTOS-RELATED IN-
4 JURY CLAIMANTS.—

5 (1) IN GENERAL.—Within the Fund, the Ad-
6 ministratoꝛ shall establish the following accounts:

7 (A) A Mesothelioma Account, which shall
8 be used solely to make payments to claimants
9 eligible for an award under the criteria of Level
10 IX.

11 (B) A Lung Cancer Account, which shall
12 be used solely to make payments to claimants
13 eligible for an award under the criteria of Level
14 VIII.

15 (C) A Severe Asbestosis Account, which
16 shall be used solely to make payments to claim-
17 ants eligible for an award under the criteria of
18 Level V.

19 (D) A Moderate Asbestosis Account, which
20 shall be used solely to make payments to claim-
21 ants eligible for an award under the criteria of
22 Level IV.

23 (2) ALLOCATION.—The Administrator shall al-
24 locate to each of the 4 accounts established under
25 paragraph (1) a portion of payments made to the

1 Fund adequate to compensate all anticipated claim-
2 ants for each account. Within 60 days after the date
3 of enactment of this Act, and periodically during the
4 life of the Fund, the Administrator shall determine
5 an appropriate amount to allocate to each account
6 after consulting appropriate epidemiological and sta-
7 tistical studies.

8 (d) AUDIT AUTHORITY.—

9 (1) IN GENERAL.—For the purpose of
10 ascertaining the correctness of any information pro-
11 vided or payments made to the Fund, or deter-
12 mining whether a person who has not made a pay-
13 ment to the Fund was required to do so, or deter-
14 mining the liability of any person for a payment to
15 the Fund, or collecting any such liability, or inquir-
16 ing into any offense connected with the administra-
17 tion or enforcement of this title, the Administrator
18 is authorized—

19 (A) to examine any books, papers, records,
20 or other data which may be relevant or material
21 to such inquiry;

22 (B) to summon the person liable for a pay-
23 ment under this title, or officer or employee of
24 such person, or any person having possession,
25 custody, or care of books of account containing

1 entries relating to the business of the person
2 liable or any other person the Administrator
3 may deem proper, to appear before the Admin-
4 istrator at a time and place named in the sum-
5 mons and to produce such books, papers,
6 records, or other data, and to give such testi-
7 mony, under oath, as may be relevant or mate-
8 rial to such inquiry; and

9 (C) to take such testimony of the person
10 concerned, under oath, as may be relevant or
11 material to such inquiry.

12 (2) FALSE, FRAUDULENT, OR FICTITIOUS
13 STATEMENTS OR PRACTICES.—If the Administrator
14 determines that materially false, fraudulent, or ficti-
15 tious statements or practices have been submitted or
16 engaged in by persons submitting information to the
17 Administrator or to the Asbestos Insurers Commis-
18 sion or any other person who provides evidence in
19 support of such submissions for purposes of deter-
20 mining payment obligations under this Act, the Ad-
21 ministrator may impose a civil penalty not to exceed
22 \$10,000 on any person found to have submitted or
23 engaged in a materially false, fraudulent, or ficti-
24 tious statement or practice under this Act. The Ad-

1 administrator shall promulgate appropriate regulations
2 to implement this paragraph.

3 (e) IDENTITY OF CERTAIN DEFENDANT PARTICI-
4 PANTS; TRANSPARENCY.—

5 (1) SUBMISSION OF INFORMATION.—Not later
6 than 60 days after the date of enactment of this
7 Act, any person who, acting in good faith, has
8 knowledge that such person or such person’s affili-
9 ated group has prior asbestos expenditures of
10 \$1,000,000 or greater, shall submit to the Adminis-
11 trator—

12 (A) either the name of such person, or
13 such person’s ultimate parent; and

14 (B) the likely tier to which such person or
15 affiliated group may be assigned under this Act.

16 (2) PUBLICATION.—Not later than 20 days
17 after the end of the 60-day period referred to in
18 paragraph (1), the Administrator or Interim Admin-
19 istrator, if the Administrator is not yet appointed,
20 shall publish in the Federal Register a list of sub-
21 missions required by this subsection, including the
22 name of such persons or ultimate parents and the
23 likely tier to which such persons or affiliated groups
24 may be assigned. After publication of such list, any
25 person who, acting in good faith, has knowledge that

1 any other person has prior asbestos expenditures of
2 \$1,000,000 or greater may submit to the Adminis-
3 trator or Interim Administrator information on the
4 identity of that person and the person's prior asbes-
5 tos expenditures.

6 (f) NO PRIVATE RIGHT OF ACTION.—Except as pro-
7 vided in sections 203(b)(2)(D)(ii) and 204(f)(3), there
8 shall be no private right of action under any Federal or
9 State law against any participant based on a claim of com-
10 pliance or noncompliance with this Act or the involvement
11 of any participant in the enactment of this Act.

12 **SEC. 222. MANAGEMENT OF THE FUND.**

13 (a) IN GENERAL.—Amounts in the Fund shall be
14 held for the exclusive purpose of providing benefits to as-
15 bestos claimants and their beneficiaries; ~~including those~~
16 ~~provided in subsection (e)~~ and to otherwise defray the rea-
17 sonable expenses of administering the Fund.

18 (b) INVESTMENTS.—

19 (1) IN GENERAL.—Amounts in the Fund shall
20 be administered and invested with the care, skill,
21 prudence, and diligence, under the circumstances
22 prevailing at the time of such investment, that a
23 prudent person acting in a like capacity and manner
24 would use.

1 (2) STRATEGY.—The Administrator shall invest
2 amounts in the Fund in a manner that enables the
3 Fund to make current and future distributions to or
4 for the benefit of asbestos claimants. In pursuing an
5 investment strategy under this subparagraph, the
6 Administrator shall consider, to the extent relevant
7 to an investment decision or action—

8 (A) the size of the Fund;

9 (B) the nature and estimated duration of
10 the Fund;

11 (C) the liquidity and distribution require-
12 ments of the Fund;

13 (D) general economic conditions at the
14 time of the investment;

15 (E) the possible effect of inflation or defla-
16 tion on Fund assets;

17 (F) the role that each investment or course
18 of action plays with respect to the overall assets
19 of the Fund;

20 (G) the expected amount to be earned (in-
21 cluding both income and appreciation of cap-
22 ital) through investment of amounts in the
23 Fund; and

1 (H) the needs of asbestos claimants for
2 current and future distributions authorized
3 under this Act.

4 (e) **MESOTHELIOMA RESEARCH AND TREATMENT**
5 **CENTERS.—**

6 (1) **IN GENERAL.—**The Administrator shall pro-
7 vide \$1,000,000 from the Fund for each of fiscal
8 years 2005 through 2009 for each of up to 10 meso-
9 thelioma disease research and treatment centers.

10 (2) **REQUIREMENTS.—**The Centers shall—

11 (A) be chosen by the Director of the Na-
12 tional Institutes of Health;

13 (B) be chosen through competitive peer re-
14 view;

15 (C) be geographically distributed through-
16 out the United States with special consideration
17 given to areas of high incidence of mesothe-
18 lioma disease;

19 (D) be closely associated with Department
20 of Veterans Affairs medical centers to provide
21 research benefits and care to veterans who have
22 suffered excessively from mesothelioma;

23 (E) be engaged in research to provide
24 mechanisms for detection and prevention of

1 mesothelioma, particularly in the areas of pain
2 management and cures;

3 ~~(F)~~ be engaged in public education about
4 mesothelioma and prevention, screening, and
5 treatment;

6 ~~(G)~~ be participants in the National Meso-
7 thelioma Registry; and

8 ~~(H)~~ be coordinated in their research and
9 treatment efforts with other Centers and insti-
10 tutions involved in exemplary mesothelioma re-
11 search.

12 ~~(d)~~(c) BANKRUPTCY TRUST GUARANTEE.—

13 (1) IN GENERAL.—Notwithstanding any other
14 provision of this Act, the Administrator shall have
15 the authority to impose a pro rata surcharge on all
16 participants under this subsection to ensure the li-
17 quidity of the Fund, if—

18 (A) the declared assets from 1 or more
19 bankruptcy trusts established under a plan of
20 reorganization confirmed and substantially con-
21 summated on or before July 31, 2004, are not
22 available to the Fund because a final judgment
23 that has been entered by a court and is no
24 longer subject to any appeal or review has en-
25 joined the transfer of assets required under sec-

1 tion 524(j)(2) of title 11, United States Code
2 (as amended by section 402(f) of this Act); and

3 (B) borrowing is insufficient to assure the
4 Fund's ability to meet its obligations under this
5 Act such that the required borrowed amount is
6 likely to increase the risk of termination of this
7 Act under section 405 based on reasonable
8 claims projections.

9 (2) ALLOCATION.—Any surcharge imposed
10 under this subsection shall be imposed over a period
11 of 5 years on a pro rata basis upon all participants,
12 ~~in accordance with each participant's relative annual~~
13 ~~liability under this subtitle and subtitle B for those~~
14 ~~5 years; in accordance with the relative aggregate~~
15 ~~funding obligations under sections 202(a)(2) and~~
16 ~~212(a)(2)(A).~~

17 (3) CERTIFICATION.—

18 (A) IN GENERAL.—Before imposing a sur-
19 charge under this subsection, the Administrator
20 shall publish a notice in the Federal Register
21 and provide in such notice for a public comment
22 period of 30 days.

23 (B) CONTENTS OF NOTICE.—The notice
24 required under subparagraph (A) shall in-
25 clude—

1 (i) information explaining the cir-
2 cumstances that make a surcharge nec-
3 essary and a certification that the require-
4 ments under paragraph (1) are met;

5 (ii) the amount of the declared assets
6 from any trust established under a plan of
7 reorganization confirmed and substantially
8 consummated on or before July 31, 2004,
9 that was not made, or is no longer, avail-
10 able to the Fund;

11 (iii) the total aggregate amount of the
12 necessary surcharge; and

13 (iv) the surcharge amount for each
14 tier and subtier of defendant participants
15 and for each insurer participant.

16 (C) FINAL NOTICE.—The Administrator
17 shall publish a final notice in the Federal Reg-
18 ister and provide each participant with written
19 notice of that participant's schedule of pay-
20 ments under this subsection. In no event shall
21 any required surcharge under this subsection be
22 due before 60 days after the Administrator
23 publishes the final notice in the Federal Reg-
24 ister and provides each participant with written
25 notice of its schedule of payments.

1 (4) MAXIMUM AMOUNT.—In no event shall the
2 total aggregate surcharge imposed by the Adminis-
3 trator exceed the lesser of—

4 (A) the total aggregate amount of the de-
5 clared assets of the trusts established under a
6 plan of reorganization confirmed and substan-
7 tially consummated prior to July 31, 2004, that
8 are no longer available to the Fund; or

9 (B) \$4,000,000,000.

10 (5) DECLARED ASSETS.—

11 (A) IN GENERAL.—In this subsection, the
12 term “declared assets” means—

13 (i) the amount of assets transferred
14 by any trust established under a plan of
15 reorganization confirmed and substantially
16 consummated on or before July 31, 2004,
17 to the Fund that is required to be returned
18 to that trust under the final judgment de-
19 scribed in paragraph (1)(A); or

20 (ii) if no assets were transferred by
21 the trust to the Fund, the amount of as-
22 sets the Administrator determines would
23 have been available for transfer to the
24 Fund from that trust under section 402(f).

1 (B) DETERMINATION.—In making a deter-
2 mination under subparagraph (A)(ii), the Ad-
3 ministrator may rely on any information rea-
4 sonably available, and may request, and use
5 subpoena authority of the Administrator if nec-
6 essary to obtain, relevant information from any
7 such trust or its trustees.

8 ~~(e)~~(d) BANKRUPTCY TRUST CREDITS.—

9 (1) IN GENERAL.—Notwithstanding any other
10 provision of this Act, but subject to paragraph (2)
11 of this subsection, the Administrator shall provide a
12 credit toward the aggregate payment obligations
13 under sections 202(a)(2) and 212(a)(2)(A) for as-
14 sets received by the Fund from any bankruptcy trust
15 established under a plan of reorganization confirmed
16 and substantially consummated after July 31, 2004.

17 (2) ALLOCATION OF CREDITS.—The Adminis-
18 trator shall allocate, for each such bankruptcy trust,
19 the credits for such assets between the defendant
20 and insurer aggregate payment obligations as fol-
21 lows:

22 (A) DEFENDANT PARTICIPANTS.—The ag-
23 gregate amount that all persons other than in-
24 surers contributing to the bankruptcy trust
25 would have been required to pay as Tier I de-

1 fendants under section 203(b) if the plan of re-
2 organization under which the bankruptcy trust
3 was established had not been confirmed and
4 substantially consummated and the proceeding
5 under chapter 11 of title 11, United States
6 Code, that resulted in the establishment of the
7 bankruptcy trust had remained pending as of
8 the date of enactment of this Act.

9 (B) INSURER PARTICIPANTS.—The aggre-
10 gate amount of all credits to which insurers are
11 entitled to under section 202(c)(4)(A) of the
12 Act.

13 **SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.**

14 (a) DEFAULT.—If any participant fails to make any
15 payment in the amount of and according to the schedule
16 under this Act or as prescribed by the Administrator, after
17 demand and a 30-day opportunity to cure the default,
18 there shall be a lien in favor of the United States for the
19 amount of the delinquent payment (including interest)
20 upon all property and rights to property, whether real or
21 personal, belonging to such participant.

22 (b) BANKRUPTCY.—In the case of a bankruptcy or
23 insolvency proceeding, the lien imposed under subsection
24 (a) shall be treated in the same manner as a lien for taxes
25 due and owing to the United States for purposes of the

1 provisions of title 11, United States Code, or section
2 3713(a) of title 31, United States Code. The United
3 States Bankruptcy Court shall have jurisdiction over any
4 issue or controversy regarding lien priority and lien perfec-
5 tion arising in a bankruptcy case due to a lien imposed
6 under subsection (a).

7 (c) CIVIL ACTION.—

8 (1) IN GENERAL.—In any case in which there
9 has been a refusal or failure to pay any liability im-
10 posed under this Act, the Administrator may bring
11 a civil action in ~~the United States District Court for~~
12 ~~the District of Columbia,~~ *any appropriate United*
13 *States District Court*, or any other appropriate law-
14 suit or proceeding outside of the United States—

15 (A) to enforce the liability and any lien of
16 the United States imposed under this section;

17 (B) to subject any property of the partici-
18 pant, including any property in which the par-
19 ticipant has any right, title, or interest to the
20 payment of such liability; or

21 (C) for temporary, preliminary, or perma-
22 nent relief.

23 (2) ADDITIONAL PENALTIES.—In any action
24 under paragraph (1) in which the refusal or failure

1 to pay was willful, the Administrator may seek re-
2 covery—

3 (A) of punitive damages;

4 (B) of the costs of any civil action under
5 this subsection, including reasonable fees in-
6 curred for collection, expert witnesses, and at-
7 torney's fees; and

8 (C) in addition to any other penalty, of a
9 fine equal to the total amount of the liability
10 that has not been collected.

11 (d) ENFORCEMENT AUTHORITY AS TO INSURER PAR-
12 TICIPANTS.—

13 (1) IN GENERAL.—In addition to or in lieu of
14 the enforcement remedies described in subsection
15 (c), the Administrator may seek to recover amounts
16 in satisfaction of a payment not timely paid by an
17 insurer participant under the procedures under this
18 subsection.

19 (2) SUBROGATION.—To the extent required to
20 establish personal jurisdiction over nonpaying in-
21 surer participants, the Administrator shall be
22 deemed to be subrogated to the contractual rights of
23 participants to seek recovery from nonpaying insur-
24 ing participants that are domiciled outside the
25 United States under the policies of liability insur-

1 ance or contracts of liability reinsurance or
2 retrocessional reinsurance applicable to asbestos
3 claims, and the Administrator may bring an action
4 or an arbitration against the nonpaying insurer par-
5 ticipants under the provisions of such policies and
6 contracts, provided that—

7 (A) any amounts collected under this sub-
8 section shall not increase the amount of deemed
9 erosion allocated to any policy or contract under
10 section 404, or otherwise reduce coverage avail-
11 able to a participant; and

12 (B) subrogation under this subsection shall
13 have no effect on the validity of the insurance
14 policies or reinsurance, and any contrary State
15 law is expressly preempted.

16 (3) RECOVERABILITY OF CONTRIBUTION.—For
17 purposes of this subsection—

18 (A) all contributions to the Fund required
19 of a participant shall be deemed to be sums le-
20 gally required to be paid for bodily injury re-
21 sulting from exposure to asbestos;

22 (B) all contributions to the Fund required
23 of any participant shall be deemed to be a sin-
24 gle loss arising from a single occurrence under

1 each contract to which the Administrator is
2 subrogated; and

3 (C) with respect to reinsurance contracts,
4 all contributions to the Fund required of a par-
5 ticipant shall be deemed to be payments to a
6 single claimant for a single loss.

7 (4) NO CREDIT OR OFFSET.—In any action
8 brought under this subsection, the nonpaying insurer
9 or reinsurer shall be entitled to no credit or offset
10 for amounts collectible or potentially collectible from
11 any participant nor shall such defaulting participant
12 have any right to collect any sums payable under
13 this section from any participant.

14 (5) COOPERATION.—Insureds and cedents shall
15 cooperate with the Administrator's reasonable re-
16 quests for assistance in any such proceeding. The
17 positions taken or statements made by the Adminis-
18 trator in any such proceeding shall not be binding
19 on or attributed to the insureds or cedents in any
20 other proceeding. The outcome of such a proceeding
21 shall not have a preclusive effect on the insureds or
22 cedents in any other proceeding and shall not be ad-
23 missible against any subrogee under this section.
24 The Administrator shall have the authority to settle

1 or compromise any claims against a nonpaying in-
2 surer participant under this subsection.

3 (e) BAR ON UNITED STATES BUSINESS.—If any di-
4 rect insurer or reinsurer refuses to ~~furnish any informa-~~
5 ~~tion requested by or to~~ pay any contribution required by
6 this Act, then, in addition to any other penalties imposed
7 by this Act, the Administrator ~~may~~ *shall* issue an order
8 barring such entity and its affiliates from insuring risks
9 located within the United States or otherwise doing busi-
10 ness within the United States *unless and until it complies*.
11 *If any direct insurer or reinsurer refuses to furnish any*
12 *information requested by the Administrator, the Adminis-*
13 *trator may issue an order barring such entity and its affili-*
14 *ates from insuring risks located within the United States*
15 *or otherwise doing business within the United States unless*
16 *and until it complies*. Insurer participants or their affili-
17 ates seeking to obtain a license from any State to write
18 any type of insurance shall be barred from obtaining any
19 such license until payment of all contributions required as
20 of the date of license application.

21 (f) CREDIT FOR REINSURANCE.—If the Adminis-
22 trator determines that an insurer participant that is a re-
23 insurer is in default in paying any required contribution
24 or otherwise not in compliance with this Act, the Adminis-
25 trator may issue an order barring any direct insurer par-

1 participant from receiving credit for reinsurance purchased
 2 from the defaulting reinsurer *after the date of the Adminis-*
 3 *trator's determination of default.* Any State law governing
 4 credit for reinsurance to the contrary is preempted.

5 (g) DEFENSE LIMITATION.—In any proceeding under
 6 this section, the participant shall be barred from bringing
 7 any challenge to any determination of the Administrator
 8 or the Asbestos Insurers Commission regarding its liability
 9 under this Act, or to the constitutionality of this Act or
 10 any provision thereof, if such challenge could have been
 11 made during the review provided under section 204(i)(10),
 12 or in a judicial review proceeding under section 303.

13 (h) DEPOSIT OF FUNDS.—

14 (1) IN GENERAL.—Any funds collected under
 15 subsection (c)(2) (A) or (C) shall be—

16 (A) deposited in the Fund; and

17 (B) used only to pay—

18 (i) claims for awards for an eligible
 19 disease or condition determined under title
 20 I; or

21 (ii) claims for reimbursement for med-
 22 ical monitoring determined under title I.

23 (2) NO EFFECT ON OTHER LIABILITIES.—The
 24 imposition of a fine under subsection (c)(2)(C) shall
 25 have no effect on—

1 (A) the assessment of contributions under
2 subtitles A and B; or

3 (B) any other provision of this Act.

4 (i) PROPERTY OF THE ESTATE.—Section 541(b) of
5 title 11, United States Code, is amended—

6 (1) in paragraph (4)(B)(ii), by striking “or” at
7 the end;

8 (2) in paragraph (5), by striking “prohibition.”
9 and inserting “prohibition; or”; and

10 (3) by inserting after paragraph (5) and before
11 the last undesignated sentence the following:

12 “(6) the value of any pending claim against or
13 the amount of an award granted from the Asbestos
14 Injury Claims Resolution Fund established under
15 the Fairness in Asbestos Injury Resolution Act of
16 2005.”.

17 (j) *PROPOSED TRANSACTIONS.*—

18 (1) *NOTICE OF PROPOSED TRANSACTION.*—*Any*
19 *participant that has taken any action to effectuate a*
20 *proposed transaction or a proposed series of trans-*
21 *actions under which a significant portion of such*
22 *participant’s assets, properties or business will, if*
23 *consummated as proposed, be, directly or indirectly,*
24 *transferred by any means (including, without limita-*
25 *tion, by sale, dividend, contribution to a subsidiary*

1 or split-off) to 1 or more persons other than the par-
2 ticipant shall provide written notice to the Adminis-
3 trator of such proposed transaction (or proposed se-
4 ries of transactions). Upon the request of such partici-
5 pant, and for so long as the participant shall not
6 publicly disclose the transaction or series of trans-
7 actions and the Administrator shall not commence
8 any action under paragraph (6), the Administrator
9 shall treat any such notice as confidential commercial
10 information under section 552 of title 5, United
11 States Code.

12 (2) *TIMING OF NOTICE AND RELATED ACTIONS.*—

13 (A) *IN GENERAL.*—Any notice that a par-
14 ticipant is required to give under paragraph (1)
15 shall be given not later than 30 days before the
16 date of consummation of the proposed trans-
17 action or the first transaction to occur in a pro-
18 posed series of transactions.

19 (B) *OTHER NOTIFICATIONS.*—

20 (i) *IN GENERAL.*—Not later than the
21 date in any year by which a participant is
22 required to make its contribution to the
23 Fund, the participant shall deliver to the
24 Administrator a written certification stat-
25 ing that—

1 (I) *the participant has complied*
2 *during the period since the last such*
3 *certification or the date of enactment*
4 *of this Act with the notice requirements*
5 *set forth in this subsection; or*

6 (II) *the participant was not re-*
7 *quired to provide any notice under this*
8 *subsection during such period.*

9 (ii) *SUMMARY.—The Administrator*
10 *shall include in the annual report required*
11 *to be submitted to Congress under section*
12 *405 a summary of all such notices (after re-*
13 *moving all confidential identifying infor-*
14 *mation) received during the most recent fis-*
15 *cal year.*

16 (C) *NOTICE COMPLETION.—The Adminis-*
17 *trator shall not consider any notice given under*
18 *paragraph (1) as given until such time as the*
19 *Administrator receives substantially all the in-*
20 *formation required by this subsection.*

21 (3) *CONTENTS OF NOTICE.—*

22 (A) *IN GENERAL.—The Administrator shall*
23 *determine by rule or regulation the information*
24 *to be included in the notice required under this*
25 *subsection, which shall include such information*

1 *as may be necessary to enable the Administrator*
2 *to determine whether—*

3 *(i) the person or persons to whom the*
4 *assets, properties or business are being*
5 *transferred in the proposed transaction (or*
6 *proposed series of transactions) should be*
7 *considered to be the successor in interest of*
8 *the participant for purposes of this Act, or*

9 *(ii) the proposed transaction (or pro-*
10 *posed series of transactions) would, if con-*
11 *summated, be subject to avoidance by a*
12 *trustee under section 544(b) or 548 of title*
13 *11, United States Code, as if, but whether*
14 *or not, the participant is subject to a case*
15 *under title 11, United States Code.*

16 *(B) STATEMENTS.—The notice shall also in-*
17 *clude—*

18 *(i) a statement by the participant as to*
19 *whether it believes any person will or has*
20 *become a successor in interest to the partici-*
21 *part for purposes of this Act and, if so, the*
22 *identity of that person; and*

23 *(ii) a statement by the participant as*
24 *to whether that person has acknowledged*

1 that it will or has become a successor in in-
2 terest for purposes of this Act.

3 (4) *DEFINITION.*—*In this subsection, the term*
4 “*significant portion of the assets, properties or busi-*
5 *ness of a participant*” *means assets (including, with-*
6 *out limitation, tangible or intangible assets, securities*
7 *and cash), properties or business of such participant*
8 *(or its affiliated group, to the extent that the partici-*
9 *part has elected to be part of an affiliated group*
10 *under section 204(f)) that, together with any other*
11 *asset, property or business transferred by such partici-*
12 *part in any of the previous completed 5 fiscal years*
13 *of such participant (or, as appropriate, its affiliated*
14 *group), and as determined in accordance with United*
15 *States generally accepted accounting principles as in*
16 *effect from time to time—*

17 (A) *generated at least 40 percent of the reve-*
18 *nues of such participant (or its affiliated group);*

19 (B) *constituted at least 40 percent of the as-*
20 *sets of such participant (or its affiliated group);*

21 (C) *generated at least 40 percent of the op-*
22 *erating cash flows of such participant (or its af-*
23 *filiated group); or*

1 (D) generated at least 40 percent of the net
2 income or loss of such participant (or its affili-
3 ated group),
4 as measured during any of such 5 previous fiscal
5 years.

6 (5) CONSUMMATION OF TRANSACTION.—Any pro-
7 posed transaction (or proposed series of transactions)
8 with respect to which a participant is required to
9 provide notice under paragraph (1) may not be con-
10 summated until at least 30 days after delivery to the
11 Administrator of such notice, unless the Adminis-
12 trator shall earlier terminate the notice period. The
13 Administrator shall endeavor whenever possible to ter-
14 minate a notice period at the earliest practicable
15 time.

16 (6) RIGHT OF ACTION.—

17 (A) IN GENERAL.—Notwithstanding section
18 221(f), if the Administrator or any participant
19 believes that a participant proposes to engage or
20 has engaged, directly or indirectly, in, or is the
21 subject of, a transaction (or series of trans-
22 actions)—

23 (i) involving a person or persons who,
24 as a result of such transaction (or series of
25 transactions), may have or may become the

1 *successor in interest or successors in interest*
2 *of such participant, where the status or po-*
3 *tential status as a successor in interest has*
4 *not been stated and acknowledged by the*
5 *participant and such person; or*

6 *(ii) that may be subject to avoidance*
7 *by a trustee under section 544(b) or 548 of*
8 *title 11, United States Code, as if, but*
9 *whether or not, the participant is a subject*
10 *to a case under title 11, United States Code,*
11 *then the Administrator or such participant may,*
12 *as a deemed creditor under applicable law, bring*
13 *a civil action in an appropriate forum against*
14 *the participant or any other person who is either*
15 *a party to the transaction (or series of trans-*
16 *actions) or the recipient of any asset, property or*
17 *business of the participant.*

18 *(B) RELIEF ALLOWED.—In any action com-*
19 *menced under this subsection, the Administrator*
20 *or a participant, as applicable, may seek—*

21 *(i) with respect to a transaction (or se-*
22 *ries of transactions) referenced in clause (i)*
23 *of subparagraph (A), a declaratory judg-*
24 *ment regarding whether such person will or*

1 *has become the successor in interest of such*
2 *participant; or*

3 (ii) *with respect to a transaction (or*
4 *series of transactions) referenced in clause*
5 *(ii) of subparagraph (A)—*

6 (I) *a temporary restraining order*
7 *or a preliminary or permanent injunc-*
8 *tion against such transaction (or series*
9 *of transactions); or*

10 (II) *such other relief regarding*
11 *such transaction (or series of trans-*
12 *actions) as the court determines to be*
13 *necessary to ensure that performance of*
14 *a participant's payment obligations*
15 *under this Act is not materially im-*
16 *paired by reason of such transaction*
17 *(or series of transactions).*

18 (C) *APPLICABILITY.—If the Administrator*
19 *or a participant wishes to challenge a statement*
20 *made by a participant that a person will not or*
21 *has not become a successor in interest for pur-*
22 *poses of this Act, then this paragraph shall be the*
23 *exclusive means by which the determination of*
24 *whether such person will or has become a suc-*
25 *cessor in interest of the participant shall be*

1 *made. This paragraph shall not preempt any*
2 *other rights of any person under applicable Fed-*
3 *eral or State law.*

4 (D) *VENUE.*—*Any action under this para-*
5 *graph shall be brought in any appropriate*
6 *United States district court or, to the extent nec-*
7 *essary to obtain complete relief, any other appro-*
8 *priate forum outside of the United States.*

9 (7) *RULES AND REGULATIONS.*—*The Adminis-*
10 *trator may promulgate regulations to effectuate the*
11 *intent of this subsection, including regulations relat-*
12 *ing to the form, timing and content of notices.*

13 **SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.**

14 If any amount of payment obligation under this title
15 is not paid on or before the last date prescribed for pay-
16 ment, the liable party shall pay interest on such amount
17 at the Federal short-term rate determined under section
18 6621(b) of the Internal Revenue Code of 1986, plus 5 per-
19 centage points, for the period from such last date to the
20 date paid.

21 **SEC. 225. EDUCATION, CONSULTATION, SCREENING, AND**
22 **MONITORING.**

23 (a) *IN GENERAL.*—*The Administrator shall establish*
24 *a program for the education, consultation, medical screen-*

1 ing, and medical monitoring of persons with exposure to
2 asbestos. The program shall be funded by the Fund.

3 (b) OUTREACH AND EDUCATION.—

4 (1) IN GENERAL.—Not later than 1 year after
5 the date of enactment of this Act, the Administrator
6 shall establish an outreach and education program,
7 including a website designed to provide information
8 about asbestos-related medical conditions to mem-
9 bers of populations at risk of developing such condi-
10 tions.

11 (2) INFORMATION.—The information provided
12 under paragraph (1) shall include information
13 about—

14 (A) the signs and symptoms of asbestos-re-
15 lated medical conditions;

16 (B) the value of appropriate medical
17 screening programs; and

18 (C) actions that the individuals can take to
19 reduce their future health risks related to as-
20 bestos exposure.

21 (3) CONTRACTS.—Preference in any contract
22 under this subsection shall be given to providers that
23 are existing nonprofit organizations with a history
24 and experience of providing occupational health out-

1 reach and educational programs for individuals ex-
2 posed to asbestos.

3 (c) MEDICAL SCREENING PROGRAM.—

4 (1) ESTABLISHMENT OF PROGRAM.—Not soon-
5 er than 18 months or later than 24 months after the
6 Administrator certifies that the Fund is fully oper-
7 ational and processing claims at a reasonable rate,
8 the Administrator shall adopt guidelines establishing
9 a medical screening program for individuals at high
10 risk of asbestos-related disease resulting from an as-
11 bestos-related disease. In promulgating such guide-
12 lines, the Administrator shall consider the views of
13 the Advisory Committee on Asbestos Disease Com-
14 pensation, the Medical Advisory Committee, and the
15 public.

16 (2) ELIGIBILITY CRITERIA.—

17 (A) IN GENERAL.—The guidelines promul-
18 gated under this subsection shall establish cri-
19 teria for participation in the medical screening
20 program.

21 (B) CONSIDERATIONS.—In promulgating
22 eligibility criteria the Administrator shall take
23 into consideration all factors relevant to the in-
24 dividual's effective cumulative exposure to as-
25 bestos, including—

- 1 (i) any industry in which the indi-
 2 vidual worked;
- 3 (ii) the individual's occupation and
 4 work setting;
- 5 (iii) the historical period in which ex-
 6 posure took place;
- 7 (iv) the duration of the exposure;
- 8 (v) the intensity and duration of non-
 9 occupational exposures; ~~and~~
- 10 *(vi) the intensity and duration of ex-*
 11 *posure to risk levels of naturally occurring*
 12 *asbestos as defined by the Environmental*
 13 *Protection Agency; and*
- 14 ~~(vi)~~*(vii)* any other factors that the
 15 Administrator determines relevant.

16 (3) PROTOCOLS.—The guidelines developed
 17 under this subsection shall establish protocols for
 18 medical screening, which shall include—

- 19 (A) administration of a health evaluation
 20 and work history questionnaire;
- 21 (B) an evaluation of smoking history;
- 22 (C) a physical examination by a qualified
 23 physician with a doctor-patient relationship
 24 with the individual;

1 (D) a chest x-ray read by a certified B-
2 reader as defined under section 121(a)(4); and

3 (E) pulmonary function testing as defined
4 under section 121(a)(13).

5 (4) FREQUENCY.—The Administrator shall es-
6 tablish the frequency with which medical screening
7 shall be provided or be made available to eligible in-
8 dividuals, which shall be not less than every 5 years.

9 (5) PROVISION OF SERVICES.—The Adminis-
10 trator shall provide medical screening to eligible in-
11 dividuals directly or by contract with another agency
12 of the Federal Government, with State or local gov-
13 ernments, or with private providers of medical serv-
14 ices. The Administrator shall establish strict quali-
15 fications for the providers of such services, and shall
16 periodically audit the providers of services under this
17 subsection, to ensure their integrity, high degree of
18 competence, and compliance with all applicable tech-
19 nical and professional standards. No provider of
20 medical screening services may have earned more
21 than 15 percent of their income from the provision
22 of services of any kind in connection with asbestos
23 litigation in any of the 3 years preceding the date
24 of enactment of this Act. All contracts with pro-
25 viders of medical screening services under this sub-

1 section shall contain provisions ~~allowing the Admin-~~
 2 ~~istrator to terminate for reimbursement of screening~~
 3 ~~services at a reasonable rate and termination of such~~
 4 contracts for cause if the Administrator determines
 5 that the service provider fails to meet the qualifica-
 6 tions established under this subsection.

7 (6) LIMITATION OF COMPENSATION FOR SERV-
 8 ICES.—The compensation required to be paid to a
 9 provider of medical screening services for such serv-
 10 ices furnished to an eligible individual shall be lim-
 11 ited to the amount that would be reimbursed at the
 12 time of the furnishing of such services under title
 13 XVIII of the Social Security Act (42 U.S.C. 1395 et
 14 seq.) for similar services if—

15 ~~(A) the individual were entitled to benefits~~
 16 ~~under part A of such title and enrolled under~~
 17 ~~part B of such title; and~~

18 ~~(B) such services are covered under title~~
 19 ~~XVIII of the Social Security Act (42 U.S.C.~~
 20 ~~1395 et seq.).~~

21 (7) FUNDING; PERIODIC REVIEW.—

22 (A) FUNDING.—The Administrator shall
 23 make such funds available from the Fund to
 24 implement this section, *with a minimum of*
 25 *\$20,000,000* but not more than \$30,000,000

1 each year in each of the 5 years following the
2 effective date of the medical screening program.
3 Notwithstanding the preceding sentence, the
4 Administrator shall suspend the operation of
5 the program or reduce its funding level if nec-
6 essary to preserve the solvency of the Fund and
7 to prevent the sunset of the overall program
8 under section 405(f).

9 (B) REVIEW.—*The Administrator may re-*
10 *duce the amount of funding below \$20,000,000*
11 *each year if the program is fully implemented.*
12 The Administrator's first annual report under
13 section 405 following the close of the 4th year
14 of operation of the medical screening program
15 shall include an analysis of the usage of the
16 program, its cost and effectiveness, its medical
17 value, and the need to continue that program
18 for an additional 5-year period. The Adminis-
19 trator shall also recommend to Congress any
20 improvements that may be required to make the
21 program more effective, efficient, and economi-
22 cal, and shall recommend a funding level for the
23 program for the 5 years following the period of
24 initial funding referred to under subparagraph
25 (A).

1 (d) LIMITATION.—In no event shall the total amount
2 allocated to the medical screening program established
3 under this subsection over the lifetime of the Fund exceed
4 \$600,000,000.

5 (e) MEDICAL MONITORING PROGRAM AND PROTO-
6 COLS.—

7 (1) IN GENERAL.—The Administrator shall es-
8 tablish procedures for a medical monitoring program
9 for persons exposed to asbestos who have been ap-
10 proved for level I compensation under section 131.

11 (2) PROCEDURES.—The procedures for medical
12 monitoring shall include—

13 (A) specific medical tests to be provided to
14 eligible individuals and the periodicity of those
15 tests, which shall initially be provided every 3
16 years and include—

17 (i) administration of a health evalua-
18 tion and work history questionnaire;

19 (ii) physical examinations, including
20 blood pressure measurement, chest exam-
21 ination, and examination for clubbing;

22 (iii) AP and lateral chest x-ray; and

23 (iv) spirometry performed according
24 to ATS standards;

1 (B) qualifications of medical providers who
2 are to provide the tests required under subpara-
3 graph (A); and

4 (C) administrative provisions for reim-
5 bursement from the Fund of the costs of moni-
6 toring eligible claimants, including the costs as-
7 sociated with the visits of the claimants to phy-
8 sicians in connection with medical monitoring,
9 and with the costs of performing and analyzing
10 the tests.

11 (3) PREFERENCES.—

12 (A) IN GENERAL.—In administering the
13 monitoring program under this subsection, pref-
14 erence shall be given to medical and program
15 providers with—

16 (i) a demonstrated capacity for identi-
17 fying, contacting, and evaluating popu-
18 lations of workers or others previously ex-
19 posed to asbestos; and

20 (ii) experience in establishing net-
21 works of medical providers to conduct med-
22 ical screening and medical monitoring ex-
23 aminations.

24 (B) PROVISION OF LISTS.—Claimants that
25 are eligible to participate in the medical moni-

1 *of the National Institutes of Health shall make avail-*
2 *able \$1,000,000 from amounts available to the Direc-*
3 *tor, for each of fiscal years 2006 through 2015, for the*
4 *establishment of each of 10 mesothelioma disease re-*
5 *search and treatment centers.*

6 (2) *REQUIREMENTS.—The Director of the Na-*
7 *tional Institutes of Health, in consultation with the*
8 *Medical Advisory Committee, shall conduct a com-*
9 *petitive peer review process to select sites for the cen-*
10 *ters described in paragraph (1). The Director shall*
11 *ensure that sites selected under this paragraph are—*

12 (A) *geographically distributed throughout*
13 *the United States with special consideration*
14 *given to areas of high incidence of mesothelioma*
15 *disease;*

16 (B) *closely associated with Department of*
17 *Veterans Affairs medical centers, in order to pro-*
18 *vide research benefits and care to veterans who*
19 *have suffered excessively from mesothelioma;*

20 (C) *engaged in exemplary laboratory and*
21 *clinical mesothelioma research, including clinical*
22 *trials, to provide mechanisms for effective thera-*
23 *peutic treatments, as well as detection and pre-*
24 *vention, particularly in areas of palliation of*
25 *disease symptoms and pain management;*

1 (D) participants in the National Mesothelioma Registry and Tissue Bank under subsection (c) and the annual International Mesothelioma Symposium under subsection (d)(2)(E);

2
3
4
5 (E) with respect to research and treatment efforts, coordinated with other centers and institutions involved in exemplary mesothelioma research and treatment;

6
7
8
9 (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

10
11
12
13 (G) nonprofit hospitals, universities, or medical or research institutions incorporated or organized in the United States.

14
15
16
17
18 (c) *MESOTHELIOMA REGISTRY AND TISSUE BANK.*—

19 (1) *ESTABLISHMENT.*—The Administrator shall
20 make available \$1,000,000 from the Fund, and the
21 Director of the National Institutes of Health shall
22 make available \$1,000,000 from amounts available to
23 the Director, for each of fiscal years 2006 through
24 2015 for the establishment, maintenance, and oper-
25 ation of a National Mesothelioma Registry to collect

1 *data regarding symptoms, pathology, evaluation,*
2 *treatment, outcomes, and quality of life and a Tissue*
3 *Bank to include the pre- and post-treatment blood*
4 *(serum and blood cells) specimens as well as tissue*
5 *specimens from biopsies and surgery. Not less than*
6 *\$500,000 of the amount made available under the pre-*
7 *ceding sentence in each fiscal year shall be allocated*
8 *for the collection and maintenance of tissue speci-*
9 *mens.*

10 (2) *REQUIREMENTS.—The Director of the Na-*
11 *tional Institutes of Health, with the advice and con-*
12 *sent of the Medical Advisory Committee, shall conduct*
13 *a competitive peer review process to select a site to*
14 *administer the Registry and Tissue Bank described in*
15 *paragraph (1). The Director shall ensure that the site*
16 *selected under this paragraph—*

17 (A) *is available to all mesothelioma patients*
18 *and qualifying physicians throughout the United*
19 *States;*

20 (B) *is subject to all applicable medical and*
21 *patient privacy laws and regulations;*

22 (C) *is carrying out activities to ensure that*
23 *data is accessible via the Internet; and*

24 (D) *provides data and tissue samples to*
25 *qualifying researchers and physicians who apply*

1 *for such data in order to further the under-*
2 *standing, prevention, screening, diagnosis, or*
3 *treatment of malignant mesothelioma.*

4 *(d) CENTER FOR MESOTHELIOMA EDUCATION.—*

5 *(1) ESTABLISHMENT.—The Administrator shall*
6 *make available \$1,000,000 from the Fund, and the*
7 *Director of the National Institutes of Health shall*
8 *make available \$1,000,000 from amounts available to*
9 *the Director, for each of fiscal years 2006 through*
10 *2015 for the establishment, with the advice and con-*
11 *sent of the Medical Advisory Committee, of a Center*
12 *for Mesothelioma Education (referred to in this sec-*
13 *tion as the “Center”) to—*

14 *(A) promote mesothelioma awareness and*
15 *education;*

16 *(B) assist mesothelioma patients and their*
17 *family members in obtaining necessary informa-*
18 *tion; and*

19 *(C) work with the centers established under*
20 *subsection (b) in advancing mesothelioma re-*
21 *search.*

22 *(2) ACTIVITIES.—The Center shall—*

23 *(A) educate the public about the new initia-*
24 *tives contained in this section through a Na-*
25 *tional Mesothelioma Awareness Campaign;*

1 (B) develop and maintain a Mesothelioma
2 Educational Resource Center (referred to in this
3 section as the “MERCİ”), that is accessible via
4 the Internet, to provide mesothelioma patients,
5 family members, and front-line physicians with
6 comprehensive, current information on mesothe-
7 lioma and its treatment, as well as on the exist-
8 ence of, and general claim procedures for the As-
9 bestos Injury Claims Resolution Fund;

10 (C) through the MERCİ and otherwise, edu-
11 cate mesothelioma patients, family members, and
12 front-line physicians about, and encourage such
13 individuals to participate in, the centers estab-
14 lished under subsection (b), the Registry and the
15 Tissue Bank;

16 (D) complement the research efforts of the
17 centers established under subsection (b) by
18 awarding competitive, peer-reviewed grants for
19 the training of clinical specialist fellows in meso-
20 thelioma, and for highly innovative, experi-
21 mental or pre-clinical research; and

22 (E) conduct an annual International Meso-
23 thelioma Symposium.

24 (3) REQUIREMENTS.—The Center shall—

1 (A) be a nonprofit corporation under sec-
2 tion 501(c)(3) of the Internal Revenue Code of
3 1986;

4 (B) be a separate entity from and not an
5 affiliate of any hospital, university, or medical
6 or research institution; and

7 (C) demonstrate a history of program
8 spending that is devoted specifically to the mis-
9 sion of extending the survival of current and fu-
10 ture mesothelioma patients, including a history
11 of soliciting, peer reviewing through a competi-
12 tive process, and funding research grant applica-
13 tions relating to the detection, prevention, treat-
14 ment, and cure of mesothelioma.

15 (4) *CONTRACTS FOR OVERSIGHT.*—*The Director*
16 *of the National Institutes of Health may enter into*
17 *contracts with the Center for the selection and over-*
18 *sight of the centers established under subsection (b), or*
19 *selection of the director of the Registry and the Tissue*
20 *Bank under subsection (c) and oversight of the Reg-*
21 *istry and the Tissue Bank.*

22 (e) *REPORT AND RECOMMENDATIONS.*—*Not later than*
23 *September 30, 2015, The Director of the National Institutes*
24 *of Health shall, after opportunity for public comment and*
25 *review, publish and provide to Congress a report and rec-*

1 *ommendations on the results achieved and information*
2 *gained through the Program, including—*

3 *(1) information on the status of mesothelioma as*
4 *a national health issue, including—*

5 *(A) annual United States incidence and*
6 *death rate information and whether such rates*
7 *are increasing or decreasing;*

8 *(B) the average prognosis; and*

9 *(C) the effectiveness of treatments and*
10 *means of prevention;*

11 *(2) promising advances in mesothelioma treat-*
12 *ment and research which could be further developed if*
13 *the Program is reauthorized; and*

14 *(3) a summary of advances in mesothelioma*
15 *treatment made in the 10-year period prior to the re-*
16 *port and whether those advances would justify con-*
17 *tinuation of the Program and whether it should be re-*
18 *authorized for an additional 10 years.*

19 *(f) SEVERABILITY.—If any provision of this Act, or*
20 *amendment made by this Act, or the application of such*
21 *provision or amendment to any person or circumstance is*
22 *held to be unconstitutional, the remainder of this Act (in-*
23 *cluding this section), the amendments made by this Act,*
24 *and the application of the provisions of such to any person*
25 *or circumstance shall not be affected thereby.*

1 (g) *REGULATIONS.*—*The Director of the National In-*
2 *stitutes of Health shall promulgate regulations to provide*
3 *for the implementation of this section.*

4 **TITLE III—JUDICIAL REVIEW**

5 **SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.**

6 (a) *EXCLUSIVE JURISDICTION.*—The United States
7 Court of Appeals for the District of Columbia Circuit shall
8 have exclusive jurisdiction over any action to review rules
9 or regulations promulgated by the Administrator or the
10 Asbestos Insurers Commission under this Act.

11 (b) *PERIOD FOR FILING PETITION.*—A petition for
12 review under this section shall be filed not later than 60
13 days after the date notice of such promulgation appears
14 in the Federal Register.

15 (c) *EXPEDITED PROCEDURES.*—The United States
16 Court of Appeals for the District of Columbia shall provide
17 for expedited procedures for reviews under this section.

18 **SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.**

19 (a) *IN GENERAL.*—Any claimant adversely affected
20 or aggrieved by a final decision of the Administrator
21 awarding or denying compensation under title I may peti-
22 tion for judicial review of such decision. Any petition for
23 review under this section shall be filed within 90 days of
24 the issuance of a final decision of the Administrator.

1 (b) EXCLUSIVE JURISDICTION.—A petition for review
2 may only be filed in the United States Court of Appeals
3 for the circuit in which the claimant resides at the time
4 of the issuance of the final order.

5 (c) STANDARD OF REVIEW.—The court shall uphold
6 the decision of the Administrator unless the court deter-
7 mines, upon review of the record as a whole, that the deci-
8 sion is not supported by substantial evidence, is contrary
9 to law, or is not in accordance with procedure required
10 by law.

11 (d) EXPEDITED PROCEDURES.—The United States
12 Court of Appeals shall provide for expedited procedures
13 for reviews under this section.

14 **SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESS-**
15 **MENTS.**

16 (a) EXCLUSIVE JURISDICTION.—The United States
17 Court of Appeals for the District of Columbia Circuit shall
18 have exclusive jurisdiction over any action to review a final
19 determination by the Administrator or the Asbestos Insur-
20 ers Commission regarding the liability of any person to
21 make a payment to the Fund, including a notice of appli-
22 cable subtier assignment under section 204(i), a notice of
23 financial hardship or inequity determination under section
24 204(d), *a notice of a distributor's adjustment under section*

1 204(m), and a notice of insurer participant obligation
2 under section 212(b).

3 (b) PERIOD FOR FILING ACTION.—A petition for re-
4 view under subsection (a) shall be filed not later than 60
5 days after a final determination by the Administrator or
6 the Commission giving rise to the action. Any defendant
7 participant who receives a notice of its applicable subtier
8 under section 204(i) ~~or~~, a notice of financial hardship or
9 inequity determination under section 204(d), *or a notice*
10 *of a distributor's adjustment under section 204(m)*, shall
11 commence any action within 30 days after a decision on
12 rehearing under section 204(i)(10), and any insurer par-
13 ticipant who receives a notice of a payment obligation
14 under section 212(b) shall commence any action within 30
15 days after receiving such notice. The court shall give such
16 action expedited consideration.

17 **SEC. 304. OTHER JUDICIAL CHALLENGES.**

18 (a) EXCLUSIVE JURISDICTION.—The United States
19 District Court for the District of Columbia shall have ex-
20 clusive jurisdiction over any action for declaratory or in-
21 junctive relief challenging any provision of this Act. An
22 action under this section shall be filed not later than 60
23 days after the date of enactment of this Act or 60 days
24 after the final action by the Administrator or the Commis-
25 sion giving rise to the action, whichever is later.

1 (b) DIRECT APPEAL.—A final decision in the action
 2 shall be reviewable on appeal directly to the Supreme
 3 Court of the United States. Such appeal shall be taken
 4 by the filing of a notice of appeal within 30 days, and
 5 the filing of a jurisdictional statement within 60 days, of
 6 the entry of the final decision.

7 (c) EXPEDITED PROCEDURES.—It shall be the duty
 8 of the United States District Court for the District of Co-
 9 lumbia and the Supreme Court of the United States to
 10 advance on the docket and to expedite to the greatest pos-
 11 sible extent the disposition of the action and appeal.

12 **SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL RE-**
 13 **VIEW.**

14 (a) NO STAYS.—

15 (1) *PAYMENTS*.—No court may issue a stay of
 16 payment by any party into the Fund pending its
 17 final judgment.

18 (2) *LEGAL CHALLENGES*.—*No court may issue a*
 19 *stay or injunction pending final judicial action, in-*
 20 *cluding the exhaustion of all appeals, on a legal chal-*
 21 *lenge to this Act or any portion of this Act.*

22 (b) EXCLUSIVITY OF REVIEW.—An action of the Ad-
 23 ministrator or the Asbestos Insurers Commission for
 24 which review could have been obtained under section 301,

1 302, or 303 shall not be subject to judicial review in any
2 other proceeding.

3 (c) CONSTITUTIONAL REVIEW.—

4 ~~(1) IN GENERAL.—Notwithstanding any other~~
5 ~~provision of law, any interlocutory or final judgment,~~
6 ~~decree, or order of a Federal court holding this Act,~~
7 ~~or any provision or application thereof, unconstitu-~~
8 ~~tional shall be reviewable as a matter of right by di-~~
9 ~~rect appeal to the Supreme Court.~~

10 (1) *IN GENERAL.—The United States District*
11 *Court for the District of Columbia shall have exclusive*
12 *jurisdiction over any action challenging the constitu-*
13 *tionality of any provision or application of this Act.*
14 *The following rules shall apply:*

15 (A) *The action shall be filed in the United*
16 *States District Court for the District of Colum-*
17 *bia and shall be heard by a 3-judge court con-*
18 *vened under section 2284 of title 28, United*
19 *States Code.*

20 (B) *A final decision in the action shall be*
21 *reviewable only by appeal directly to the Su-*
22 *preme Court of the United States. Such appeal*
23 *shall be taken by the filing of a notice of appeal*
24 *within 10 days, and the filing of a jurisdictional*

1 *statement within 30 days, after the entry of the*
2 *final decision.*

3 *(C) It shall be the duty of the United States*
4 *District Court for the District of Columbia and*
5 *the Supreme Court of the United States to ad-*
6 *vance on the docket and to expedite to the great-*
7 *est possible extent the disposition of the action*
8 *and appeal.*

9 ~~(2) PERIOD FOR FILING APPEAL.—Any such~~
10 ~~appeal shall be filed not more than 30 days after~~
11 ~~entry of such judgment, decree, or order.~~

12 ~~(3)(2) REPAYMENT TO ASBESTOS TRUST AND~~
13 ~~CLASS ACTION TRUST.—If the transfer of the assets~~
14 ~~of any asbestos trust of a debtor or any class action~~
15 ~~trust (or this Act as a whole) is held to be unconsti-~~
16 ~~tutional or otherwise unlawful, the Fund shall trans-~~
17 ~~fer the remaining balance of such assets (determined~~
18 ~~under section 405(f)(1)(A)(iii)) back to the appro-~~
19 ~~priate asbestos trust or class action trust within 90~~
20 ~~days after final judicial action on the legal challenge,~~
21 ~~including the exhaustion of all appeals.~~

1 **TITLE IV—MISCELLANEOUS**
 2 **PROVISIONS**

3 **SEC. 401. FALSE INFORMATION.**

4 (a) IN GENERAL.—Chapter 63 of title 18, United
 5 States Code, is amended by adding at the end the fol-
 6 lowing:

7 **“§ 1348. Fraud and false statements in connection**
 8 **with participation in Asbestos Injury**
 9 **Claims Resolution Fund**

10 “(a) FRAUD RELATING TO ASBESTOS INJURY
 11 CLAIMS RESOLUTION FUND.—Whoever knowingly and
 12 willfully executes, or attempts to execute, a scheme or arti-
 13 fice to defraud the Office of Asbestos Disease Compensa-
 14 tion or the Asbestos Insurers Commission under title H
 15 of the Fairness in Asbestos Injury Resolution Act of 2005
 16 shall be fined under this title or imprisoned not more than
 17 20 years, or both.

18 “(b) FALSE STATEMENT RELATING TO ASBESTOS
 19 INJURY CLAIMS RESOLUTION FUND.—Whoever, in any
 20 matter involving the Office of Asbestos Disease Compensa-
 21 tion or the Asbestos Insurers Commission, knowingly and
 22 willfully—

23 “(1) falsifies, conceals, or covers up by any
 24 trick, scheme, or device a material fact;

1 “(b) *FALSE STATEMENT RELATING TO ASBESTOS IN-*
2 *JURY CLAIMS RESOLUTION FUND.*—

3 “(1) *IN GENERAL.*—*It shall be unlawful for any*
4 *person, in any matter involving the Office of Asbestos*
5 *Disease Compensation or the Asbestos Insurers Com-*
6 *mission, to knowingly and willfully—*

7 “(A) *falsify, conceal, or cover up by any*
8 *trick, scheme, or device a material fact;*

9 “(B) *make any materially false, fictitious,*
10 *or fraudulent statement or representation; or*

11 “(C) *make or use any false writing or docu-*
12 *ment knowing the same to contain any materi-*
13 *ally false, fictitious, or fraudulent statement or*
14 *entry, in connection with the award of a claim*
15 *or the determination of a participant’s payment*
16 *obligation under title I or II of the Fairness in*
17 *Asbestos Injury Resolution Act of 2005.*

18 “(2) *PENALTY.*—*A person who violates this sub-*
19 *section shall be fined under this title or imprisoned*
20 *not more than 10 years, or both.”.*

21 “(b) *TECHNICAL AND CONFORMING AMENDMENT.*—*The*
22 *table of sections for chapter 63 of title 18, United States*
23 *Code, is amended by adding at the end the following:*

“1351. Fraud and false statements in connection with participation in Asbes-
tos Injury Claims Resolution Fund.”.

1 **SEC. 402. EFFECT ON BANKRUPTCY LAWS.**

2 (a) NO AUTOMATIC STAY.—Section 362(b) of title
3 11, United States Code, is amended—

4 (1) in paragraph (17), by striking “or” at the
5 end;

6 (2) in paragraph (18), by striking the period at
7 the end and inserting “; or”; and

8 (3) by inserting after paragraph (18) the fol-
9 lowing:

10 “(19) under subsection (a) of this section of the
11 enforcement of any payment obligations under sec-
12 tion 204 of the Fairness in Asbestos Injury Resolu-
13 tion Act of 2005, against a debtor, or the property
14 of the estate of a debtor, that is a participant (as
15 that term is defined in section 3 of that Act).”.

16 (b) ASSUMPTION OF EXECUTORY CONTRACT.—Sec-
17 tion 365 of title 11, United States Code, is amended by
18 adding at the end the following:

19 “(p) If a debtor is a participant (as that term is de-
20 fined in section 3 of the Fairness in Asbestos Injury Reso-
21 lution Act of 2005), the trustee shall be deemed to have
22 assumed all executory contracts entered into by the partic-
23 ipant under section 204 of that Act. The trustee may not
24 reject any such executory contract.”.

1 (c) ALLOWED ADMINISTRATIVE EXPENSES.—Section
2 503 of title 11, United States Code, is amended by adding
3 at the end the following:

4 “(c)(1) Claims or expenses of the United States, the
5 Attorney General, or the Administrator (as that term is
6 defined in section 3 of the Fairness in Asbestos Injury
7 Resolution Act of 2005) based upon the asbestos payment
8 obligations of a debtor that is a Participant (as that term
9 is defined in section 3 of that Act), shall be paid as an
10 allowed administrative expense. The debtor shall not be
11 entitled to either notice or a hearing with respect to such
12 claims.

13 “(2) For purposes of paragraph (1), the term ‘asbes-
14 tos payment obligation’ means any payment obligation
15 under title II of the Fairness in Asbestos Injury Resolu-
16 tion Act of 2005.”.

17 (d) NO DISCHARGE.—Section 523 of title 11, United
18 States Code, is amended by adding at the end the fol-
19 lowing:

20 “(f) A discharge under section 727, 1141, 1228, or
21 1328 of this title does not discharge any debtor that is
22 a participant (as that term is defined in section 3 of the
23 Fairness in Asbestos Injury Resolution Act of 2005) of
24 the debtor’s payment obligations assessed against the par-
25 ticipant under title II of that Act.”.

1 (e) PAYMENT.—Section 524 of title 11, United States
2 Code, is amended by adding at the end the following:

3 “(i) PARTICIPANT DEBTORS.—

4 “(1) IN GENERAL.—Paragraphs (2) and (3)
5 shall apply to a debtor who—

6 “(A) is a participant that has made prior
7 asbestos expenditures (as such terms are de-
8 fined in the Fairness in Asbestos Injury Resolu-
9 tion Act of 2005); and

10 “(B) is subject to a case under this title
11 that is pending—

12 “(i) on the date of enactment of the
13 Fairness in Asbestos Injury Resolution Act
14 of 2005; or

15 “(ii) at any time during the 1-year pe-
16 riod preceding the date of enactment of
17 that Act.

18 “(2) TIER I DEBTORS.—A debtor that has been
19 assigned to Tier I under section 202 of the Fairness
20 in Asbestos Injury Resolution Act of 2005, shall
21 make payments in accordance with sections 202 and
22 203 of that Act.

23 “(3) TREATMENT OF PAYMENT OBLIGA-
24 TIONS.—All payment obligations of a debtor under

1 sections 202 and 203 of the Fairness in Asbestos In-
2 jury Resolution Act of 2005 shall—

3 “(A) constitute costs and expenses of ad-
4 ministration of a case under section 503 of this
5 title;

6 “(B) notwithstanding any case pending
7 under this title, be payable in accordance with
8 section 202 of that Act;

9 “(C) not be stayed;

10 “(D) not be affected as to enforcement or
11 collection by any stay or injunction of any
12 court; and

13 “(E) not be impaired or discharged in any
14 current or future case under this title.”.

15 (f) TREATMENT OF TRUSTS.—Section 524 of title
16 11, United States Code, as amended by this Act, is
17 amended by adding at the end the following:

18 “(j) ASBESTOS TRUSTS.—

19 “(1) IN GENERAL.—A trust shall assign a por-
20 tion of the corpus of the trust to the Asbestos Injury
21 Claims Resolution Fund (referred to in this sub-
22 section as the ‘Fund’) as established under the Fair-
23 ness in Asbestos Injury Resolution Act of 2005 if
24 the trust qualifies as a ‘trust’ under section 201 of
25 that Act.

1 “(2) TRANSFER OF TRUST ASSETS.—

2 “(A) IN GENERAL.—

3 “(i) Except as provided under sub-
4 paragraphs (B), (C), and (E), the assets in
5 any trust established to provide compensa-
6 tion for asbestos claims (as defined in sec-
7 tion 3 of the Fairness in Asbestos Injury
8 Resolution Act of 2005) shall be trans-
9 ferred to the Fund not later than ~~6~~
10 ~~months~~ *90 days* after the date of enact-
11 ment of the Fairness in Asbestos Injury
12 Resolution Act of 2005 or 30 days fol-
13 lowing funding of a trust established under
14 a reorganization plan subject to section
15 202(e) of that Act. Except as provided
16 under subparagraph (B), the Adminis-
17 trator of the Fund shall accept such assets
18 and utilize them for any purposes of the
19 Fund under section 221 of such Act, in-
20 cluding the payment of claims for awards
21 under such Act to beneficiaries of the trust
22 from which the assets were transferred.

23 “(ii) Notwithstanding any other provi-
24 sion of Federal or State law, no liability of
25 any kind may be imposed on a trustee of

1 a trust for transferring assets to the Fund
2 in accordance with clause (i).

3 “(B) AUTHORITY TO REFUSE ASSETS.—
4 The Administrator of the Fund may refuse to
5 accept any asset that the Administrator deter-
6 mines may create liability for the Fund in ex-
7 cess of the value of the asset.

8 “(C) ALLOCATION OF TRUST ASSETS.—If
9 a trust under subparagraph (A) has bene-
10 ficiaries with claims that are not asbestos
11 claims, the assets transferred to the Fund
12 under subparagraph (A) shall not include assets
13 allocable to such beneficiaries. The trustees of
14 any such trust shall determine the amount of
15 such trust assets to be reserved for the con-
16 tinuing operation of the trust in processing and
17 paying claims that are not asbestos claims. The
18 trustees shall demonstrate to the satisfaction of
19 the Administrator, or by clear and convincing
20 evidence in a proceeding brought before the
21 United States District Court for the District of
22 Columbia in accordance with paragraph (4),
23 that the amount reserved is properly allocable
24 to claims other than asbestos claims.

1 “(D) SALE OF FUND ASSETS.—The invest-
2 ment requirements under section 222 of the
3 Fairness in Asbestos Injury Resolution Act of
4 2005 shall not be construed to require the Ad-
5 ministrators of the Fund to sell assets trans-
6 ferred to the Fund under subparagraph (A).

7 “(E) LIQUIDATED CLAIMS.—Except as
8 specifically provided in this subparagraph, all
9 asbestos claims against a trust are superseded
10 and preempted as of the date of enactment of
11 the Fairness in Asbestos Injury Resolution Act
12 of 2005, and a trust shall not make any pay-
13 ment relating to asbestos claims after that date.
14 If, in the ordinary course and the normal and
15 usual administration of the trust consistent
16 with past practices, a trust had before the date
17 of enactment of the Fairness in Asbestos Injury
18 Resolution Act of 2005, made all determina-
19 tions necessary to entitle an individual claimant
20 to a noncontingent cash payment from the
21 trust, the trust shall (i) make any lump-sum
22 cash payment due to that claimant, and (ii)
23 make or provide for all remaining noncontin-
24 gent payments on any award being paid or
25 scheduled to be paid on an installment basis, in

1 each case only to the same extent that the trust
2 would have made such cash payments in the or-
3 dinary course and consistent with past practices
4 before enactment of that Act. A trust shall not
5 make any payment in respect of any alleged
6 contingent right to recover any greater amount
7 than the trust had already paid, or had com-
8 pleted all determinations necessary to pay, to a
9 claimant in cash in accordance with its ordinary
10 distribution procedures in effect as of June 1,
11 2003.

12 “(3) INJUNCTION.—

13 “(A) IN GENERAL.—Any injunction issued
14 as part of the formation of a trust described in
15 paragraph (1) shall remain in full force and ef-
16 fect. No court, Federal or State, may enjoin the
17 transfer of assets by a trust to the Fund in ac-
18 cordance with this subsection pending resolu-
19 tion of any litigation challenging such transfer
20 or the validity of this subsection or of any pro-
21 vision of the Fairness in Asbestos Injury Reso-
22 lution Act of 2005, and an interlocutory order
23 denying such relief shall not be subject to im-
24 mediate appeal under section 1291(a) of title
25 28.

1 “(B) AVAILABILITY OF FUND ASSETS.—
2 Notwithstanding any other provision of law,
3 once such a transfer has been made, the assets
4 of the Fund shall be available to satisfy any
5 final judgment entered in such an action and
6 such transfer shall no longer be subject to any
7 appeal or review—

8 “(i) declaring that the transfer ef-
9 fects a taking of a right or property for
10 which an individual is constitutionally enti-
11 tled to just compensation; or

12 “(ii) requiring the transfer back to a
13 trust of any or all assets transferred by
14 that trust to the Fund.

15 “(4) JURISDICTION.—Solely for purposes of im-
16 plementing this subsection, personal jurisdiction over
17 every covered trust, the trustees thereof, and any
18 other necessary party, and exclusive subject matter
19 jurisdiction over every question arising out of or re-
20 lated to this subsection, shall be vested in the United
21 States District Court for the District of Columbia.
22 Notwithstanding any other provision of law, includ-
23 ing section 1127 of this title, that court may make
24 any order necessary and appropriate to facilitate
25 prompt compliance with this subsection, including

1 assuming jurisdiction over and modifying, to the ex-
2 tent necessary, any applicable confirmation order or
3 other order with continuing and prospective applica-
4 tion to a covered trust. The court may also resolve
5 any related challenge to the constitutionality of this
6 subsection or of its application to any trust, trustee,
7 or individual claimant. The Administrator of the
8 Fund may bring an action seeking such an order or
9 modification, under the standards of rule 60(b) of
10 the Federal Rules of Civil Procedure or otherwise,
11 and shall be entitled to intervene as of right in any
12 action brought by any other party seeking interpre-
13 tation, application, or invalidation of this subsection.
14 Any order denying relief that would facilitate prompt
15 compliance with the transfer provisions of this sub-
16 section shall be subject to immediate appeal under
17 section 304 of the Fairness in Asbestos Injury Reso-
18 lution Act of 2005. Notwithstanding any other provi-
19 sion of this paragraph, for purposes of implementing
20 the sunset provisions of section 402(f) of such Act
21 which apply to asbestos trusts and the class action
22 trust, the bankruptcy court or United States district
23 court having jurisdiction over any such trust as of
24 the date of enactment of such Act shall retain such
25 jurisdiction.”.

1 (g) NO AVOIDANCE OF TRANSFER.—Section 546 of
2 title 11, United States Code, is amended by adding at the
3 end the following:

4 “(h) Notwithstanding the rights and powers of a
5 trustee under sections 544, 545, 547, 548, 549, and 550
6 of this title, if a debtor is a participant (as that term is
7 defined in section 3 of the Fairness in Asbestos Injury
8 Resolution Act of 2005), the trustee may not avoid a
9 transfer made by the debtor under its payment obligations
10 under section 202 or 203 of that Act.”.

11 (h) CONFIRMATION OF PLAN.—Section 1129(a) of
12 title 11, United States Code, is amended by adding at the
13 end the following:

14 “(14) If the debtor is a participant (as that
15 term is defined in section 3 of the Fairness in As-
16 bestos Injury Resolution Act of 2005), the plan pro-
17 vides for the continuation after its effective date of
18 payment of all payment obligations under title II of
19 that Act.”.

20 (i) EFFECT ON INSURANCE RECEIVERSHIP PRO-
21 CEEDINGS.—

22 (1) LIEN.—In an insurance receivership pro-
23 ceeding involving a direct insurer, reinsurer or run-
24 off participant, there shall be a lien in favor of the
25 Fund for the amount of any assessment and any

1 such lien shall be given priority over all other claims
2 against the participant in receivership, except for the
3 expenses of administration of the receivership and
4 the perfected claims of the secured creditors. Any
5 State law that provides for priorities inconsistent
6 with this provision is preempted by this Act.

7 (2) PAYMENT OF ASSESSMENT.—Payment of
8 any assessment required by this Act shall not be
9 subject to any automatic or judicially entered stay in
10 any insurance receivership proceeding. This Act shall
11 preempt any State law requiring that payments by
12 a direct insurer, reinsurer or runoff participant in
13 an insurance receivership proceeding be approved by
14 a court, receiver or other person. Payments of as-
15 sessments by any direct insurer or reinsurer partici-
16 pant under this Act shall not be subject to the avoid-
17 ance powers of a receiver or a court in or relating
18 to an insurance receivership proceeding.

19 (j) STANDING IN BANKRUPTCY PROCEEDINGS.—The
20 Administrator shall have standing in any bankruptcy case
21 involving a debtor participant. No bankruptcy court may
22 require the Administrator to return property seized to sat-
23 isfy obligations to the Fund.

1 **SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.**

2 (a) EFFECT ON FEDERAL AND STATE LAW.—The
3 provisions of this Act shall supersede any Federal or State
4 law insofar as such law may relate to any asbestos claim,
5 including any claim described under subsection (e)(2).

6 (b) EFFECT ON SILICA CLAIMS.—

7 (1) IN GENERAL.—

8 (A) RULE OF CONSTRUCTION.—Nothing in
9 this Act shall be construed to preempt, bar, or
10 otherwise preclude any personal injury claim at-
11 tributable to exposure to silica as to which the
12 plaintiff—

13 (i) pleads with particularity and es-
14 tablishes by a preponderance of evidence
15 either that—

16 (I) no claim has been asserted or
17 filed by or with respect to the exposed
18 person in any forum for any asbestos-
19 related condition and the exposed per-
20 son (or another claiming on behalf of
21 or through the exposed person) is not
22 eligible for any monetary award under
23 this Act; or

24 (II)(aa) the exposed person suf-
25 fers or has suffered a functional im-

1 pairment that was caused by exposure
2 to silica; and

3 (bb) asbestos exposure was not a
4 substantial contributing factor to such
5 functional impairment; and

6 (ii) satisfies the requirements of para-
7 graph (2) .

8 (B) PREEMPTION.—Claims attributable to
9 exposure to silica that fail to meet the require-
10 ments of subparagraph (A) shall be preempted
11 by this Act.

12 (2) REQUIRED EVIDENCE.—

13 (A) IN GENERAL.—In any claim to which
14 paragraph (1) applies, the initial pleading (or,
15 for claims pending on the date of enactment of
16 this Act, an amended pleading to be filed within
17 60 days after such date, but not later than 60
18 days before trial, shall plead with particularity
19 the elements of subparagraph (A)(i)(I) or (II)
20 and shall be accompanied by the information
21 described under subparagraph (B)(i) through
22 (iv).

23 (B) PLEADINGS.—If the claim pleads the
24 elements of paragraph (1)(A)(i)(II) and by the
25 information described under clauses (i) through

1 (iv) of this subparagraph if the claim pleads the
2 elements of paragraph (1)(A)(i)(I)—

3 (i) admissible evidence, including at a
4 minimum, a B-reader's report, the under-
5 lying x-ray film and such other evidence
6 showing that the claim may be maintained
7 and is not preempted under paragraph (1);

8 (ii) notice of any previous lawsuit or
9 claim for benefits in which the exposed
10 person, or another claiming on behalf of or
11 through the injured person, asserted an in-
12 jury or disability based wholly or in part
13 on exposure to asbestos;

14 (iii) if known by the plaintiff after
15 reasonable inquiry by the plaintiff or his
16 representative, the history of the exposed
17 person's exposure, if any, to asbestos; and

18 (iv) copies of all medical and labora-
19 tory reports pertaining to the exposed per-
20 son that refer to asbestos or asbestos expo-
21 sure.

22 (3) *STATUTE OF LIMITATIONS.*—*In general, the*
23 *statute of limitations for a silica claim shall be gov-*
24 *erned by applicable State law, except that in any case*
25 *under this subsection, the statute of limitations shall*

1 *only start to run when the plaintiff becomes im-*
2 *paired.*

3 (c) SUPERSEDING PROVISIONS.—

4 (1) IN GENERAL.—Except as provided under
5 paragraph (3) *and section 106(f)*, any agreement,
6 understanding, or undertaking by any person or af-
7 filiated group with respect to the treatment of any
8 asbestos claim that requires future performance by
9 any party, insurer of such party, settlement adminis-
10 trator, or escrow agent shall be superseded in its en-
11 tirety by this Act.

12 (2) NO FORCE OR EFFECT.—Except as pro-
13 vided under paragraph (3), any such agreement, un-
14 derstanding, or undertaking by any such person or
15 affiliated group shall be of no force or effect, and no
16 person shall have any rights or claims with respect
17 to any such agreement, understanding, or under-
18 taking.

19 (3) EXCEPTION.—

20 (A) IN GENERAL.—Except as provided in
21 section 202(f), nothing in this Act shall abro-
22 gate a binding and legally enforceable written
23 settlement agreement between any defendant
24 participant or its insurer and a specific named

1 plaintiff with respect to the settlement of an as-
2 bestos claim of the plaintiff if—

3 (i) before the date of enactment of
4 this Act, the settlement agreement was ex-
5 ecuted directly by the settling defendant or
6 the settling insurer and the individual
7 plaintiff, or on behalf of the plaintiff where
8 the plaintiff is incapacitated and the settle-
9 ment agreement is signed by an authorized
10 legal representative;

11 (i) before the date of enactment of this
12 Act, the settlement agreement was executed
13 by—

14 (I) the settling defendant or the
15 settling insurer; and

16 (II)(aa) the specific individual
17 plaintiff, or the individual's immediate
18 relatives; or

19 (bb) an authorized legal represent-
20 ative acting on behalf of the plaintiff
21 where the plaintiff is incapacitated
22 and the settlement agreement is signed
23 by that authorized legal representative;

24 (ii) the settlement agreement contains
25 an express obligation by the settling de-

1 fendant or settling insurer to make a fu-
2 ture direct monetary payment or payments
3 in a fixed amount or amounts to the indi-
4 vidual plaintiff; and

5 (iii) within 30 days after the date of
6 enactment of this Act, or such shorter time
7 period specified in the settlement agree-
8 ment, all conditions to payment under the
9 settlement agreement have been fulfilled,
10 so that the only remaining performance
11 due under the settlement agreement is the
12 payment or payments by the settling de-
13 fendant or the settling insurer.

14 (B) BANKRUPTCY-RELATED AGREE-
15 MENTS.—The exception set forth in this para-
16 graph shall not apply to any bankruptcy-related
17 agreement.

18 (C) COLLATERAL SOURCE.—Any settle-
19 ment payment under this section is a collateral
20 source if the plaintiff seeks recovery from the
21 Fund.

22 (D) ABROGATION.—Nothing in subpara-
23 graph (A) shall abrogate a settlement agree-
24 ment otherwise satisfying the requirements of
25 that subparagraph if such settlement agreement

1 expressly anticipates the enactment of this Act
2 and provides for the effects of this Act.

3 (E) HEALTH CARE INSURANCE OR EX-
4 PENSES SETTLEMENTS.—Nothing in this Act
5 shall abrogate or terminate an otherwise fully
6 enforceable settlement agreement which was ex-
7 ecuted before the date of enactment of this Act
8 directly by the settling defendant or the settling
9 insurer and a specific named plaintiff to pay
10 the health care insurance or health care ex-
11 penses of the plaintiff.

12 (d) EXCLUSIVE REMEDY.—

13 (1) IN GENERAL.—Except as provided under
14 paragraph (2) *and section 106(f)*, the remedies pro-
15 vided under this Act shall be the exclusive remedy
16 for any asbestos claim, including any claim described
17 in subsection (e)(2), under any Federal or State law.

18 (2) CIVIL ACTIONS AT TRIAL.—

19 (A) IN GENERAL.—This Act shall not
20 apply to any asbestos claim that—

21 (i) is a civil action filed in a Federal
22 or State court (not including a filing in a
23 bankruptcy court);

24 (ii) is not part of a consolidation of
25 actions or a class action; and

1 (iii) on the date of enactment of this
2 Act—

3 (I) in the case of a civil action
4 which includes a jury trial, is before
5 the jury after its impanelling and
6 commencement of presentation of evi-
7 dence, but before its deliberations;

8 (II) in the case of a civil action
9 which includes a trial in which a judge
10 is the trier of fact, is at the presen-
11 tation of evidence at trial; or

12 (III) a verdict, final order, or
13 final judgment has been entered by a
14 trial court.

15 (B) NONAPPLICABILITY.—This Act shall
16 not apply to a civil action described under sub-
17 paragraph (A) throughout the final disposition
18 of the action.

19 (e) BAR ON ASBESTOS CLAIMS.—

20 (1) IN GENERAL.—No asbestos claim (including
21 any claim described in paragraph (2)) may be pur-
22 sued, and no pending asbestos claim may be main-
23 tained, in any Federal or State court, except as pro-
24 vided under subsection (d)(2) *and section 106(f)*.

25 (2) CERTAIN SPECIFIED CLAIMS.—

1 (A) IN GENERAL.—Subject to section 404
2 (d) and (e)(3) of this Act, no claim may be
3 brought or pursued in any Federal or State
4 court or insurance receivership proceeding—

5 (i) relating to any default, confessed
6 or stipulated judgment on an asbestos
7 claim if the judgment debtor expressly
8 agreed, in writing or otherwise, not to con-
9 test the entry of judgment against it and
10 the plaintiff expressly agreed, in writing or
11 otherwise, to seek satisfaction of the judg-
12 ment only against insurers or in bank-
13 ruptcy;

14 (ii) relating to the defense, investiga-
15 tion, handling, litigation, settlement, or
16 payment of any asbestos claim by any par-
17 ticipant, including claims for bad faith or
18 unfair or deceptive claims handling or
19 breach of any duties of good faith; or

20 (iii) arising out of or relating to the
21 asbestos-related injury of any individual
22 and—

23 (I) asserting any conspiracy, con-
24 cert of action, aiding or abetting, act,
25 conduct, statement, misstatement, un-

1 dertaking, publication, omission, or
2 failure to detect, speak, disclose, pub-
3 lish, or warn relating to the presence
4 or health effects of asbestos or the
5 use, sale, distribution, manufacture,
6 production, development, inspection,
7 advertising, marketing, or installation
8 of asbestos; or

9 (II) asserting any conspiracy,
10 act, conduct, statement, omission, or
11 failure to detect, disclose, or warn re-
12 lating to the presence or health effects
13 of asbestos or the use, sale, distribu-
14 tion, manufacture, production, devel-
15 opment, inspection, advertising, mar-
16 keting, or installation of asbestos, as-
17 serted as or in a direct action against
18 an insurer or reinsurer based upon
19 any theory, statutory, contract, tort,
20 or otherwise; or

21 (iv) by any third party, and premised
22 on any theory, allegation, or cause of ac-
23 tion, for reimbursement of healthcare costs
24 allegedly associated with the use of or ex-

1 posure to asbestos, whether such claim is
2 asserted directly, indirectly or derivatively.

3 (B) EXCEPTIONS.—Subparagraph (A) (ii)
4 and (iii) shall not apply to claims against par-
5 ticipants by persons—

6 (i) with whom the participant is in
7 privity of contract;

8 (ii) who have received an assignment
9 of insurance rights not otherwise voided by
10 this Act; or

11 (iii) who are beneficiaries covered by
12 the express terms of a contract with that
13 participant.

14 (3) PREEMPTION.—Any action asserting an as-
15 bestos claim (including a claim described in para-
16 graph (2)) in any Federal or State court is pre-
17 empted by this Act, except as provided under sub-
18 section (d)(2) *and section 106(f)*.

19 (4) DISMISSAL.—Except as provided under sub-
20 section (d)(2), no judgment other than a judgment
21 of dismissal may be entered in any such action, in-
22 cluding an action pending on appeal, or on petition
23 or motion for discretionary review, on or after the
24 date of enactment of this Act. A court may dismiss
25 any such action on its motion. If the court denies

1 the motion to dismiss, it shall stay further pro-
2 ceedings until final disposition of any appeal taken
3 under this Act.

4 (5) REMOVAL.—

5 (A) IN GENERAL.—If an action in any
6 State court under paragraph (3) is preempted,
7 barred, or otherwise precluded under this Act,
8 and not dismissed, or if an order entered after
9 the date of enactment of this Act purporting to
10 enter judgment or deny review is not rescinded
11 and replaced with an order of dismissal within
12 30 days after the filing of a motion by any
13 party to the action advising the court of the
14 provisions of this Act, any party may remove
15 the case to the district court of the United
16 States for the district in which such action is
17 pending.

18 (B) TIME LIMITS.—For actions originally
19 filed after the date of enactment of this Act, the
20 notice of removal shall be filed within the time
21 limits specified in section 1441(b) of title 28,
22 United States Code.

23 (C) PROCEDURES.—The procedures for re-
24 moval and proceedings after removal shall be in
25 accordance with sections 1446 through 1450 of

1 title 28, United States Code, except as may be
2 necessary to accommodate removal of any ac-
3 tions pending (including on appeal) on the date
4 of enactment of this Act.

5 (D) REVIEW OF REMAND ORDERS.—

6 (i) IN GENERAL.—Section 1447 of
7 title 28, United States Code, shall apply to
8 any removal of a case under this section,
9 except that notwithstanding subsection (d)
10 of that section, a court of appeals may ac-
11 cept an appeal from an order of a district
12 court granting or denying a motion to re-
13 mand an action to the State court from
14 which it was removed if application is
15 made to the court of appeals not less than
16 7 days after entry of the order.

17 (ii) TIME PERIOD FOR JUDGMENT.—If
18 the court of appeals accepts an appeal
19 under clause (i), the court shall complete
20 all action on such appeal, including ren-
21 dering judgment, not later than 60 days
22 after the date on which such appeal was
23 filed, unless an extension is granted under
24 clause (iii).

1 (iii) EXTENSION OF TIME PERIOD.—

2 The court of appeals may grant an exten-
3 sion of the 60-day period described in
4 clause (ii) if—

5 (I) all parties to the proceeding
6 agree to such extension, for any pe-
7 riod of time; or

8 (II) such extension is for good
9 cause shown and in the interests of
10 justice, for a period not to exceed 10
11 days.

12 (iv) DENIAL OF APPEAL.—If a final
13 judgment on the appeal under clause (i) is
14 not issued before the end of the period de-
15 scribed in clause (ii), including any exten-
16 sion under clause (iii), the appeal shall be
17 denied.

18 (E) JURISDICTION.—The jurisdiction of
19 the district court shall be limited to—

20 (i) determining whether removal was
21 proper; and

22 (ii) determining, based on the evi-
23 dentiary record, whether the claim pre-
24 sented is preempted, barred, or otherwise
25 precluded under this Act.

1 (6) CREDITS.—

2 (A) IN GENERAL.—If, notwithstanding the
3 express intent of Congress stated in this sec-
4 tion, any court finally determines for any rea-
5 son that an asbestos claim is not barred under
6 this subsection and is not subject to the exclu-
7 sive remedy or preemption provisions of this
8 section, then any participant required to satisfy
9 a final judgment executed with respect to any
10 such claim may elect to receive a credit against
11 any assessment owed to the Fund equal to the
12 amount of the payment made with respect to
13 such executed judgment.

14 (B) REQUIREMENTS.—The Administrator
15 shall require participants seeking credit under
16 this paragraph to demonstrate that the partici-
17 pant—

18 (i) timely pursued all available rem-
19 edies, including remedies available under
20 this paragraph to obtain dismissal of the
21 claim; and

22 (ii) notified the Administrator at least
23 20 days before the expiration of any period
24 within which to appeal the denial of a mo-
25 tion to dismiss based on this section.

1 (C) INFORMATION.—The Administrator
 2 may require a participant seeking credit under
 3 this paragraph to furnish such further informa-
 4 tion as is necessary and appropriate to establish
 5 eligibility for, and the amount of, the credit.

6 (D) INTERVENTION.—The Administrator
 7 may intervene in any action in which a credit
 8 may be due under this paragraph.

9 **SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CON-**
 10 **TRACTS.**

11 (a) EROSION OF INSURANCE COVERAGE LIMITS.—

12 (1) DEFINITIONS.—In this section, the fol-
 13 lowing definitions shall apply:

14 (A) DEEMED EROSION AMOUNT.—The
 15 term “deemed erosion amount” means the
 16 amount of erosion deemed to occur at enact-
 17 ment under paragraph (2).

18 (B) EARLY SUNSET.—The term “early
 19 sunset” means an event causing termination of
 20 the program under section 405(f) which relieves
 21 the insurer participants of paying some portion
 22 of the aggregate payment level of
 23 \$46,025,000,000 required under section
 24 212(a)(2)(A).

1 (C) EARNED EROSION AMOUNT.—The
 2 term “earned erosion amount” means, in the
 3 event of any early sunset under section 405(f),
 4 the percentage, as set forth in the following
 5 schedule, depending on the year in which the
 6 defendant participants’ funding obligations end,
 7 of those amounts which, at the time of the early
 8 sunset, a defendant participant has paid to the
 9 fund and remains obligated to pay into the
 10 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

1 (D) REMAINING AGGREGATE PRODUCTS
2 LIMITS.—The term “remaining aggregate prod-
3 ucts limits” means aggregate limits that apply
4 to insurance coverage granted under the “prod-
5 ucts hazard”, “completed operations hazard”,
6 or “Products—Completed Operations Liability”
7 in any comprehensive general liability policy
8 issued between calendar years 1940 and 1986
9 to cover injury which occurs in any State, as re-
10 duced by—

11 (i) any existing impairment of such
12 aggregate limits as of the date of enact-
13 ment of this Act; and

14 (ii) the resolution of claims for reim-
15 bursement or coverage of liability or paid
16 or incurred loss for which notice was pro-
17 vided to the insurer before the date of en-
18 actment of this Act.

19 (E) SCHEDULED PAYMENT AMOUNTS.—
20 The term “scheduled payment amounts” means
21 the future payment obligation to the Fund
22 under this Act from a defendant participant in
23 the amount established under sections 203 and
24 204.

1 (F) UNEARNED EROSION AMOUNT.—The
2 term “unearned erosion amount” means, in the
3 event of any early sunset under section 405(f),
4 the difference between the deemed erosion
5 amount and the earned erosion amount.

6 (2) QUANTUM AND TIMING OF EROSION.—

7 (A) EROSION UPON ENACTMENT.—The
8 collective payment obligations to the Fund of
9 the insurer and reinsurer participants as as-
10 sessed by the Administrator shall be deemed as
11 of the date of enactment of this Act to erode re-
12 maining aggregate products limits available to a
13 defendant participant only in an amount of
14 38.1 percent of each defendant participant’s
15 scheduled payment amount.

16 (B) NO ASSERTION OF CLAIM.—No insurer
17 or reinsurer may assert any claim against a de-
18 fendant participant or captive insurer for insur-
19 ance, reinsurance, payment of a deductible, or
20 retrospective premium adjustment arising out
21 of that insurer’s or reinsurer’s payments to the
22 Fund or the erosion deemed to occur under this
23 section.

24 (C) POLICIES WITHOUT CERTAIN LIMITS
25 OR WITH EXCLUSION.—Except as provided

1 under subparagraph (E), nothing in this section
2 shall require or permit the erosion of any insur-
3 ance policy or limit that does not contain an ag-
4 gregate products limit, or that contains an as-
5 bestos exclusion.

6 (D) TREATMENT OF CONSOLIDATION
7 ELECTION.—If an affiliated group elects con-
8 solidation as provided in section 204(f), the
9 total erosion of limits for the affiliated group
10 under paragraph (2)(A) shall not exceed ~~59.64~~
11 *38.1* percent of the scheduled payment amount
12 of the single payment obligation for the entire
13 affiliated group. The total erosion of limits for
14 any individual defendant participant in the af-
15 filiated group shall not exceed its individual
16 share of ~~59.64~~ *38.1* percent of the affiliated
17 group's scheduled payment amount, as meas-
18 ured by the individual defendant participant's
19 percentage share of the affiliated group's prior
20 asbestos expenditures.

21 (E) RULE OF CONSTRUCTION.—Notwith-
22 standing any other provision of this section,
23 nothing in this Act shall be deemed to erode re-
24 maining aggregate products limits of a defend-
25 ant participant that can demonstrate by a

1 reponderance of the evidence that 75 percent of
2 its prior asbestos expenditures were made in de-
3 fense or satisfaction of asbestos claims alleging
4 bodily injury arising exclusively from the expo-
5 sure to asbestos at premises owned, rented, or
6 controlled by the defendant participant (a
7 “premises defendant”). In calculating such per-
8 centage, where expenditures were made in de-
9 fense or satisfaction of asbestos claims alleging
10 bodily injury due to exposure to the defendant
11 participant’s products and to asbestos at prem-
12 ises owned, rented, or controlled by the defend-
13 ant participant, half of such expenditures shall
14 be deemed to be for such premises exposures. If
15 a defendant participant establishes itself as a
16 premises defendant, 75 percent of the payments
17 by such defendant participant shall erode cov-
18 erage limits, if any, applicable to premises li-
19 abilities under applicable law.

20 (3) METHOD OF EROSION.—

21 (A) ALLOCATION.—The amount of erosion
22 allocated to each defendant participant shall be
23 allocated among periods in which policies with
24 remaining aggregate product limits are avail-
25 able to that defendant participant pro rata by

1 policy period, in ascending order by attachment
2 point.

3 (B) OTHER EROSION METHODS.—

4 (i) IN GENERAL.—Notwithstanding
5 subparagraph (A), the method of erosion
6 of any remaining aggregate products limits
7 which are subject to—

8 (I) a coverage-in-place or settle-
9 ment agreement between a defendant
10 participant and 1 or more insurance
11 participants as of the date of enact-
12 ment; or

13 (II) a final and nonappealable
14 judgment as of the date of enactment
15 or resulting from a claim for coverage
16 or reimbursement pending as of such
17 date, shall be as specified in such
18 agreement or judgment with regard to
19 erosion applicable to such insurance
20 participants' policies.

21 (ii) REMAINING LIMITS.—To the ex-
22 tent that a final nonappealable judgment
23 or settlement agreement to which an in-
24 surer participant and a defendant partici-
25 pant are parties in effect as of the date of

1 enactment of this Act extinguished a de-
2 fendant participant's right to seek coverage
3 for asbestos claims under an insurer par-
4 ticipant's policies, any remaining limits in
5 such policies shall not be considered to be
6 remaining aggregate products limits under
7 subsection (a)(1)(A).

8 (4) RESTORATION OF AGGREGATE PRODUCTS
9 LIMITS UPON EARLY SUNSET.—

10 (A) RESTORATION.—In the event of an
11 early sunset, any unearned erosion amount will
12 be deemed restored as aggregate products limits
13 available to a defendant participant as of the
14 date of enactment.

15 (B) METHOD OF RESTORATION.—The un-
16 earned erosion amount will be deemed restored
17 to each defendant participant's policies in such
18 a manner that the last limits that were deemed
19 eroded at enactment under this subsection are
20 deemed to be the first limits restored upon
21 early sunset.

22 (C) TOLLING OF COVERAGE CLAIMS.—In
23 the event of an early sunset, the applicable stat-
24 ute of limitations and contractual provisions for
25 the filing of claims under any insurance policy

1 with restored aggregate products limits shall be
2 deemed tolled after the date of enactment
3 through the date 6 months after the date of
4 early sunset.

5 (5) PAYMENTS BY DEFENDANT PARTICIPANT.—

6 Payments made by a defendant participant shall be
7 deemed to erode, exhaust, or otherwise satisfy appli-
8 cable self-insured retentions, deductibles, retrospec-
9 tively rated premiums, and limits issued by non-
10 participating insolvent or captive insurance compa-
11 nies. Reduction of remaining aggregate limits under
12 this subsection shall not limit the right of a defend-
13 ant participant to collect from any insurer not a par-
14 ticipant.

15 (6) EFFECT ON OTHER INSURANCE CLAIMS.—

16 Other than as specified in this subsection, this Act
17 does not alter, change, modify, or affect insurance
18 for claims other than asbestos claims.

19 (b) DISPUTE RESOLUTION PROCEDURE.—

20 (1) ARBITRATION.—The parties to a dispute re-
21 garding the erosion of insurance coverage limits
22 under this section may agree in writing to settle
23 such dispute by arbitration. Any such provision or
24 agreement shall be valid, irrevocable, and enforce-

1 able, except for any grounds that exist at law or in
2 equity for revocation of a contract.

3 (2) TITLE 9, UNITED STATES CODE.—Arbitra-
4 tion of such disputes, awards by arbitrators, and
5 confirmation of awards shall be governed by title 9,
6 United States Code, to the extent such title is not
7 inconsistent with this section. In any such arbitra-
8 tion proceeding, the erosion principles provided for
9 under this section shall be binding on the arbitrator,
10 unless the parties agree to the contrary.

11 (3) FINAL AND BINDING AWARD.—An award by
12 an arbitrator shall be final and binding between the
13 parties to the arbitration, but shall have no force or
14 effect on any other person. The parties to an arbi-
15 tration may agree that in the event a policy which
16 is the subject matter of an award is subsequently de-
17 termined to be eroded in a manner different from
18 the manner determined by the arbitration in a judg-
19 ment rendered by a court of competent jurisdiction
20 from which no appeal can or has been taken, such
21 arbitration award may be modified by any court of
22 competent jurisdiction upon application by any party
23 to the arbitration. Any such modification shall gov-
24 ern the rights and obligations between such parties
25 after the date of such modification.

1 (c) EFFECT ON NONPARTICIPANTS.—

2 (1) IN GENERAL.—No insurance company or
3 reinsurance company that is not a participant, other
4 than a captive insurer, shall be entitled to claim that
5 payments to the Fund erode, exhaust, or otherwise
6 limit the nonparticipant's insurance or reinsurance
7 obligations.

8 (2) OTHER CLAIMS.—Nothing in this Act shall
9 preclude a participant from pursuing any claim for
10 insurance or reinsurance from any person that is not
11 a participant other than a captive insurer.

12 (d) FINITE RISK POLICIES NOT AFFECTED.—

13 (1) IN GENERAL.—Notwithstanding any other
14 provision of this Act, except subject to section
15 212(a)(1)(D), this Act shall not alter, affect or im-
16 pair any rights or obligations of—

17 (A) any party to an insurance contract
18 that expressly provides coverage for govern-
19 mental charges or assessments imposed to re-
20 place insurance or reinsurance liabilities in ef-
21 fect on the date of enactment of this Act; or

22 (B) subject to paragraph (2), any person
23 with respect to any insurance ~~or reinsurance~~
24 purchased by a participant after December 31,
25 1990, that expressly (but not necessarily exclu-

1 sively) provides coverage for asbestos liabilities,
 2 including those policies commonly referred to as
 3 “finite risk” policies.

4 (2) LIMITATION.—No person may assert that
 5 any amounts paid to the Fund in accordance with
 6 this Act are covered by any policy described under
 7 paragraph (1)(B) purchased by a defendant partici-
 8 pant, unless such policy specifically provides cov-
 9 erage for required payments to a Federal trust fund
 10 established by a Federal statute to resolve asbestos
 11 injury claims.

12 (e) EFFECT ON CERTAIN INSURANCE AND REINSUR-
 13 ANCE CLAIMS.—

14 (1) NO COVERAGE FOR FUND ASSESSMENTS.—
 15 ~~No~~ *Subject to section 212(a)(1)(D), no participant or*
 16 *captive insurer may pursue an insurance or reinsur-*
 17 *ance claim against another participant or captive in-*
 18 *surer for payments to the Fund required under this*
 19 *Act, except under a ~~contract~~ written agreement spe-*
 20 *cifically providing insurance ~~or reinsurance~~, reinsur-*
 21 *ance, or other reimbursement for required payments*
 22 *to a Federal trust fund established by a Federal*
 23 *statute to resolve asbestos injury claims or, where*
 24 *applicable, under finite risk policies under subsection*
 25 (d).

1 (2) CERTAIN INSURANCE ASSIGNMENTS VOID-
2 ED.—Any assignment of any rights to insurance cov-
3 erage for asbestos claims to any person who has as-
4 serted an asbestos claim before the date of enact-
5 ment of this Act, or to any trust, person, or other
6 entity not part of an affiliated group as defined in
7 section 201(1) of this Act established or appointed
8 for the purpose of paying asbestos claims which were
9 asserted before such date of enactment, or by any
10 Tier I defendant participant, before any sunset of
11 this Act, shall be null and void. This subsection shall
12 not void or affect in any way any assignments of
13 rights to insurance coverage other than to asbestos
14 claimants or to trusts, persons, or other entities not
15 part of an affiliated group as defined in section
16 201(1) of this Act established or appointed for the
17 purpose of paying asbestos claims, or by Tier I de-
18 fendant participants.

19 (3) INSURANCE CLAIMS PRESERVED.—Notwith-
20 standing any other provision of this Act, this Act
21 shall not alter, affect, or impair any rights or obliga-
22 tions of any person with respect to any insurance or
23 reinsurance for amounts that any person pays, has
24 paid, or becomes legally obligated to pay in respect
25 of asbestos or other claims, *including claims filed,*

1 *pursued, or revived under section 405(g), except to*
 2 *the extent that—*

3 ~~(A) such person pays or becomes legally~~
 4 ~~obligated to pay claims that are superseded by~~
 5 ~~section 403;~~

6 *(A) such claims are preempted, barred, or*
 7 *superseded by section 403;*

8 (B) any such rights or obligations of such
 9 person with respect to insurance or reinsurance
 10 are prohibited by paragraph (1) or (2) of sub-
 11 section (e); or

12 (C) the limits of insurance otherwise avail-
 13 able to such participant in respect of asbestos
 14 claims are deemed to be eroded under sub-
 15 section (a).

16 **SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR AND**
 17 **SUNSET OF THE ACT.**

18 (a) IN GENERAL.—The Administrator shall submit
 19 an annual report to the Committee on the Judiciary of
 20 the Senate and the Committee on the Judiciary of the
 21 House of Representatives on the operation of the Asbestos
 22 Injury Claims Resolution Fund within 6 months after the
 23 close of each fiscal year.

24 (b) CONTENTS OF REPORT.—The annual report sub-
 25 mitted under this subsection shall include an analysis of—

1 (1) the claims experience of the program during
2 the most recent fiscal year, including—

3 (A) the number of claims made to the Of-
4 fice and a description of the types of medical
5 diagnoses and asbestos exposures underlying
6 those claims;

7 (B) the number of claims denied by the
8 Office and a description of the types of medical
9 diagnoses and asbestos exposures underlying
10 those claims, and a general description of the
11 reasons for their denial;

12 (C) a summary of the eligibility determina-
13 tions made by the Office under section 114;

14 (D) a summary of the awards made from
15 the Fund, including the amount of the awards;
16 and

17 (E) for each eligible condition, a statement
18 of the percentage of asbestos claimants who
19 filed claims during the prior calendar year and
20 were determined to be eligible to receive com-
21 pensation under this Act, who have received the
22 compensation to which such claimants are enti-
23 tled according to section 131;

24 (2) the administrative performance of the pro-
25 gram, including—

1 (A) the performance of the program in
2 meeting the time limits prescribed by law and
3 an analysis of the reasons for any systemic
4 delays;

5 (B) any backlogs of claims that may exist
6 and an explanation of the reasons for such
7 backlogs;

8 (C) the costs to the Fund of administering
9 the program; and

10 (D) any other significant factors bearing
11 on the efficiency of the program;

12 (3) the financial condition of the Fund, includ-
13 ing—

14 (A) statements of the Fund's revenues, ex-
15 penses, assets, and liabilities;

16 (B) the identity of all participants, the
17 funding allocations of each participant, and the
18 total amounts of all payments to the Fund;

19 (C) a list of all financial hardship or in-
20 equity adjustments applied for during the fiscal
21 year, and the adjustments that were made dur-
22 ing the fiscal year;

23 (D) a statement of the investments of the
24 Fund; and

1 (E) a statement of the borrowings of the
2 Fund;

3 (4) the financial prospects of the Fund, includ-
4 ing—

5 (A) an estimate of the number and types
6 of claims, the amount of awards, and the par-
7 ticipant payment obligations for the next fiscal
8 year;

9 (B) an analysis of the financial condition
10 of the Fund, including an estimation of the
11 Fund's ability to pay claims for the subsequent
12 5 years in full as and when required, an evalua-
13 tion of the Fund's ability to retire its existing
14 debt and assume additional debt, and an eval-
15 uation of the Fund's ability to satisfy other ob-
16 ligations under the program; and

17 (C) a report on any changes in projections
18 made in earlier annual reports or sunset anal-
19 yses regarding the Fund's ability to meet its fi-
20 nancial obligations;

21 (5) any recommendations from the Advisory
22 Committee on Asbestos Disease Compensation and
23 the Medical Advisory Committee of the Fund to im-
24 prove the diagnostic, exposure, and medical criteria
25 so as to pay ~~only those claimants whose injuries are~~

1 caused by exposure to asbestos *those claimants who*
2 *suffer from injuries for which exposure to asbestos was*
3 *a substantial contributing factor;*

4 (6) a summary of the results of audits con-
5 ducted under section 115; and

6 (7) a summary of prosecutions under section
7 1348 of title 18, United States Code (as added by
8 this Act).

9 (c) ~~CLAIMS ANALYSIS.~~—If the Administrator con-
10 cludes, on the basis of the annual report submitted under
11 this section, that the Fund is compensating claims for in-
12 juries that are not caused by exposure to asbestos and
13 compensating such claims may, currently or in the future,
14 undermine the Fund's ability to compensate persons with
15 injuries that are caused by exposure to asbestos, the Ad-
16 ministrator shall include in the report an analysis of the
17 reasons for the situation, a description of the range of rea-
18 sonable alternatives for responding to the situation, and
19 a recommendation as to which alternative best serves the
20 interest of claimants and the public. The report shall in-
21 clude a description of changes in the diagnostic, exposure,
22 or medical criteria of section 121 that the Administrator
23 believes may be necessary to protect the Fund from com-
24 pensating claims not caused by exposure to asbestos.

1 (c) *CLAIMS ANALYSIS AND VERIFICATION OF UNAN-*
2 *TICIPATED CLAIMS.—*

3 (1) *IN GENERAL.—If the Administrator con-*
4 *cludes, on the basis of the annual report submitted*
5 *under this section, that—*

6 (A) *the average number of claims that qual-*
7 *ify for compensation under a claim level or des-*
8 *ignation exceeds 125 percent of the number of*
9 *claims expected to qualify for compensation*
10 *under that claim level or designation in the most*
11 *recent Congressional Budget Office estimate of*
12 *asbestos-injury claims for any 3-year period, the*
13 *Administrator shall conduct a review of a statis-*
14 *tically significant sample of claims qualifying*
15 *for compensation under the appropriate claim*
16 *level or designation; or*

17 (B) *the average number of claims that qual-*
18 *ify for compensation under a claim level or des-*
19 *ignation is less than 75 percent of the number of*
20 *claims expected to qualify for compensation*
21 *under that claim level or designation in the most*
22 *recent Congressional Budget Office estimate of*
23 *asbestos-injury claims for any 3-year period, the*
24 *Administrator shall conduct a review of a statis-*
25 *tically significant sample of claims deemed ineli-*

1 *gible for compensation under the appropriate*
2 *claim level or designation.*

3 (2) *DETERMINATIONS.*—*The Administrator shall*
4 *examine the best available medical evidence and any*
5 *recommendation made under subsection (b)(5) in*
6 *order to determine which 1 or more of the following*
7 *is true:*

8 (A) *Without a significant number of excep-*
9 *tions, all of the claimants who qualified for com-*
10 *ensation under the claim level or designation*
11 *suffer from an injury or disease for which expo-*
12 *sure to asbestos was a substantial contributing*
13 *factor.*

14 (B) *A significant number of claimants who*
15 *qualified for compensation under the claim level*
16 *or designation do not suffer from an injury or*
17 *disease for which exposure to asbestos was a sub-*
18 *stantial contributing factor.*

19 (C) *A significant number of claimants who*
20 *were denied compensation under the claim level*
21 *of designation did suffer from an injury or dis-*
22 *ease for which exposure to asbestos was a sub-*
23 *stantial contributing factor.*

24 (D) *The Congressional Budget Office projec-*
25 *tions underestimated or overestimated the actual*

1 *number of persons who suffer from an injury or*
2 *disease for which exposure to asbestos was a sub-*
3 *stantial contributing factor.*

4 (3) *RECOMMENDATIONS CONCERNING CLAIMS*
5 *CRITERIA.—If the Administrator determines that a*
6 *significant number of the claimants who qualified for*
7 *compensation under the claim level under review do*
8 *not suffer from an injury or disease for which expo-*
9 *sure to asbestos was a substantial contributing factor,*
10 *or that a significant number of the claimants who*
11 *were denied compensation under the claim level under*
12 *review suffered from an injury or disease for which*
13 *exposure to asbestos was a substantial contributing*
14 *factor, the Administrator shall recommend to Con-*
15 *gress, under subsection (e), changes to the compensa-*
16 *tion criteria in order to ensure that the Fund pro-*
17 *vides compensation for injury or disease for which ex-*
18 *posure to asbestos was a substantial contributing fac-*
19 *tor, but does not provide compensation to claimants*
20 *who do not suffer from an injury or disease for which*
21 *asbestos exposure was a substantial contributing fac-*
22 *tor.*

23 (d) *RECOMMENDATIONS OF ADMINISTRATOR AND AD-*
24 *VISORY COMMITTEE.—*

1 (1) *REFERRAL.*—*If the Administrator rec-*
 2 *ommends changes to this Act under subsection (c), the*
 3 *recommendations and accompanying analysis shall be*
 4 *referred to the Advisory Committee on Asbestos Dis-*
 5 *ease Compensation established under section 102 (in*
 6 *this subsection referred to as the “Advisory Com-*
 7 *mittee”).*

8 (2) *ADVISORY COMMITTEE RECOMMENDATIONS.*—
 9 *The Advisory Committee shall hold expedited public*
 10 *hearings on the alternatives and recommendations of*
 11 *the Administrator and make its own recommenda-*
 12 *tions for reform of the program under titles I and II.*

13 (3) *TRANSMITTAL TO CONGRESS.*—*Not later than*
 14 *90 days after receiving the recommendations of the*
 15 *Administrator, the Advisory Committee shall trans-*
 16 *mit the recommendations of the Administrator and*
 17 *the recommendations of the Advisory Committee to*
 18 *the Committee on the Judiciary of the Senate and the*
 19 *Committee on the Judiciary of the House of Rep-*
 20 *resentatives.*

21 ~~(d)~~(e) *SHORTFALL ANALYSIS.*—

22 (1) *IN GENERAL.*—

23 (A) *ANALYSIS.*—*If the Administrator con-*
 24 *cludes, on the basis of the information con-*
 25 *tained in the annual report submitted under*

1 this section, that the Fund may not be able to
2 pay claims as such claims become due at any
3 time within the next 5 years, the Administrator
4 shall include in the report an analysis of the
5 reasons for the situation, an estimation of when
6 the Fund will no longer be able to pay claims
7 as such claims become due, a description of the
8 range of reasonable alternatives for responding
9 to the situation, and a recommendation as to
10 which alternative best serves the interest of
11 claimants and the public. The report may in-
12 clude a description of changes in the diagnostic,
13 exposure, or medical criteria of section 121 that
14 the Administrator believes may be necessary to
15 protect the Fund.

16 (B) RANGE OF ALTERNATIVES.—The
17 range of alternatives under subparagraph (A)
18 may include—

19 (i) triggering the termination of this
20 Act under subsection (f) at any time after
21 the date of enactment of this Act; and

22 (ii) reform of the program set forth in
23 titles I and II of this Act (including
24 changes in the diagnostic, exposure, or
25 medical criteria, changes in the enforce-

1 ment or application of those criteria,
2 changes in the timing of payments,
3 changes in contributions by defendant par-
4 ticipants, insurer participants (or both
5 such participants), or changes in award
6 values).

7 (C) *INSURER SHORTFALL ASSESSMENTS.*—

8 *Beginning in year 6 of the life of the Fund, if*
9 *the Administrator determines that a shortfall in*
10 *payment of the annual amounts required to be*
11 *paid by insurer participants under section*
12 *212(a)(3)(C) is the substantial factor that would*
13 *cause the Administrator to recommend the termi-*
14 *nation of this Act under subsection (f), then the*
15 *Administrator may impose shortfall assessments*
16 *on insurer participants in addition to the pay-*
17 *ments imposed under section 212, except that the*
18 *Administrator shall not impose such assessments*
19 *if the additional amounts would not be sufficient*
20 *to permit the Administrator to avoid recom-*
21 *mending termination of this Act. During any*
22 *given year, the total of such shortfall assessments*
23 *shall not exceed the amount by which, during the*
24 *prior year, total payments by insurer partici-*
25 *pants fell short of the aggregate amounts re-*

1 *quired to be paid under section 212(a)(3)(C).*
2 *Shortfall assessments shall be allocated among*
3 *insurer participants using the methodology*
4 *adopted by the Asbestos Insurers Commission*
5 *under section 212(a)(1)(B).*

6 (2) CONSIDERATIONS.—In formulating rec-
7 ommendations, the Administrator shall take into ac-
8 count the reasons for any shortfall, actual or pro-
9 jected, which may include—

10 (A) financial factors, including return on
11 investments, borrowing capacity, interest rates,
12 ability to collect contributions, and other rel-
13 evant factors;

14 (B) the operation of the Fund generally,
15 including administration of the claims proc-
16 essing, the ability of the Administrator to col-
17 lect contributions from participants, potential
18 problems of fraud, the adequacy of the criteria
19 to rule out idiopathic mesothelioma, and inad-
20 equate flexibility to extend the timing of pay-
21 ments;

22 (C) the appropriateness of the diagnostic,
23 exposure, and medical criteria, including the
24 adequacy of the criteria to rule out idiopathic
25 mesothelioma;

1 (D) the actual incidence of asbestos-related
2 diseases, including mesothelioma, based on epi-
3 demiological studies and other relevant data;

4 (E) compensation of diseases with alter-
5 native causes; and

6 (F) other factors that the Administrator
7 considers relevant.

8 (3) RECOMMENDATION OF TERMINATION.—Any
9 recommendation of termination should include a
10 plan for winding up the affairs of the Fund (and the
11 program generally) within a defined period, includ-
12 ing paying in full all claims resolved at the time the
13 report is prepared. Any plan under this paragraph
14 shall provide for priority in payment to the claim-
15 ants with the most serious illnesses.

16 (4) RESOLVED CLAIMS.—For purposes of this
17 section, a claim shall be deemed resolved when the
18 Administrator has determined the amount of the
19 award due the claimant, and either the claimant has
20 waived judicial review or the time for judicial review
21 has expired.

22 ~~(e) RECOMMENDATIONS OF ADMINISTRATOR AND~~
23 ~~COMMISSION.—~~

24 ~~(1) IN GENERAL.—If the Administrator rec-~~
25 ~~ommends changes to this Act under subsection (e),~~

1 the recommendations and accompanying analysis
2 shall be referred to a special commission consisting
3 of the Attorney General, the Secretary of Labor, the
4 Secretary of Health and Human Services, the Sec-
5 retary of the Treasury, and the Secretary of Com-
6 merce, or their designees. The Commission shall
7 hold expedited public hearings on the Administra-
8 tor's alternatives and recommendations and then
9 make its own recommendations for reform of the
10 program set forth in titles I and II of this Act.
11 Within 180 days after receiving the Administrator's
12 recommendations, the Commission shall transmit its
13 own recommendations to the Congress in the same
14 manner as set forth in subsection (a).

15 (2) REFERRAL.—If the Administrator rec-
16 ommends changes to, or termination of, this Act
17 under subsection (d), the recommendations and ac-
18 companying analysis shall be referred to the Com-
19 mission. The Commission shall hold expedited public
20 hearings on the Administrator's alternatives and rec-
21 ommendations and then make its own recommenda-
22 tions for reform of the program set forth in titles I
23 and II of this Act. Within 180 days after receiving
24 the Administrator's recommendations, the Commis-
25 sion shall transmit its own recommendations to Con-

1 gress in the same manner as set forth in subsection
2 (a).

3 (f) SUNSET OF ACT.—

4 (1) IN GENERAL.—

5 (A) TERMINATION.—Subject to paragraph
6 (4), titles I (except subtitle A) and II and sec-
7 tions 403 and 404(e)(2) shall terminate as pro-
8 vided under paragraph (2), if the Adminis-
9 trator—

10 (i) has begun the processing of claims;

11 and

12 (ii) as part of the review conducted to
13 prepare an annual report under this sec-
14 tion, determines that if any additional
15 claims are resolved, the Fund will not have
16 sufficient resources when needed to pay
17 100 percent of all resolved claims while
18 also meeting all other obligations of the
19 Fund under this Act, including the pay-
20 ment of—

21 (I) debt repayment obligations;

22 and

23 (II) remaining obligations to the
24 asbestos trust of a debtor and the
25 class action trust.

1 (B) REMAINING OBLIGATIONS.—For pur-
2 poses of subparagraph (A)(ii), the remaining
3 obligations to the asbestos trust of the debtor
4 and the class action trust shall be determined
5 by the Administrator by assuming that, instead
6 of a lump-sum payment, such trust had trans-
7 ferred its assets to the Fund on an annual
8 basis, taking into consideration relevant factors,
9 including the most recent projections made by
10 the trust’s actuary before the date of enactment
11 of this Act of the amount and timing of future
12 claim payments and administrative and oper-
13 ating expenses.

14 (2) EFFECTIVE DATE OF TERMINATION.—A
15 termination under paragraph (1) shall take effect
16 180 days after the date of a determination of the
17 Administrator under paragraph (1) and shall apply
18 to all asbestos claims that have not been resolved by
19 the Fund as of the date of the determination.

20 (3) RESOLVED CLAIMS.—If a termination takes
21 effect under this subsection, all resolved claims shall
22 be paid in full by the Fund.

23 (4) EXTINGUISHED CLAIMS.—A claim that is
24 extinguished under the statute of limitations provi-

1 sions in section 113(b) is not revived at the time of
2 sunset under this subsection.

3 (5) CONTINUED FUNDING.—If a termination
4 takes effect under this subsection, participants will
5 still be required to make payments as provided
6 under subtitles A and B of title II. If the full
7 amount of payments required by title II is not nec-
8 essary for the Fund to pay claims that have been re-
9 solved as of the date of termination, pay the Fund’s
10 debt and obligations to the asbestos trusts and class
11 action trust, and support the Fund’s continued oper-
12 ation as needed to pay such claims, debt, and obliga-
13 tions, the Administrator may reduce such payments.
14 Any such reductions shall be allocated among par-
15 ticipants in approximately the same proportion as
16 the liability under subtitles A and B of title II.

17 (6) SUNSET CLAIMS.—

18 (A) DEFINITIONS.—In this paragraph—

19 (i) the term “sunset claims” means
20 claims filed with the Fund, but not yet re-
21 solved, when this Act has terminated; and

22 (ii) the term “sunset claimants”
23 means persons asserting sunset claims.

24 (B) IN GENERAL.—If a termination takes
25 effect under this subsection, the applicable stat-

1 ute of limitations for the filing of sunset claims
2 under subsection (g) shall be tolled for any past
3 or pending sunset claimants while such claim-
4 ants were pursuing claims filed under this Act.
5 For those claimants who decide to pursue a
6 sunset claim in accordance with subsection (g),
7 the applicable statute of limitations shall apply,
8 except that claimants who filed a claim against
9 the Fund under this Act before the date of ter-
10 mination shall have 2 years after the date of
11 termination to file a sunset claim in accordance
12 with subsection (g).

13 (7) ASBESTOS TRUSTS AND CLASS ACTION
14 TRUST.—On and after the date of termination under
15 this subsection, the trust distribution program of
16 any asbestos trust and the class action trust shall be
17 replaced with the medical criteria requirements of
18 section 121.

19 (8) PAYMENT TO ASBESTOS TRUSTS AND CLASS
20 ACTION TRUST.—The amounts determined under
21 paragraph (1)(B) for payment to the asbestos trusts
22 and the class action trust shall be transferred to the
23 respective asbestos trusts of the debtor and the class
24 action trust within 90 days.

25 (g) NATURE OF CLAIM AFTER SUNSET.—

1 (1) IN GENERAL.—

2 (A) RELIEF.—On and after the date of
3 termination under subsection (f), any individual
4 with an asbestos claim who has not previously
5 had a claim resolved by the Fund, may in a
6 civil action obtain relief in damages subject to
7 the terms and conditions under this subsection
8 and paragraph (6) of subsection (f).

9 (B) RESOLVED CLAIMS.—An individual
10 who has had a claim resolved by the Fund may
11 not pursue a court action, except that an indi-
12 vidual who received an award for a nonmalignant
13 disease (Levels I through V) from the
14 Fund may assert a claim for a subsequent or
15 progressive disease under this subsection, unless
16 the disease was diagnosed or the claimant had
17 discovered facts that would have led a reason-
18 able person to obtain such a diagnosis before
19 the date on which the previous claim against
20 the Fund was disposed.

21 (C) MESTHELIOMA CLAIM.—An individual
22 who received an award for a nonmalignant or
23 malignant disease (except mesothelioma) (Lev-
24 els I through VIII) from the Fund may assert
25 a claim for mesothelioma under this subsection,

1 unless the mesothelioma was diagnosed or the
2 claimant had discovered facts that would have
3 led a reasonable person to obtain such a diag-
4 nosis before the date on which the nonmalig-
5 nant or other malignant claim was disposed.

6 (2) EXCLUSIVE REMEDY.—As of the effective
7 date of a termination of this Act under subsection
8 (f), an action under paragraph (1) shall be the ex-
9 clusive remedy for any asbestos claim that might
10 otherwise exist under Federal, State, or other law,
11 regardless of whether such claim arose before or
12 after the date of enactment of this Act or of the ter-
13 mination of this Act, except that claims against the
14 Fund that have been resolved before the date of the
15 termination determination under subsection (f) may
16 be paid by the Fund.

17 (3) VENUE.—

18 (A) IN GENERAL.—Actions under para-
19 graph (1) may be brought in—

20 (i) any Federal district court;

21 (ii) any State court in the State where
22 the claimant resides; or

23 (iii) any State court in a State where
24 the asbestos exposure occurred.

1 (B) DEFENDANTS NOT FOUND.—If any
2 defendant cannot be found in the State de-
3 scribed in clause (ii) or (iii) of subparagraph
4 (A), the claim may be pursued only against that
5 defendant in the Federal district court or the
6 State court located within any State in which
7 the defendant may be found.

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

21 (D) STATE VENUE REQUIREMENTS.—
22 Nothing in this paragraph shall preempt or su-
23 persede any State's law relating to venue re-
24 quirements within that State which are more
25 restrictive.

1 (4) CLASS ACTION TRUSTS.—Notwithstanding
2 any other provision of this section—

3 (A) after the assets of any class action
4 trust have been transferred to the Fund in ac-
5 cordance with section 203(b)(5), no asbestos
6 claim may be maintained with respect to asbes-
7 tos liabilities arising from the operations of a
8 person with respect to whose liabilities for as-
9 bestos claims a class action trust has been es-
10 tablished, whether such claim names the person
11 or its successors or affiliates as defendants; and

12 (B) if a termination takes effect under
13 subsection (f), the exclusive remedy for all as-
14 bestos claims (including sunset claims and
15 claims first arising or first presented after ter-
16 mination of the Fund) arising from such oper-
17 ations will be a claim against the class action
18 trust to which the Administrator has trans-
19 ferred funds under subsection (f)(8) to pay as-
20 bestos claims, if necessary in proportionally re-
21 duced amounts.

22 (5) *EXPERT WITNESSES.*—*If scientific, technical,*
23 *or other specialized knowledge will assist the trier of*
24 *fact to understand the evidence or to determine a fact*
25 *in issue in an action permitted under paragraph (1),*

1 *a witness qualified as an expert by knowledge, skill,*
 2 *experience, training, or education, may testify thereto*
 3 *in the form of an opinion or otherwise, if—*

4 *(A) the testimony is based upon sufficient*
 5 *facts or data;*

6 *(B) the testimony is the product of reliable*
 7 *principles and methods; and*

8 *(C) the witness has applied the principles*
 9 *and methods reliably to the facts of the case.*

10 **SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABIL-**
 11 **ITY OF THE UNITED STATES GOVERNMENT.**

12 (a) CAUSES OF ACTIONS.—Except as otherwise spe-
 13 cifically provided in this Act, nothing in this Act shall be
 14 construed as creating a cause of action against the United
 15 States Government, any entity established under this Act,
 16 or any officer or employee of the United States Govern-
 17 ment or such entity.

18 (b) FUNDING LIABILITY.—Nothing in this Act shall
 19 be construed to—

20 (1) create any obligation of funding from the
 21 United States Government, ~~other than the funding~~
 22 ~~for personnel and support as provided under this~~
 23 ~~Act; or including any borrowing authorized under~~
 24 *section 221(b)(2); or*

1 (2) obligate the United States Government to
2 pay any award or part of an award, if amounts in
3 the Fund are inadequate.

4 **SEC. 407. RULES OF CONSTRUCTION.**

5 (a) LIBBY, MONTANA CLAIMANTS.—Nothing in this
6 Act shall preclude the formation of a fund for the payment
7 of eligible medical expenses related to treating asbestos-
8 related disease for current and former residents of Libby,
9 Montana. The payment of any such medical expenses shall
10 not be collateral source compensation as defined under
11 section 134(a).

12 (b) HEALTHCARE FROM PROVIDER OF CHOICE.—
13 Nothing in this Act shall be construed to preclude any eli-
14 gible claimant from receiving healthcare from the provider
15 of their choice.

16 **SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND**
17 **SAFETY REQUIREMENTS.**

18 (a) ASBESTOS IN COMMERCE.—If the Administrator
19 receives information concerning conduct occurring after
20 the date of enactment of this Act that may have been a
21 violation of standards issued by the Environmental Protec-
22 tion Agency under the Toxic Substances Control Act (15
23 U.S.C. 2601 et seq.), relating to the manufacture, impor-
24 tation, processing, disposal, and distribution in commerce
25 of asbestos-containing products, the Administrator shall

1 refer the matter in writing within 30 days after receiving
2 that information to the Administrator of the Environ-
3 mental Protection Agency and the United States attorney
4 for possible civil or criminal penalties, including those
5 under section 17 of the Toxic Substances Control Act (15
6 U.S.C. 2616), and to the appropriate State authority with
7 jurisdiction to investigate asbestos matters.

8 (b) ASBESTOS AS AIR POLLUTANT.—If the Adminis-
9 trator receives information concerning conduct occurring
10 after the date of enactment of this Act that may have been
11 a violation of standards issued by the Environmental Pro-
12 tection Agency under the Clean Air Act (42 U.S.C. 7401
13 et seq.), relating to asbestos as a hazardous air pollutant,
14 the Administrator shall refer the matter in writing within
15 30 days after receiving that information to the Adminis-
16 trator of the Environmental Protection Agency and the
17 United States attorney for possible criminal and civil pen-
18 alties, including those under section 113 of the Clean Air
19 Act (42 U.S.C. 7413), and to the appropriate State au-
20 thority with jurisdiction to investigate asbestos matters.

21 (c) OCCUPATIONAL EXPOSURE.—If the Adminis-
22 trator receives information concerning conduct occurring
23 after the date of enactment of this Act that may have been
24 a violation of standards issued by the Occupational Safety
25 and Health Administration under the Occupational Safety

1 and Health Act of 1970 (29 U.S.C. 651 et seq.), relating
2 to occupational exposure to asbestos, the Administrator
3 shall refer the matter in writing within 30 days after re-
4 ceiving that information and refer the matter to the Sec-
5 retary of Labor or the appropriate State agency with au-
6 thority to enforce occupational safety and health stand-
7 ards, for investigation for possible civil or criminal pen-
8 alties under section 17 of the Occupational Safety and
9 Health Act of 1970 (29 U.S.C. 666).

10 (d) ENHANCED CRIMINAL PENALTIES FOR WILLFUL
11 VIOLATIONS OF OCCUPATIONAL STANDARDS FOR ASBES-
12 TOS.—Section 17(e) of the Occupational Safety and
13 Health Act of 1970 (29 U.S.C. 656(e)) is amended—

14 (1) by striking “Any” and inserting “(1) Ex-
15 cept as provided in paragraph (2), any”; and

16 (2) by adding at the end the following:

17 “(2) Any employer who willfully violates any standard
18 issued under section 6 with respect to the control of occu-
19 pational exposure to asbestos, shall upon conviction be
20 punished by a fine in accordance with section 3571 of title
21 18, United States Code, or by imprisonment for not more
22 than 5 years, or both, except that if the conviction is for
23 a violation committed after a first conviction of such per-
24 son, punishment shall be by a fine in accordance with sec-

1 tion 3571 of title 18, United States Code, or by imprison-
2 ment for not more than 10 years, or both.”.

3 (e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND
4 BY EPA AND OSHA ASBESTOS VIOLATORS.—

5 (1) IN GENERAL.—The Administrator shall as-
6 sess employers or other individuals determined to
7 have violated asbestos statutes, standards, or regula-
8 tions administered by the Department of Labor, the
9 Environmental Protection Agency, and their State
10 counterparts, for contributions to the Asbestos In-
11 jury Claims Resolution Fund (in this section re-
12 ferred to as the “Fund”).

13 (2) IDENTIFICATION OF VIOLATORS.—Each
14 year, the Administrator shall—

15 (A) in consultation with the Assistant Sec-
16 retary of Labor for Occupational Safety and
17 Health, identify all employers that, during the
18 previous year, were subject to final orders find-
19 ing that they violated standards issued by the
20 Occupational Safety and Health Administration
21 for control of occupational exposure to asbestos
22 (29 C.F.R. 1910.1001, 1915.1001, and
23 1926.1101) or the equivalent asbestos stand-
24 ards issued by any State under section 18 of

1 the Occupational Safety and Health Act (29
2 U.S.C. 668); and

3 (B) in consultation with the Administrator
4 of the Environmental Protection Agency, iden-
5 tify all employers or other individuals who, dur-
6 ing the previous year, were subject to final or-
7 ders finding that they violated asbestos regula-
8 tions administered by the Environmental Pro-
9 tection Agency (including the National Emis-
10 sions Standard for Asbestos established under
11 the Clean Air Act (42 U.S.C. 7401 et seq.), the
12 asbestos worker protection standards estab-
13 lished under part 763 of title 40, Code of Fed-
14 eral Regulations, and the regulations banning
15 asbestos promulgated under section 501 of this
16 Act), or equivalent State asbestos regulations.

17 (3) ASSESSMENT FOR CONTRIBUTION.—The
18 Administrator shall assess each such identified em-
19 ployer or other individual for a contribution to the
20 Fund for that year in an amount equal to—

21 (A) 2 times the amount of total penalties
22 assessed for the first violation of occupational
23 health and environmental statutes, standards,
24 or regulations;

1 (B) 4 times the amount of total penalties
2 for a second violation of such statutes, stand-
3 ards, or regulations; and

4 (C) 6 times the amount of total penalties
5 for any violations thereafter.

6 (4) LIABILITY.—Any assessment under this
7 subsection shall be considered a liability under this
8 Act.

9 (5) PAYMENTS.—Each such employer or other
10 individual assessed for a contribution to the Fund
11 under this subsection shall make the required con-
12 tribution to the Fund within 90 days of the date of
13 receipt of notice from the Administrator requiring
14 payment.

15 (6) ENFORCEMENT.—The Administrator is au-
16 thorized to bring a civil action under section 223(c)
17 against any employer or other individual who fails to
18 make timely payment of contributions assessed
19 under this section.

20 (f) REVIEW OF FEDERAL SENTENCING GUIDELINES
21 FOR ENVIRONMENTAL CRIMES RELATED TO ASBES-
22 TOS.—Under section 994 of title 28, United States Code,
23 and in accordance with this section, the United States
24 Sentencing Commission shall review and amend, as appro-

1 p r i a t e , t h e U n i t e d S t a t e s S e n t e n c i n g G u i d e l i n e s a n d r e -
2 l a t e d p o l i c y s t a t e m e n t s t o e n s u r e t h a t —

3 (1) a p p r o p r i a t e c h a n g e s a r e m a d e w i t h i n t h e
4 g u i d e l i n e s t o r e f l e c t a n y s t a t u t o r y a m e n d m e n t s t h a t
5 h a v e o c c u r r e d s i n c e t h e t i m e t h a t t h e c u r r e n t g u i d e -
6 l i n e w a s p r o m u l g a t e d ;

7 (2) t h e b a s e o f f e n s e l e v e l , a d j u s t m e n t s , a n d s p e -
8 c i f i c o f f e n s e c h a r a c t e r i s t i c s c o n t a i n e d i n s e c t i o n
9 2 Q 1 . 2 o f t h e U n i t e d S t a t e s S e n t e n c i n g G u i d e l i n e s
10 (r e l a t i n g t o m i s h a n d l i n g o f h a z a r d o u s o r t o x i c s u b -
11 s t a n c e s o r p e s t i c i d e s ; r e c o r d k e e p i n g , t a m p e r i n g , a n d
12 f a l s i f i c a t i o n ; a n d u n l a w f u l l y t r a n s p o r t i n g h a z a r d o u s
13 m a t e r i a l s i n c o m m e r c e) a r e i n c r e a s e d a s a p p r o p r i a t e
14 t o e n s u r e t h a t f u t u r e a s b e s t o s - r e l a t e d o f f e n s e s r e -
15 f l e c t t h e s e r i o u s n e s s o f t h e o f f e n s e , t h e h a r m t o t h e
16 c o m m u n i t y , t h e n e e d f o r o n g o i n g r e f o r m , a n d t h e
17 h i g h l y r e g u l a t e d n a t u r e o f a s b e s t o s ;

18 (3) t h e b a s e o f f e n s e l e v e l , a d j u s t m e n t s , a n d s p e -
19 c i f i c o f f e n s e c h a r a c t e r i s t i c s a r e s u f f i c i e n t t o d e t e r
20 a n d p u n i s h f u t u r e a c t i v i t y a n d a r e a d e q u a t e i n c a s e s
21 i n w h i c h t h e r e l e v a n t o f f e n s e c o n d u c t —

22 (A) i n v o l v e s a s b e s t o s a s a h a z a r d o u s o r
23 t o x i c s u b s t a n c e ; a n d

24 (B) o c c u r s a f t e r t h e d a t e o f e n a c t m e n t o f
25 t h i s A c t ;

1 (4) the adjustments and specific offense charac-
2 teristics contained in section 2B1.1 of the United
3 States Sentencing Guidelines related to fraud, de-
4 ceit, and false statements, adequately take into ac-
5 count that asbestos was involved in the offense, and
6 the possibility of death or serious bodily harm as a
7 result;

8 (5) the guidelines that apply to organizations in
9 chapter 8 of the United States Sentencing Guide-
10 lines are sufficient to deter and punish organiza-
11 tional criminal misconduct that involves the use,
12 handling, purchase, sale, disposal, or storage of as-
13 bestos; and

14 (6) the guidelines that apply to organizations in
15 chapter 8 of the United States Sentencing Guide-
16 lines are sufficient to deter and punish organiza-
17 tional criminal misconduct that involves fraud, de-
18 ceit, or false statements against the Office of Asbes-
19 tos Disease Compensation.

20 **SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.**

21 (a) DENIAL, TERMINATION, OR ALTERATION OF
22 HEALTH COVERAGE.—No health insurer offering a health
23 plan may deny or terminate coverage, or in any way alter
24 the terms of coverage, of any claimant or the beneficiary
25 of a claimant, on account of the participation of the claim-

1 ant or beneficiary in a medical monitoring program under
2 this Act, or as a result of any information discovered as
3 a result of such medical monitoring.

4 (b) DEFINITIONS.—In this section:

5 (1) HEALTH INSURER.—The term “health in-
6 surer” means—

7 (A) an insurance company, healthcare
8 service contractor, fraternal benefit organiza-
9 tion, insurance agent, third-party administrator,
10 insurance support organization, or other person
11 subject to regulation under the laws related to
12 health insurance of any State;

13 (B) a managed care organization; or

14 (C) an employee welfare benefit plan regu-
15 lated under the Employee Retirement Income
16 Security Act of 1974 (29 U.S.C. 1001 et seq.).

17 (2) HEALTH PLAN.—The term “health plan”
18 means—

19 (A) a group health plan (as such term is
20 defined in section 607 of the Employee Retire-
21 ment Income Security Act of 1974 (29 U.S.C.
22 1167)), and a multiple employer welfare ar-
23 rangement (as defined in section 3(4) of such
24 Act) that provides health insurance coverage; or

1 (B) any contractual arrangement for the
2 provision of a payment for healthcare, including
3 any health insurance arrangement or any ar-
4 rangement consisting of a hospital or medical
5 expense incurred policy or certificate, hospital
6 or medical service plan contract, or health
7 maintenance organizing subscriber contract.

8 (c) CONFORMING AMENDMENTS.—

9 (1) ERISA.—Section 702(a)(1) of the Em-
10 ployee Retirement Income Security Act of 1974 (29
11 U.S.C. 1182(a)(1)), is amended by adding at the
12 end the following:

13 “(I) Participation in a medical monitoring
14 program under the Fairness in Asbestos Injury
15 Resolution Act of 2005.”.

16 (2) PUBLIC SERVICE HEALTH ACT.—Section
17 2702(a)(1) of the Public Health Service Act (42
18 U.S.C. 300gg–1(a)(1)) is amended by adding at the
19 end the following:

20 “(I) Participation in a medical monitoring
21 program under the Fairness in Asbestos Injury
22 Resolution Act of 2005.”.

23 (3) INTERNAL REVENUE CODE OF 1986.—Sec-
24 tion 9802(a)(1) of the Internal Revenue Code of
25 1986 is amended by adding at the end the following:

1 “(I) Participation in a medical monitoring
2 program under the Fairness in Asbestos Injury
3 Resolution Act of 2005.”.

4 **TITLE V—ASBESTOS BAN**

5 **SEC. 501. PROHIBITION ON ASBESTOS CONTAINING PROD-** 6 **UCTS.**

7 (a) IN GENERAL.—Title II of the Toxic Substances
8 Control Act (15 U.S.C. 2641 et seq.) is amended—

9 (1) by inserting before section 201 (15 U.S.C.
10 2641) the following:

11 **“Subtitle A—General Provisions”;**

12 and

13 (2) by adding at the end the following:

14 **“Subtitle B—Ban of Asbestos** 15 **Containing Products**

16 **“SEC. 221. BAN OF ASBESTOS CONTAINING PRODUCTS.**

17 “(a) DEFINITIONS.—In this chapter:

18 “(1) ADMINISTRATOR.—The term ‘Adminis-
19 trator’ means the Administrator of the Environ-
20 mental Protection Agency.

21 “(2) ASBESTOS.—The term ‘asbestos’ in-
22 cludes—

23 “(A) chrysotile;

24 “(B) amosite;

25 “(C) crocidolite;

1 “(D) tremolite asbestos;

2 “(E) winchite asbestos;

3 “(F) richterite asbestos;

4 “(G) anthophyllite asbestos;

5 “(H) actinolite asbestos;

6 “(I) ~~amphibole~~ asbestos *asbestiform*

7 *amphibole minerals*; and

8 “(J) any of the minerals listed under sub-
9 paragraphs (A) through (I) that has been
10 chemically treated or altered, and any
11 asbestiform variety, type, or component thereof.

12 “(3) ASBESTOS CONTAINING PRODUCT.—The
13 term ‘asbestos containing product’ means any prod-
14 uct (including any part) to which asbestos is delib-
15 erately or knowingly added or used because the spe-
16 cific properties of asbestos are necessary for product
17 use or function. Under no circumstances shall the
18 term ‘asbestos containing product’ be construed to
19 include products that contain de minimus levels of
20 naturally occurring asbestos as defined by the Ad-
21 ministrator not later than 1 year after the date of
22 enactment of this chapter.

23 “(4) DISTRIBUTE IN COMMERCE.—The term
24 ‘distribute in commerce’—

1 “(A) has the meaning given the term in
2 section 3 of the Toxic Substances Control Act
3 (15 U.S.C. 2602); and

4 “(B) shall not include—

5 “(i) an action taken with respect to
6 an asbestos containing product in connec-
7 tion with the end use of the asbestos con-
8 taining product by a person that is an end
9 user, or an action taken by a person who
10 purchases or receives a product, directly or
11 indirectly, from an end user; or

12 “(ii) distribution of an asbestos con-
13 taining product by a person solely for the
14 purpose of disposal of the asbestos con-
15 taining product in compliance with applica-
16 ble Federal, State, and local requirements.

17 “(b) IN GENERAL.—Subject to subsection (c), the
18 Administrator shall promulgate—

19 “(1) not later than 1 year after the date of en-
20 actment of this chapter, proposed regulations that—

21 “(A) prohibit persons from manufacturing,
22 processing, or distributing in commerce asbes-
23 tos containing products; and

24 “(B) provide for implementation of sub-
25 sections (c) and (d); and

1 “(2) not later than 2 years after the date of en-
2 actment of this chapter, final regulations that, effec-
3 tive 60 days after the date of promulgation, prohibit
4 persons from manufacturing, processing, or distrib-
5 uting in commerce asbestos containing products.

6 “(c) EXEMPTIONS.—

7 “(1) IN GENERAL.—Any person may petition
8 the Administrator for, and the Administrator may
9 grant, an exemption from the requirements of sub-
10 section (b), if the Administrator determines that—

11 “(A) the exemption would not result in an
12 unreasonable risk of injury to public health or
13 the environment; and

14 “(B) the person has made good faith ef-
15 forts to develop, but has been unable to develop,
16 a substance, or identify a mineral that does not
17 present an unreasonable risk of injury to public
18 health or the environment and may be sub-
19 stituted for an asbestos containing product.

20 “(2) TERMS AND CONDITIONS.—~~An~~ *Except for*
21 *an exception authorized under paragraph (3)(A)(i),*
22 *an exemption granted under this subsection shall be*
23 *in effect for such period (not to exceed 5 years) and*
24 *subject to such terms and conditions as the Adminis-*
25 *trator may prescribe.*

1 “(3) GOVERNMENTAL USE.—

2 “(A) IN GENERAL.—The Administrator of
3 the Environmental Protection Agency shall pro-
4 vide an exemption from the requirements of
5 subsection (b), without review or limit on dura-
6 tion, if such exemption for an asbestos con-
7 taining product is—

8 “(i) sought by the Secretary of De-
9 fense and the Secretary certifies, and pro-
10 vides a copy of that certification to Con-
11 gress, that—

12 “(I) use of the asbestos con-
13 taining product is necessary to the
14 critical functions of the Department;

15 “(II) no reasonable alternatives
16 to the asbestos containing product
17 exist for the intended purpose; and

18 “(III) use of the asbestos con-
19 taining product will not result in an
20 unreasonable risk to health or the en-
21 vironment; or

22 “(ii) sought by the Administrator of
23 the National Aeronautics and Space Ad-
24 ministration and the Administrator of the
25 National Aeronautics and Space Adminis-

1 tration certifies, and provides a copy of
2 that certification to Congress, that—

3 “(A) *IN GENERAL.*—

4 “(i) *DEPARTMENT OF DEFENSE.*—
5 *Nothing in this section or in the regulations*
6 *promulgated by the Administrator under*
7 *subsection (b) shall prohibit or limit the*
8 *manufacture, processing, or distribution in*
9 *commerce of asbestos containing products by*
10 *or for the Department of Defense or the use*
11 *of asbestos containing products by or for the*
12 *Department of Defense if the Secretary of*
13 *Defense certifies (or recertifies within 10*
14 *years of a prior certification), and provides*
15 *a copy of the certification to Congress,*
16 *that—*

17 “(I) *use of asbestos containing*
18 *product is necessary to the critical*
19 *functions of the Department, which in-*
20 *cludes the use of the asbestos con-*
21 *taining product in any weaponry,*
22 *equipment, aircraft, vehicles, or other*
23 *classes or categories of property which*
24 *are owned or operated by the Armed*
25 *Forces of the United States (including*

1 *the Coast Guard) or by the National*
2 *Guard of any State and which are*
3 *uniquely military in nature;*

4 “(II) *no reasonably available and*
5 *equivalent alternatives to the asbestos*
6 *containing product exist for the in-*
7 *tended purpose; and*

8 “(III) *use of the asbestos con-*
9 *taining product will not result in a*
10 *known unreasonable risk to health or*
11 *the environment.*

12 “(ii) *NATIONAL AERONAUTICS AND*
13 *SPACE ADMINISTRATION.—The Adminis-*
14 *trator of the Environmental Protection*
15 *Agency shall provide an exemption from the*
16 *requirements of subsection (b), without re-*
17 *view or limit on duration, if such exemp-*
18 *tion for an asbestos containing product is*
19 *sought by the Administrator of the National*
20 *Aeronautics and Space Administration and*
21 *the Administrator of the National Aero-*
22 *nautics and Space Administration certifies,*
23 *and provides a copy of that certification to*
24 *Congress, that—*

1 “(I) the asbestos containing
2 product is necessary to the critical
3 functions of the National Aeronautics
4 and Space Administration;

5 “(II) no reasonable alternatives
6 to the asbestos containing product
7 exist for the intended purpose; and

8 “(III) the use of the asbestos
9 containing product will not result in
10 an unreasonable risk to health or the
11 environment.

12 “(B) ADMINISTRATIVE PROCEDURE ACT.—
13 Any certification required under subparagraph
14 (A) shall not be subject to chapter 5 of title 5,
15 United States Code (commonly referred to as
16 the ‘Administrative Procedure Act’).

17 “(4) SPECIFIC EXEMPTIONS.—The following
18 are exempted:

19 “(A) Asbestos diaphragms for use in the
20 manufacture of chlor-alkali and the products
21 and derivative therefrom.

22 “(B) Roofing cements, coatings, and
23 mastics utilizing asbestos that is totally encap-
24 sulated with asphalt, subject to a determination

1 by the Administrator of the Environmental Pro-
2 tection Agency under paragraph (5).

3 “(5) ENVIRONMENTAL PROTECTION AGENCY
4 REVIEW.—

5 “(A) REVIEW IN 18 MONTHS.—Not later
6 than 18 months after the date of enactment of
7 this chapter, the Administrator of the Environ-
8 mental Protection Agency shall complete a re-
9 view of the exemption for roofing cements, coat-
10 ings, and mastics utilizing asbestos that are to-
11 tally encapsulated with asphalt to determine
12 whether—

13 “(i) the exemption would result in an
14 unreasonable risk of injury to public health
15 or the environment; and

16 “(ii) there are reasonable, commercial
17 alternatives to the roofing cements, coat-
18 ings, and mastics utilizing asbestos that is
19 totally encapsulated with asphalt.

20 “(B) REVOCATION OF EXEMPTION.—Upon
21 completion of the review, the Administrator of
22 the Environmental Protection Agency shall have
23 the authority to revoke the exemption for the
24 products exempted under paragraph (4)(B), if
25 warranted.

1 “(d) DISPOSAL.—

2 “(1) IN GENERAL.—Except as provided in para-
3 graph (2), not later than 3 years after the date of
4 enactment of this chapter, each person that pos-
5 sesses an asbestos containing product that is subject
6 to the prohibition established under this section shall
7 dispose of the asbestos containing product, by a
8 means that is in compliance with applicable Federal,
9 State, and local requirements.

10 “(2) EXEMPTION.—Nothing in paragraph (1)—

11 “(A) applies to an asbestos containing
12 product that—

13 “(i) is no longer in the stream of com-
14 merce; or

15 “(ii) is in the possession of an end
16 user or a person who purchases or receives
17 an asbestos containing product directly or
18 indirectly from an end user; or

19 “(B) requires that an asbestos containing
20 product described in subparagraph (A) be re-
21 moved or replaced.”.

22 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

23 The table of contents in section 1 of the Toxic Substances
24 Control Act (15 U.S.C. prec. 2601) is amended—

1 (1) by inserting before the item relating to sec-
2 tion 201 the following:

“Subtitle A—General Provisions”;

3 and

4 (2) by adding at the end of the items relating
5 to title II the following:

“Subtitle B—Ban of Asbestos Containing Products

“Sec. 221. Ban of asbestos containing products.”.

6 **SEC. 502. NATURALLY OCCURRING ASBESTOS.**

7 (a) *STUDY.*—

8 (1) *IN GENERAL.*—*Not later than 12 months*
9 *after the date of enactment of this Act, the Adminis-*
10 *trator of the Environmental Protection Agency*
11 *shall—*

12 (A) *conduct a study to assess the risks of ex-*
13 *posure to naturally occurring asbestos, including*
14 *the appropriateness of the existing risk assess-*
15 *ment values for asbestos and methods of assessing*
16 *exposure; and*

17 (B) *submit a report that contains a detailed*
18 *statement of the findings and conclusions of such*
19 *study to—*

20 (i) *the majority and minority leaders*
21 *of the Senate;*

22 (ii) *the Speaker and the minority lead-*
23 *er of the House of Representatives; and*

1 (iii) the relevant committees of juris-
2 diction of the Senate and House of Rep-
3 resentatives, including—

4 (I) the Environment and Public
5 Works Committee of the Senate;

6 (II) the Appropriations Com-
7 mittee of the Senate;

8 (III) the Judiciary Committee of
9 the Senate;

10 (IV) the Energy and Commerce
11 Committee of the House of Representa-
12 tives;

13 (V) the Judiciary Committee of
14 the House of Representatives; and

15 (VI) the Appropriations Com-
16 mittee of the House of Representatives.

17 (2) DEVELOPMENT REQUIREMENTS.—

18 (A) IN GENERAL.—Not later than 18
19 months after the date of enactment of this Act,
20 the Administrator of the Environmental Protec-
21 tion Agency, in consultation with appropriate
22 Federal and State agencies and other interested
23 parties after appropriate notice, shall establish
24 dust management guidelines, and model State
25 regulations that States can choose to adopt, for

1 *commercial and residential development, and*
2 *road construction in areas where naturally oc-*
3 *curring asbestos is present and considered a risk.*
4 *Such dust management guidelines may at a*
5 *minimum incorporate provisions consistent with*
6 *the relevant California Code of Regulation (17*
7 *C.C.R. 93105–06).*

8 *(B) DUST MANAGEMENT GUIDELINES.—*

9 *Guidelines under this paragraph shall include—*

10 *(i) site management practices to mini-*
11 *mize the disturbance of naturally occurring*
12 *asbestos and contain asbestos mobilized*
13 *from the source at the development site;*

14 *(ii) air and soil monitoring programs*
15 *to assess asbestos exposure levels at the de-*
16 *velopment site and to determine whether as-*
17 *bestos is migrating from the site; and*

18 *(iii) appropriate disposal options for*
19 *asbestos-containing materials to be removed*
20 *from the site during development.*

21 *(b) TESTING PROTOCOLS.—*

22 *(1) IN GENERAL.—Not later than 18 months*
23 *after the date of enactment of this Act, the Adminis-*
24 *trator of the Environmental Protection Agency, in*
25 *consultation with appropriate State agencies, shall es-*

1 *tablish comprehensive protocols for testing for the*
2 *presence of naturally occurring asbestos.*

3 (2) *PROTOCOLS.—The protocols under this sub-*
4 *section shall address both ambient air monitoring and*
5 *activity-based personal sampling and include—*

6 (A) *suggested sampling devices and guide-*
7 *lines to address the issues of methods com-*
8 *parability, sampler operation, performance spec-*
9 *ifications, and quality control and quality assur-*
10 *ance;*

11 (B) *a national laboratory and air sampling*
12 *accreditation program for all methods of anal-*
13 *yses of air and soil for naturally occurring as-*
14 *bestos;*

15 (C) *recommended laboratory analytical pro-*
16 *cedures, including fiber types, fiber lengths, and*
17 *fiber aspect ratios; and*

18 (D) *protocols for collecting and analyzing*
19 *aggregate and soil samples for asbestos content,*
20 *including proper and consistent sample prepara-*
21 *tion practices suited to the activity likely to*
22 *occur on the soils of the study area.*

23 (c) *EXISTING BUILDINGS AND AREAS.—Not later than*
24 *1 year after the date of enactment of this Act, the Adminis-*
25 *trator of the Environmental Protection Agency shall issue*

1 *public education materials, recommended best management*
2 *practices and recommended remedial measures for areas*
3 *containing naturally occurring asbestos including exist-*
4 *ing—*

5 *(1) schools and parks; and*

6 *(2) commercial and residential development.*

7 *(d) MAPPING.—The Secretary of the Interior shall—*

8 *(1) acquire infrared mapping data for naturally*
9 *occurring asbestos, prioritizing California counties*
10 *experiencing rapid population growth;*

11 *(2) process that data into map images; and*

12 *(3) collaborate with the California Geological*
13 *Survey and any other appropriate State agencies in*
14 *producing final maps of asbestos zones.*

15 *(e) RESEARCH GRANTS.—The Director of the National*
16 *Institutes of Health shall administer 1 or more research*
17 *grants to qualified entities for studies that focus on better*
18 *understanding the health risks of exposure to naturally oc-*
19 *curing asbestos. Grants under this subsection shall be*
20 *awarded through a competitive peer-reviewed, merit-based*
21 *process.*

22 *(f) TASK FORCE PARTICIPATION.—Representatives of*
23 *Region IX of the United States Environmental Protection*
24 *Agency, and the Agency for Toxic Substances and Disease*
25 *Registry of the United States Department of Health and*

1 *Human Services shall participate in any task force con-*
2 *vened by the State of California to evaluate policies and*
3 *adopt guidelines for the mitigation of risks associated with*
4 *naturally occurring asbestos.*

5 *(g) MATCHING GRANTS.— The Administrator of the*
6 *Environmental Protection Agency is authorized to award*
7 *50 percent matching Federal grants to States and munici-*
8 *palities. Not later than 4 months after the date of enactment*
9 *of this Act, the Administrator of the Environmental Protec-*
10 *tion Agency shall establish criteria to award such grants—*

11 *(1) for monitoring and remediation of naturally*
12 *occurring asbestos—*

13 *(A) at schools, parks, and other public*
14 *areas; and*

15 *(B) in serpentine aggregate roads gener-*
16 *ating significant public exposure; and*

17 *(2) for development, implementation, and en-*
18 *forcement of State and local dust management regula-*
19 *tions concerning naturally occurring asbestos, pro-*
20 *vided that after the Administrator has issued model*
21 *State regulations under subsection (a)(2), such State*
22 *and local regulations shall be at least as protective as*
23 *the model regulations to be eligible for the matching*
24 *grants.*

1 (h) *AVAILABILITY OF FUNDS.*—An amount of
2 \$40,000,000 from the Fund shall be made available to carry
3 out the requirements of this section, including up to
4 \$9,000,000 for the Secretary of the Interior to carry out
5 subsection (d), up to \$4,000,000 for the Director of the Na-
6 tional Institutes of Health to carry out subsection (e), and
7 the remainder for the Administrator of the Environmental
8 Protection Agency, at least \$15,000,000 of which shall be
9 used for the matching grants under subsection (g).

10 (i) *CONSTRUCTION.*—

11 (1) *GUIDELINES AND PROTOCOLS.*—The guide-
12 lines and protocols issued by the Administrator of the
13 Environmental Protection Agency under the specific
14 authorities in subsections (a), (b), and (c) shall be
15 construed as nonbinding best practices unless adopted
16 as a mandatory requirement by a State or local gov-
17 ernment. Notwithstanding the preceding sentence, ac-
18 creditation for testing will not be granted except in
19 accordance with the guidelines issued under sub-
20 section (b)(2)(B).

21 (2) *FEDERAL CAUSES OF ACTION.*—This section
22 shall not be construed as creating any new Federal
23 cause of action for civil, criminal, or punitive dam-
24 ages.

1 (3) *FEDERAL CLAIMS.*—*This section shall not be*
2 *construed as creating any new Federal claim for in-*
3 *junctive or declaratory relief against a State, local, or*
4 *private party.*

5 (4) *STATES AND LOCALITIES.*—*Nothing in this*
6 *section shall limit the authority of States or localities*
7 *concerning naturally occurring asbestos.*

Calendar No. 131

109TH CONGRESS
1ST Session

S. 852

A BILL

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

JUNE 16, 2005

Reported with amendments