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Senate

The Senate met at 9:45 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer.

Let us pray.

Be exalted, God of peace and love above the heavens. Let Your glory fill the Earth, for You are holy.

Thank You for the gift of today, for borrowed heartbeats. Give us pure hearts, so we may see you clearly. With the eyes of faith, empower us to accomplish Your purposes.

Make us bold in our striving to help the lost, the lonely, and the least. Inspire our Senators as they labor for liberty. Keep their feet on the right path. Give them the courage to refuse to deviate from integrity and the determination to do Your will.

Remind us that You will never leave us even when we walk through the valley of the shadow of death. Take from us the worries which distract us and give us more trust.

We pray in Your holy Name.

Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. CHAMBLISS. Mr. President, we will begin today's session with a period of morning business for up to 1 hour. At the conclusion of morning business, we will begin consideration of S. 852, the asbestos legislation. Last night, we were able to invoke cloture on the motion to proceed to the asbestos bill. The order last night allows us to proceed to the bill for debate only. Even though amendments will not be in order today, the majority leader hopes we will use the time today constructively and Members will come to the floor to talk on the bill or their submitted amendments.

We expect to move this bill forward this week by making progress on amendments. There is plenty of time this week to consider amendments and vote on various proposals. Having said that, a number of colleagues have asked about Friday. The leader reminds everybody that Friday will be a working day and Senators can expect rollcall votes.

In addition to this bill, we have other issues to consider, including executive nominations that have yet to clear the calendar.

RECOGNITION OF THE DEMOCRATIC LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

ASBESTOS VICTIMS

Mr. REID. Mr. President, as of this morning, 2,262 American soldiers have died in Iraq and 17,000, 18,000 have been injured, wounded; over 16,000 have been wounded so seriously that they could not return to battle. Each of these deaths and every one of these individuals who have been wounded, many of whom have been maimed, is a national tragedy. Yesterday, I was speaking to one of my friends with whom I came to Washington in 1982. We keep in touch with each other. He now lives in Santa Rosa, CA. He said, ''Harry, you know, we just lost our sixth soldier in this little community.''

I have attended funerals of Nevada servicemen who have been killed. I want to make sure we do everything we can so that fewer of our loyal, patriotic men and women are not killed in Iraq. I want to make sure they have all the equipment—anything they need.

As we speak, there are other tragedies in America, one of which deals with the legislation that is on the floor today. This year, 2006, 10,000 people will die from asbestos-related diseases. That is the case every year. These people did nothing wrong. They were simply exposed to a substance that corporate America knew would make them sick and cause them to die. But because of corporate America's willingness to exchange the lives of these men and women, they went ahead and did this. People were exposed to this at work, at home by hugging their father or husband when he came home from work, or in a schoolyard where asbestos equipment was, in their neighborhoods, in trucks hauling this substance all over America, and people got sick. They die painful, slow, horrible deaths. So there is a debate going on today dealing with asbestos.

This is not a fair bill. Look, I believe we need legislation to compensate the victims, but this is not it. I have said—and I don't have the experience in the legislature of the President pro tempore, but I have been in legislative bodies a long time; more than 30 years I have served in legislatures. This is the worst piece of legislation I have ever seen in the 30-plus years I have been serving in legislatures.

I don't doubt how hard Senator SPECTER has worked and how badly he wants this done, but that doesn't make the legislation good; it is bad. Perhaps because he has tried so hard, he doesn't see the trees for the forest, as they say.

To show the strength of corporate America, 13 companies that will benefit greatly from this legislation have paid lobbyists, within a 2-year period of time, $144.5 million. That should send a message to everyone. This legislation is not good for asbestos victims. It

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

strips victims of their legal right to obtain compensation in the court system and puts them in an administrative trust fund that is underfunded and doomed to fail. That is why all the leading asbestos victims organizations oppose this bill.

Here is a letter from the Asbestos Victims Group United, dated February 1, 2006, written to me and to Senator FRIST. I will read parts of it:

We represent a diverse group of national asbestos victims' groups. We are writing this letter as a matter of urgency to ask Members to vote against S. 852. This legislation is not primarily intended, nor is it good, for victims. In fact, in its current form, the legislation would make recovery of compensation dramatically worse for victims. It would deny whole classes of cancer-ridden victims, who, today, are able to recover compensation for their injuries, any ability to be compensated.

. . . We oppose this legislation. We do not want this proposed government policy forced upon us. We believe the program will fail to treat victims fairly, while benefiting the very companies that caused the problem. We have said it before and now we say it louder.

. . . We have said it before and now we say it louder: We believe it would be wholly irresponsible for Congress to proceed with consideration and passage of this legislation. Please do not allow the families who already have lost so much to be victimized once again.

The first signatory on this letter is Susan Vento, the wife of a man I served in Congress with, who never worked around asbestos—or so he thought. But he did work around it as a young man during a summer job while in school, and he got this disease. He was a big, strong man who worked out in the gym every day, and he died within a year, a slow, agonizing death. So the first signatory on this letter is Susan Vento, Chairperson, Committee to Protect Mesothelioma Victims.

I ask unanimous consent that this letter be printed in the RECORD.

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

ASBESTOS VICTIMS GROUPS UNITED,
February 1, 2006.

Hon. WILLIAM FRIST,
Majority Leader, U.S. Senate, Washington, DC.
Hon. HARRY REID,
Democratic Leader, U.S. Senate,
Washington, DC.

DEAR LEADERS FRIST AND REID: We represent a diverse group of national asbestos victims' groups. We are writing this letter as a matter of urgency to ask Members to vote against S. 852. This legislation is not primarily intended, nor is it good, for victims. In fact, in its current form, the legislation would make recovery of compensation dramatically worse for victims. It would deny whole classes of cancer-ridden victims, who, today, are able to recover compensation for their injuries, any ability to be compensated.

If we have not made our position clear in our previous letters, we would like to make it very clear here: We oppose this legislation. We do not want this proposed government policy forced upon us. We believe the program will fail to treat victims fairly, while benefiting the very companies that caused the problem. We may not have the power of these corporations, but we have a voice, and we intend to use our voice to its maximum volume to defeat this bill.

And, if it passes, we plan to use our voice to inform the American people in every state and every district of this tragic fate of justice and to urge every victim to demand their right of compensation from the federal government.

We have listed below the specific substantive reasons we oppose S. 852:

It removes the fundamental right to a trial by jury and replaces it with an untried and unsound entitlement program that, we believe, is set to fail on day one.

Victims will face long delays in receiving compensation while the fund is set up and the bill is challenged on constitutional grounds. Many victims, especially those with mesothelioma, will die during that time period.

$140 billion is too low and has been, at best, deemed a questionable minimum by the CBO. For the victim, this means the fund could leave them empty-handed. (For the taxpayer, it could mean excessive Federal borrowing).

Thousands of victims will fail to qualify because of newer more restrictive legal and medical standards—this is not a ''no-fault'' system. Despite not being allowed into the system, victims will likely be locked out of the trial system.

The bill excludes thousands who worked at, or lived near, hundreds of addresses around the country where Libby vermiculite was shipped.

The bill is structured to make it nearly impossible for victims who were exposed to asbestos in their own homes, and who did not live with an asbestos worker, to prove their exposure and eligibility for compensation. Assurances that these people will be taken care of via the ''medical exceptions panel'' are false promises given thousands would fall into this category and the fund will not be able to handle that many cases.

Trust funds have a dismal history: most have failed, all have been bogged down at the start-up and all have underestimated the amount of claims by large margins, as was shown in the recent GAO Report: Federal Compensation Programs.

Future victims of asbestos exposure, notably those exposed during 9/11 and Hurricanes Rita and Katrina, will receive no compensation and have no access to the court system.

Many asbestos victims with lung cancer, particularly smokers, are excluded despite the medical consensus that people with heavy asbestos exposure are at a substantially increased risk of cancer.

There is no automatic sunset provision—if the fund is not paying claims, victims must be able to gain access back into the courts without relying on the administrator's discretion.

The bill does not account for those who may have been exposed to naturally occurring asbestos.

Before allowing this legislation to move to the floor, please consider these questions:

Will the proposed funding be sufficient to compensate all victims?

How many victims will be left out from being compensated for asbestos injuries?

How much will the fund be forced to borrow from the federal government?

How many companies will contribute and how much will each be assessed?

Can the bill, if enacted, withstand the numerous legal and constitutional challenges already threatened by a wide range of parties?

We have said it before and now we say it louder: We believe it would be wholly irresponsible for Congress to proceed with consideration and passage of this legislation. Please do not allow the families who already have lost so much to be victimized once again.

Sincerely,

Susan Vento, Chairperson, Committee to Protect Mesothelioma Victims, Washington, DC.

Linda Reinstein, Co-Founder and Executive Director, Asbestos Disease Awareness Organization, Redondo Beach, CA.

Michael Bowker, Founder and Executive Director, Asbestos Victims Organization; Author, Fatal Deception: The Untold Story of Asbestos: Why It Is Still Legal and Why It Is Still Killing Us, Placerville, CA.

Jim Fite, National Secretary, White Lung Association, Baltimore, MD.

Barbara Zeluck, Secretary, White Lung Asbestos Information Center, New York, NY.

Mr. REID. Mr. President, I had placed in the RECORD yesterday one of the petitions. We have 150,000 signatures on that—150,000 signatures here in the Capitol in boxes. We debate this bill. There is a lot of technical talk about startups, sunsets, and payment tiers. But let's not lose sight of what this debate is about. It is about whether the Senate will keep faith with the victims of a disease which they had no opportunity to avoid.

The problem in America today, as it relates to what is going on on the Senate floor, is not a crisis created by the legal system; it is a crisis created by the people who expose these people to asbestos. If there were ever a cry for fairness and equity and justice, it is this. We cannot let corporate America do what they are trying to do to these innocent men and women.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for up to 1 hour, with the first half of time under the control of the majority leader or his designee, and the second half of the time controlled by the Democratic leader or his designee.

The Senator from Georgia is recognized.

NSA TERRORIST SURVEILLANCE PROGRAM

Mr. CHAMBLISS. Mr. President, several weeks ago, after a highly classified program was leaked to the media, the President described certain activities of the National Security Agency that he authorized in the weeks following our Nation coming under direct attack on our own soil by Osama bin Laden's al-Qaida terrorists.

As described by the President, the Vice President, the Attorney General, and experts from the Department of Justice and the intelligence community, the terrorist surveillance program at NSA targets very specific

international communications of suspected and known al-Qaida operatives in a foreign country who are communicating with associates around the world and, occasionally, in a limited way, with individuals inside the United States. The purpose of the program is to collect foreign intelligence in an effort to identify and prevent another devastating attack on our homeland.

As we have learned, the terrorist surveillance program is designed with the goal of preventing terrorist attacks in the United States and protecting the lives of Americans. Given the imperative to reliably and immediately detect and disrupt the plots of international terrorists who are intent on killing Americans, the President is acting well within his constitutional authorities.

The Foreign Intelligence Surveillance Act has been, and continues to be, a valuable tool in protecting our national security interests in many cases. However, the world changed on September 11, 2001, demonstrating the importance that the President have the power and authority to protect the American people from future attacks of terrorism. Both the Constitution and the Congress grant the President that authority. FISA lacks the speed and agility necessary to fight the war on terror, and its bureaucratic requirements prevent the ''hot pursuit'' of international communications necessary to prevent attacks.

As vitally important as it is to protect American lives, it is also important that Americans' rights are protected. That is exactly why the administration has put in place a system of responsible measures to ensure our civil liberties are also protected. In doing so, congressional leaders from both parties have been kept informed about the program from the start. Furthermore, this program is reauthorized approximately every 45 days to ensure it is still necessary, and that it is being used properly, and the activities conducted within this program are thoroughly reviewed by lawyers within the National Security Agency and the Department of Justice to ensure the program is only collecting the international communications of suspected terrorists here in the United States and elsewhere.

Their oversight includes assuring an aggressive program is in place to assist the highly trained intelligence professionals at NSA verify that all activities are consistent with minimization procedures that weed out the identities of ordinary Americans and preserve civil liberties.

I note that FISA, which has been the alternative that the critics of this program have looked to as the real program that should be used, requires a reauthorization every 90 days. Here the President and the administration have taken an additional precaution to protect the privacy rights of Americans by reauthorizing this program approximately every 45 days.

On September 11, 2001, terrorists operating covertly inside the United States, and in contact with al-Qaida members overseas, perpetrated the worst attack on domestic soil in American history. Osama bin Laden recently reiterated publicly al-Qaida's intention to attack us again with operatives hiding within our borders.

Congress identified al-Qaida as an enemy of this country by passing the authorization for the use of force, authorizing the President to use all necessary and appropriate force to protect our homeland.

When the enemy is behind your lines, you must use every lawful tool at your disposal to find and stop them. That is why the President has authorized the terrorist surveillance program.

As the 9/11 Commission pointed out, and as also the joint House-Senate Intelligence Committee investigation, as well as the report from the Subcommittee on Terrorism and Homeland Security in the House, which was filed in July of 2002, reported, two of the terrorist hijackers who flew a jet into the Pentagon, Nawaf al Hamzi and Khalid al Mihdhar, were communicating with members of al-Qaida overseas while they were inside the United States preparing for the deadly attack of September 11.

Regrettably, we did not know this until it was too late. GEN Mike Hayden, the former Director of the National Security Agency and the Deputy Director of National Intelligence, indicated that had this program been in place before 9/11, these terrorists could have been detected and identified.

Unfortunately, as a result of the public disclosure of this highly classified program, our enemies have learned information they should not have. Our national security has been damaged and Americans have been put at greater risk.

In our recent Intelligence Committee open hearing, CIA Director Porter Goss commented that as a consequence of leaks in general, damage has been very severe to our capabilities to carry out our mission. General Hayden observed that our intelligence capabilities are not immune to leaks in the public domain.

It is clear that this is an important program necessary to address the previous flaws in our early warning system that allowed at least two of the 9/11 murderers to live among us while they plotted our destruction. This vital program makes it more likely that terrorists will be identified and located in time to prevent another disaster. In fact, that may have already happened. It is a program that is conducted within the President's constitutional authority and is subject to review and oversight.

It is also clear that continued leaks over this program are degrading our ability to continue to protect the lives of Americans.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Kentucky is recognized.

DEFENSE OF NSA TERRORIST SURVEILLANCE PROGRAM

Mr. MCCONNELL. Mr. President, today America is at war. We were awakened to this war on September 11, 2001, even though our enemies had been waging it against us for a number of years. The enemy, of course, is al-Qaida, a treacherous terrorist group whose goal is simply to kill as many Americans as possible and to strike such fear into civilized nations that freedom itself is forced into retreat.

To combat this deadly threat, the President has rightly—rightly—asserted his constitutional authority to use every tool at his disposal to fight the war on terror. One of those tools is the NSA's terrorist surveillance program.

Yet despite the grave terrorist threat, I fear too many have forgotten that we are, indeed, a nation at war, and so have forgotten the vital need for the terrorist surveillance program. Perhaps it is because we have not seen another attack on American soil since September 11, despite, I might add, the terrorists' best efforts.

But there can be no doubt that al-Qaida terrorists are still plotting brutal attacks against this country and other freedom-loving countries. For proof of this, look no further than a recent audiotape made by Osama bin Laden himself. In a tape aired on Al-Jazeera television last month, bin Laden said this:

> The mujahadeen, with God's grace, have managed repeatedly to penetrate all security measures adopted by the unjust allied countries. The proof of that is the explosions you have seen in the capitals of the European nations who are in this aggressive coalition.

He went on:

> Similar operations happening in America. . . . are under preparation, and you will see them in your homes the minute they are through.

A not-so-veiled threat for another attack here at home. It couldn't be any clearer than that: ''Similar operations,'' so Osama bin Laden said, ''are under preparation, and you will see them in your homes the minute they are through.''

At this very moment, al-Qaida operatives in America, right here at home—madmen such as Mohamed Atta—may be plotting attacks. What kinds of attacks could they be hatching? Here is one example.

In 2003, authorities apprehended a man named Iyman Faris for assisting al-Qaida in plotting and planning a terrorist attack. Faris is an American citizen. He lived in Ohio before being taken into Federal custody.

In 2002, Faris traveled to Pakistan where he met with known members of al-Qaida. The terrorists told him they were planning attacks in New York and here in Washington, and asked if he would help.

So Faris elected to return to America, visit New York City, and reconnoiter the Brooklyn Bridge with the intent of finding the best means to destroy it. He even went so far as to research how to sever the cables supporting the bridge. Approximately 135,000 vehicles cross the Brooklyn Bridge every day.

According to the Washington Post, Government officials have privately credited Faris's arrest to the President's terrorist surveillance program. Faris has since pleaded guilty to having plotted to destroy the Brooklyn Bridge, a direct result of the terrorism surveillance program.

This time the terrorists did not succeed, but as we all know, while our goal is to stop them every time, their goal is to succeed just once.

Let me repeat that. We have to stop them every time. They only have to succeed once.

To uncover and disrupt attacks such as this, the President must aggressively use every tool at his disposal to exercise his authority under the Constitution to protect America. To do any less would be a dereliction of duty.

A major part of the war on terror is the terrorist surveillance program. This very narrowly tailored program intercepts international communications—not domestic, even though that word has been used a lot in error—international communications by members of al-Qaida or other suspected terrorist groups outside America into this country, or by those terrorists' allies in this country out to terrorists in foreign lands. So the universe is international communications. Public mischaracterizations have portrayed this terrorist surveillance program as something ominous, as if the Government is listening in to domestic phone calls made by average, law-abiding Americans. That is flat out wrong, and those mischaracterizations ought to cease.

If someone is calling from Tora Bora, they are not calling to order a pizza. Let me repeat: If someone is calling from Tora Bora, they are not calling to order a pizza.

The NSA is only interested in al-Qaida sleeper agents in the United States, men such as Iyman Faris, the Brooklyn Bridge bomber, who call or receive calls from known agents of al-Qaida or affiliated terrorist groups abroad with instructions for their next deadly mission.

The NSA terrorist surveillance program is not only entirely necessary, it is entirely lawful. The President enjoys broad authority under the Constitution to protect all Americans. And the Foreign Intelligence Surveillance Court of Review, the court charged with reviewing the legality of measures such as the terrorism surveillance program, has confirmed that the President has broad powers with respect to foreign intelligence gathering.

The court wrote in 2002 that, with respect to conducting searches without warrants in order to obtain foreign intelligence information:

> We take for granted that the President does have that authority, and, assuming that is so, FISA could not encroach upon the President's constitutional power.

That could not be more clear. That is the Foreign Intelligence Surveillance Court of Review saying:

> We take for granted that the President does have that authority, and, assuming that is so, FISA could not encroach upon the President's constitutional power.

If that is not enough legal authority, here is more. Congress delegated broad war powers to the President when it authorized the war on terror in 2001. The Senate passed that authorization 98 to 0 with the support of many of the same Democrats who vehemently speak against the program today.

That authorization empowered the President to ''use all necessary and appropriate force'' to fight terror. It did not say ''some force.'' It did not say ''all force except when it comes to international communications intercepts.'' It did not even say ''all force now, less later, depending on the political landscape.'' It said ''all force,'' and ''all force'' means ''all force.''

However, opponents of the terrorism surveillance program apparently do not want to allow the President to use all the force at his disposal to fight terror. Howard Dean, the chairman of the Democratic Party, recently expressed his strong disapproval, and this is how he put it:

> President Bush's secret program to spy on the American people reminds Americans of the abuse of power during the days of President Nixon and Vice President Agnew.

That is Howard Dean's appraisal of the terrorism surveillance program. That is from the leader of the Democratic Party. Obviously, he completely misses the point.

The terrorist surveillance program intercepts calls between known al-Qaida terrorists and their affiliates overseas and the al-Qaida terrorist accomplices here in America. As the President has said, if you are calling al-Qaida, we want to know why.

The only conclusion one can draw from statements such as Governor Dean's—statements that explicitly compare programs that stop terrorists who want to destroy the Brooklyn Bridge to illegal activity from a generation ago—is that he opposes the program and wants it stopped.

We cannot fight the war on terror with one hand tied behind our backs. That is exactly the wrong direction we need to take in the war on terror. After more than 4 years since the devastating attack of September 11, this is still a hard-fought battle. Al-Qaida's leader, Osama bin Laden himself, has bragged—has bragged—about impending attacks.

If anyone doubts the death-crazed tenacity of our enemies, let them hear these words, also from the bin Laden audiotape I quoted from earlier. Here is what he had to say further:

> We will seek revenge all our lives. The nights and days will not pass without us taking vengeance, like on September 11, God permitting. Your minds will be troubled and your lives embittered.

Clearly our enemy is cunning and our enemy is cruel. We must be aggressive about using every tool at our disposal to fight the war on terror.

I applaud the President for doing just that, and for remaining unbowed in the face of loud criticism from a few as he continues to carry out his duty to protect America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

THE PRESIDENT'S INTELLIGENCE PROGRAM

Mr. ALLARD. Mr. President, I want to take just a moment to say a few words in support of the President's intelligence program and associate myself with the comments that have been made both by the Senator from Georgia as well as the Senator from Kentucky. They focused a lot on the legal arguments, but I thought perhaps I would approach this from what is best for the security of this country and how the American people are reacting to the President's intelligence program. I will have to base my observations on town meetings I have recently held in Colorado. I had several town meetings. I think they help me better understand the issues of importance to my constituents, and I think my constituents in Colorado are a cross-section, pretty much, of the United States.

Interestingly enough, the top issues facing most Coloradans at those town meetings had to do with the war in Iraq, whether we should be in the conflict or not; the Federal deficit—we had a lot of discussion about getting the debt in order, getting the deficit in order—and obviously, because we are a cold weather State, there was a lot of talk about the cost of energy and our continued reliance on foreign energy resources.

The National Security Agency surveillance program was not a top issue. Indeed, it was hardly mentioned. This tells me a couple of things. First, it tells me that Coloradans are not particularly alarmed by the use of those tools that seem to be used by the President which are creating so much objection from the other side of the aisle. I think most Coloradans view this as just a commonsense thing. They know it is important to national security and we have to conduct such a program. They understand that we need to protect this country. I think they understand this Nation is at war. It is at war with terrorism. And I think they are beginning to understand, as I am beginning to understand, that this didn't start with 9/11, it started in the 1990s—maybe even as far back as 1979 when we began to have terrorist attacks on embassies and ships and

planes and various symbols of prosperity in the Western World. Unfortunately, it took a devastating attack such as 9/11 for us to really begin to realize that this war is a war to the finish.

In the 9/11 attack there were more people killed than at Pearl Harbor. This was a serious assault on America. It was an attack on America. We began to realize that al-Qaida is not interested in talking about peace. As a group of extremists, they are not interested in conducting diplomatic relations. They don't want to compromise. They are fanatics who only want to kill, maim, and destroy.

Al-Qaida is a very sophisticated enemy that operates in dozens of countries, including the United States. They have global reach, as seen by their bombings in London, Madrid, and Jordan. This organization works clandestinely, in the shadows, and is very hard to track much less to stop. Most Americans realize that. We have been fortunate that we have not been attacked again since September 11. We all know those attacks could come at any time, but that does not make these attacks inevitable. These terrorists can be stopped. We have the tools at our disposal that we can and must use to defeat al-Qaida. The President's use of the National Security Agency program has to be one of those.

Let's be clear. The President promised after September 11 that he would direct every resource at his command—whether it is diplomatic, intelligence, or military tools—to disrupt and defeat the global network of terror. Americans all over stood up and praised him for stepping forward. The media praised him for stepping forward because we all realized this was unprecedented in American history, and it could not be ignored. It had to be addressed immediately.

The terrorist surveillance program is a very important tool in that effort. The program is narrowly focused. It only targets communications when one party is outside the United States and the reasonable information suggests that at least one party is a member of al-Qaida or an affiliated terrorist group. This program is not being used to listen in on communications of innocent Americans. Those people who want to put a slant against this program, they call it a domestic program. It is not a domestic spy program. It is an extension of our information gathering outside the borders of the United States. It just so happens that we have people in the United States who have aligned themselves with those terrorist groups to harm American citizens.

I think most Americans understand that if they want to have a secure home, if they want to have security for their families, these individuals have to be followed and we have to do what we can to prevent these catastrophic, terrorist-driven events from occurring.

The President takes full responsibility for moving forward. He even mentioned it in his State of the Union Address. But he has done it in a responsible way. He has followed the reauthorization process every 45 days to ensure that innocent Americans are not being targeted and that the program is working successfully. Republican and Democratic leaders of the Congress have been briefed on this program more than a dozen times since 2001, and no Member of Congress, Republican or Democrat, expressed any concern about this program until it was reported publicly in the press last December.

Here is a problem that this brings up: so many times reports about these intelligence programs, when they come out in the press, are wrong. I have served on the Intelligence Committee. I have taken the opportunity to be briefed on these intelligence programs. But most of what shows up in the press out there is wrong. Those of us who really know the story and would respond cannot respond because in the process of response you may actually validate the fact that it is an intelligence program—which you don't want al-Qaida or the terrorists to know. And the other thing is, if you respond to those accusations that are made in those news articles that are wrong, you have to bring out the facts which just fully discloses what our intelligence program is. With full disclosure, then you tip off the terrorists as to what we are up to.

I think it has been reported time and time again in the testimony before our committees that it is hurting our intelligence program. We are not gathering the information that we were gathering before because, in effect, the terrorists have simply shut down because they have realized what has happened and what our capabilities are in gathering this intelligence. At times, with disclosure of some of these intelligence programs, we have actually had Americans who are in the process of collecting information die as a result—perhaps individuals overseas who are acting on behalf of the United States.

We need to protect this tool because we all know that the enemy listens. They have not stopped their intelligence gathering and would love nothing better than for us to begin a discussion about the operational aspects of these sensitive programs. Compounding this difficulty is the fact that many of the press reports, according to Attorney General Gonzales, have in almost every case—and he confirms what I just said—been misinformed, inaccurate, or just outright wrong.

I support the President. I believe it is a responsible tool to use in the war against terrorism. If we do not use it, we are going to lose our ability to secure the homes of Americans. I think most Americans understand that. We must use these tools provided by law to combat our continued threat. We cannot sit and hope that terrorists will not attack us again.

We should not play into the hands of the terrorists. We now see the danger in front of us. We see what must be done. We simply must go out and do it and do it in a responsible way. The President's intelligence-gathering program is effective and it is responsible to support him if we want to have security for our families and our homes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I ask unanimous consent I may have 15 minutes to speak as in morning business.

The PRESIDING OFFICER. The Senator has that right, so he may proceed without objection.

EXPANDING EDUCATIONAL OPPORTUNITIES

Mr. AKAKA. Mr. President, the time has come to put our money into action and expand educational opportunities in science, math, and foreign languages.

I began my professional career as an educator. Fighting to ensure a prosperous future for our country and for Hawaii's children is why I am in Congress today. I hope this year we will see real progress by the enactment of legislation to make a real difference, for both the short- and long-term, in science, math, and foreign language education.

I applaud President Bush's call in his State of the Union Address for increasing the number of teachers in math and science and making college-level courses more available to low income high school students. It is unfortunate that the budget reconciliation bill recently passed by the House cut $12 billion from the Federal student loan program, while the tax reconciliation bill we considered last week provides $70 billion in tax cuts for the wealthy. I know I am not alone when I say supporting college level courses in high school is no substitute for going to college. We need both and more of each.

Robbing Peter to pay Paul robs our youth of their future.

We need to make a sustained commitment to addressing critical educational issues in science, math, and foreign languages. The President is correct that America's ability to compete in global markets, and to defend ourselves against foreign threats, depend on our ability to educate future generations.

Four years ago, Senator DURBIN and I joined forces with a bipartisan group of Senators to introduce legislation to strengthen national security by encouraging the development and expansion of programs to meet critical needs in science, math, and foreign languages at the elementary, secondary, and higher education levels. I also introduced legislation to strengthen education opportunities for Federal employees in these critical areas, and improve the government's recruitment and retention of individuals possessing these skills. Last year, Senators COCHRAN, DODD, and I introduced legislation

to develop a national foreign language strategy.

Some of our proposals have become law. Others were passed by the Senate, but the House refused to consider them. The Intelligence Reform Act of 2004 established two things promoted in our legislation. First, a rotation program to help mid-level Federal employees in the intelligence community improve their skills; and second, a scholarship program for individuals who possess critical skills, especially those in science, math, and foreign language, in exchange for service with the Federal Government.

Still, America should rightly ask: why has it been so hard to make even these modest improvements? Especially when there have been numerous national studies and commissions that conclude we need to do better at educating Americans.

In 2001, the Hart-Rudman Commission said that America needs a workforce skilled in science, math, computer science, and engineering. They said that the failure to foster these skills was jeopardizing America's position as a global leader. The commission also found that the maintenance of American power in the world depends upon the quality of U.S. Government personnel. It requires employees with more expertise in more countries, regions, and issues. This includes a commitment to language education.

Legislation that I introduced along with my colleagues, some of which dates back to 2001, contains vital components that should be considered as we debate the President's proposed education initiatives.

Some of these programs include: Funding the Federal Government's student loan repayment program for positions critical to national security and for staff with science and foreign language skills; providing financial incentives, including subsidized loans, for students earning degrees in science, mathematics, engineering, or a foreign language; establishing grant programs for local educational agencies that engage in public-private partnerships to improve science and math education; awarding fellowships to students who agree to work for the Federal Government and to Federal workers who wish to develop skills in critical national security fields; encouraging early foreign language study in our elementary and secondary schools by establishing foreign language partnerships for teacher training; promoting innovative foreign language programs through grants to higher education institutions; and establishing a National Foreign Language Coordination Council and language director to develop and oversee the implementation of a national language strategy that reflects input from all sectors of society.

The intent of these programs is to support a revitalized, re-energized educational system in these critical areas from elementary through graduate school and improve the skills of our current labor force.

Some of the programs would enhance certain skills of our Nation's teachers at all levels while providing them with the tools they need to sustain the development of our Nation's youth.

For example, one program would develop foreign language partnerships between local schools and higher education foreign language departments to enhance teacher training and develop appropriate foreign language curricula.

If we want to ensure America's future competitiveness in global markets, we need to engage America's industry in assisting our youth to develop the skills industry needs to compete.

Another program proposed in our legislation establishes public-private partnerships to encourage the donation of scientific laboratory equipment, provide internship and mentoring opportunities, and to award scholarship funds for students in critical areas.

To survive in a diverse world, Americans need to harness their natural diversity and expand linkages to their larger community. Education must be seen as a community effort.

We must think more broadly when it comes to foreign languages. The program that Senator DURBIN and I envisioned includes immersion programs where students take a science or technology related class in a non-English speaking country, or a cultural awareness program in which foreign language students study the science and technology issues of that country. It is important to understand what other countries are doing in science and technology before foreign innovations surpass our own.

I am glad that President Bush has recognized that action must be taken to improve education in these critical areas by calling for increasing the ranks of advanced placement and international baccalaureate teachers and expanding access to AP and IB classes. I also thank him for finally taking steps to strengthen foreign language education in the U.S. with the National Security Language Initiative.

However, real commitments need to be made.

If we do not see education as a continual process for both the student and the teacher, a process designed to engage younger and older generations alike, then we will have created a product of only limited duration—a band-aid for our intellectual security.

We need to think beyond high school and college level work. We need to engage all levels of schooling and, beyond that, we need to enhance our current workforce. We cannot afford to neglect today's workforce if we want to be successful building our future.

I yield the remainder of my time. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I understand there is 12 minutes remaining on our side in morning business and then we will go to the bill itself.

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. Mr. President, I yield 12 minutes, and then I ask for recognition because I intend to speak on the bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 852, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 852) to create a fair and efficient system to resolve claims of victims of bodily injury caused by asbestos exposure, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with amendments.

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 852

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

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

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

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

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

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

(6) The United States Supreme Court has recognized that Congress must act to create a more rational asbestos claims system. In 1991, a Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist, found that the ''ultimate solution should be legislation recognizing the national proportions of the problem . . . and creating a national asbestos dispute resolution scheme . . .''. The Court found in 1997 in Amchem Products Inc. v. Windsor, 521 U.S. 591, 595 (1997), that ''[t]he argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.'' In 1999, the Court in Ortiz v. Fibreboard Corp., 527 U.S. 819, 821 (1999), found that the ''elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation.'' That finding was again recognized in 2003 by the Court in Norfolk & Western Railway Co. v. Ayers, 123 S. Ct. 1210 (2003).

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

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

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

(10) The asbestos found in Libby, Montana, tremolite asbestos, has demonstrated an unusually high level of toxicity, as compared to chrysotile asbestos. Diseases contracted from this tremolite asbestos are unique and highly progressive. These diseases typically manifest in a characteristic pleural disease pattern, and often result in severe impairment or death without radiographic interstitial disease or typical chrysotile markers of radiographic severity. According to the Agency for Toxic Substances and Disease Registry previous studies by the National Institutes of Occupational Safety and Health document significantly increased rates of pulmonary abnormalities and disease (asbestosis and lung cancer) among former workers.

(11) In Libby, Montana, exposure pathways are and were not limited to the workplace, rather, for decades there has been an unprecedented 24 hour per day contamination of the community's homes, playgrounds, gardens, and community air, such that the entire community of Libby, Montana, has been designated a Superfund site and is listed on the Environmental Protection Agency's National Priorities List.

(12) These multiple exposure pathways have caused severe asbestos disease and death not only in former workers at the mine and milling facilities, but also in the workers' spouses and children, and in community members who had no direct contact with the mine. According to the Environmental Protection Agency, some potentially important alternative pathways for past asbestos exposure include elevated concentrations of asbestos in ambient air and recreational exposures from children playing in piles of vermiculite. Furthermore, the Environmental Protection Agency has determined that current potential pathways of exposure include vermiculite placed in walls and attics as thermal insulation, vermiculite or ore used as road bed material, ore used as ornamental landscaping, and vermiculite or concentrated ore used as a soil and garden amendment or aggregate in driveways.

(13) The Environmental Protection Agency also concluded, ''Asbestos contamination exists in a number of potential source materials at multiple locations in and around the residential and commercial area of Libby. . . While data are not yet sufficient to perform reliable human-health risk evaluations for all sources and all types of disturbance, it is apparent that releases of fiber concentrations higher than Occupational Safety and Health Administration standards may occur in some cases . . . and that screening-level estimates of lifetime excess cancer risk can exceed the upper-bound risk range of 1E–04 usually used by the Environmental Protection Agency for residents under a variety of exposure scenarios. The occurrence of non-occupational asbestos-related disease that has been observed among Libby residents is extremely unusual, and has not been associated with asbestos mines elsewhere, suggesting either very high and prolonged environmental exposures and/or increased toxicity of this form of amphibole asbestos.''.

(14) According to a November 2003 article from the Journal Environmental Health Perspectives titled, Radiographic Abnormalities and Exposure to Asbestos-Contaminated Vermiculite in the Community of Libby, Montana, USA, Libby residents who have evidence of ''no apparent exposure'', i.e., did not work with asbestos, were not a family member of a former worker, etc., had a greater rate of pleural abnormalities (6.7 percent) than did those in control groups or general populations found in other studies from other states (which ranged from 0.2 percent to 4.6 percent). ''Given the ubiquitous nature of vermiculite contamination in Libby, along with historical evidence of elevated asbestos concentrations in the air, it would be difficult to find participants who could be characterized as unexposed.''.

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

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

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

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

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

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

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

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

(A) chrysotile;

(B) amosite;

(C) crocidolite;

(D) tremolite asbestos;

(E) winchite asbestos;

(F) richterite asbestos;

(G) anthophyllite asbestos;

(H) actinolite asbestos;

[(I) amphibole asbestos;]

(I) asbestiform amphibole minerals;

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

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

(3) ASBESTOS CLAIM.—

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

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

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

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

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

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

(v) claims arising out of medical malpractice.

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

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

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

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

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

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

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

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

(12) PARTICIPANT.—

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

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

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

(iii) any successor in interest of a participant.

(B) EXCEPTION.—

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

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

(13) PERSON.—The term ''person''—

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

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

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

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

(16) SUCCESSOR IN INTEREST.—The term ''successor in interest'' means any person that [acquires assets], *in 1 or a series of transactions, acquires all or substantially all of the assets and properties (including, without limitation, under section 363(b) or 1123(b)(4) of title 11, United States Code)*, and substantially continues the business operations, of a participant. The factors to be considered in determining whether a person is a successor in interest include—

(A) retention of the same facilities or location;

(B) retention of the same employees;

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

(D) retention of the same supervisory personnel;

(E) continuity of assets;

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

(G) retention of the same name;

(H) maintenance of the same customer base;

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

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

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

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

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

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

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

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

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

(a) IN GENERAL.—

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

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

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

(3) TERMINATION OF THE OFFICE.—The Office of Asbestos Disease Compensation shall terminate effective not later than 12 months following certification by the Administrator that the Fund has neither paid a claim in the previous 12 months nor has debt obligations remaining to pay.

(4) EXPENSES.—There shall be available from the Fund to the Administrator such sums as are necessary for any and all expenses associated with the Office of Asbestos Disease Compensation and necessary to carry out the purposes of this Act. Expenses covered should include—

(A) management of the Fund;

(B) personnel salaries and expenses, including retirement and similar benefits;

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

(D) all administrative and legal expenses; and

(E) any other sum that could be attributable to the Fund.

(b) APPOINTMENT OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator of the Office of Asbestos Disease Compensation

shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall serve for a term of 5 years.

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

(c) DUTIES OF ADMINISTRATOR.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) APPLICATION OF FOIA.—

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

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

(2) CONFIDENTIALITY OF FINANCIAL RECORDS.—

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

(B) DUTIES OF ADMINISTRATOR AND CHAIRMAN OF THE ASBESTOS INSURERS COMMISSION.—The Administrator and Chairman of the Asbestos Insurers Commission—

(i) shall adopt procedures for—

(I) handling submitted records marked confidential; and

(II) protecting from disclosure records they determine to be confidential commercial or financial information exempt under section 552(b)(4) of title 5, United States Code; and

(ii) may establish a pre-submission determination process to protect from disclosure records on reserves and asbestos-related liabilities submitted by any defendant participant that is exempt under section 552(b)(4) of title 5, United States Code.

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

(3) CONFIDENTIALITY OF MEDICAL RECORDS.—Any claimant may designate any record submitted under this section as a confidential personnel or medical file for purposes of section 552 of title 5, United States Code. The Administrator and the Chairman of the Asbestos Insurers Commission shall adopt procedures for designating such records as confidential.

SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE COMPENSATION.

(a) ESTABLISHMENT.—

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

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

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

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

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

(B) The Administrator shall appoint [8] *4* members, who shall be individuals with qualifications and expertise in occupational or pulmonary medicine, occupational health, workers' compensation programs, financial administration, investment of funds, program auditing, or other relevant fields.

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

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

(1) claims filing and claims processing procedures;

(2) claimant assistance programs;

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

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

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

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

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

(c) OPERATION OF THE COMMITTEE.—

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

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

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

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

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

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

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

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

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

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

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

SEC. 103. MEDICAL ADVISORY COMMITTEE.

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

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

SEC. 104. CLAIMANT ASSISTANCE.

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

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

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

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

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

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

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

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

(d) LEGAL ASSISTANCE.—

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

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

(3) NOTICE.—

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

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

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

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

(e) ATTORNEY'S FEES.—

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

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

(A) $5,000; or

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

SEC. 105. PHYSICIANS PANELS.

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

(b) FORMATION OF PANELS.—

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

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

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

(C) the particular expertise necessary for each panel.

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

(3) PANEL MEMBERS.—

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

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

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

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

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

(1) a physician licensed in any State;

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

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

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

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

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

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

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

SEC. 106. PROGRAM STARTUP.

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

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

(c) EXIGENT HEALTH CLAIMS.—

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

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

(A) *the claimant is living and provides* a diagnosis of mesothelioma meeting the requirements of section 121(d)(10); **[**or**]**

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

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

(i) was living when the claim was filed with the Fund, or if before the implementation of interim regulations for the filing of claims with the Fund, on the date of enactment of this Act;

(ii) has since died from an asbestos-related disease or condition; and

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

(3) ADDITIONAL EXIGENT HEALTH CLAIMS.—The Administrator may, in final regulations

promulgated under section 101(c), designate additional categories of claims that qualify as exigent health claims under this subsection.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of exigent health claims, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, may enter into settlements with claimants. [In the absence of an offer of judgment as provided under section 106(f)(2), the claimant may submit a claim to that claims facility. The claims facility shall receive the claimant's submissions and evaluate the claim in accordance with subtitles B and C. The claims facility shall then submit the file to the Administrator for payment in accordance with subtitle D. This subsection shall not apply to exceptional medical claims under section 121(f). A claimant may appeal any decision at a claims facility with the Administrator in accordance with section 114.] *The processing and payment of claims shall be subject to regulations promulgated under this Act.*

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

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

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

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

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

[(2) EXIGENT HEALTH CLAIMS.—

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

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

[(ii) FILING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(B) PURSUAL OF EXIGENT HEALTH CLAIMS.—

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

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

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

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

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

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

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

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

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

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

[(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than 1 county (or

Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.]

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

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

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

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

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

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

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

(2) EXIGENT HEALTH CLAIMS.—

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

(i) IN GENERAL.—Any person that has filed an exigent health claim, as provided under subsection (c)(2), seeking a judgment or order for monetary damages in any Federal or State court before the date of the enactment of this Act, may seek a settlement in accordance with this paragraph. Any person with an exigent health claim, as provided under subsection (c)(2), that arises after such date of enactment may seek a settlement offer in accordance with this paragraph.

(ii) FILING.—

(I) IN GENERAL.—At any time before the Fund or claims facility being certified as operational and paying exigent health claims at a reasonable rate, any person with an exigent health claim as described under clause (i) shall file a notice of their intent to seek a settlement or shall file their exigent health claim with the Administrator or claims facility. Filing of an exigent health claim with the Administrator or claims facility may serve as notice of intent to seek a settlement.

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

(iii) EXIGENT HEALTH CLAIM INFORMATION.—To file an exigent health claim, each individual shall provide all of the following information:

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

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

(III) A certification by the claimant that the information provided is true and complete. The certification provided under this subclause shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator or claims facility in support of a claim.

(IV) For exigent health claims arising after the date of enactment of this Act, the claimant shall identify each defendant that would be an appropriate defendant in a civil action seeking damages for the asbestos claim of the claimant. The identification of a defendant under this subclause shall be required to comply with rule 11 of the Federal Rules of Civil Procedure.

(iv) TIMING.—A claimant who has filed a notice of their intent to seek a settlement under clause (ii) shall within 60 days after filing notice provide to the Administrator or claims facility, and all affected defendants the information required under clause (iii). If a claimant has filed an exigent health claim under clause (ii) the Administrator shall provide all affected defendants the information required under clause (iii).

(v) ADMINISTRATOR OR CLAIMS FACILITY CERTIFICATION OF SETTLEMENT.—

(I) DETERMINATION.—Within 60 days after the information under clause (iii) is provided, the Administrator or claims facility shall determine whether or not the claim meets the requirements of an exigent health claim.

(II) REQUIREMENTS MET.—If the Administrator or claims facility determines that the claim meets the requirements of an exigent health claim, the Administrator or claims facility shall immediately—

(aa) issue and serve on all parties a certification of eligibility of such claim;

(bb) determine the value of such claim under the Fund by subtracting from the amount in section 131 the total amount of collateral source compensation received by the claimant; and

(cc) pay the award of compensation to the claimant under clause (xi).

(III) REQUIREMENTS NOT MET.—If the requirements under clause (iii) are not met, the claimant shall have 30 days to perfect the claim. If the claimant fails to perfect the claim within that 30-day period or the Administrator or claims facility determines that the claim does not meet the requirements of an exigent health claim, the claim shall not be eligible to proceed under this paragraph. A claimant may appeal any decision issued by a claims facility with the Administrator in accordance with section 114.

(vi) FAILURE TO CERTIFY.—If the Administrator or claims facility is unable to process the claim and does not make a determination regarding the certification of the claim as required under clause (v), the Administrator or claims facility shall within 10 days after the end of the 60-day period referred to under clause (v)(I) provide notice of the failure to act to the claimant and the defendants in the pending Federal or State court action or the defendants identified under clause (iii)(IV). If the Administrator or claims facility fails to provide such notice within 10 days, the claimant may elect to provide the notice to the affected defendants to prompt a settlement offer.

(vii) FAILURE TO PAY.—If the Administrator or claims facility does not pay the award as required under clause (xi), the Administrator shall refer the certified claim within 10 days as a certified exigent health claim to the defendants in the pending Federal and State court action or to the potential defendants identified under clause (iii)(IV) for exigent claims arising after the date of enactment of this Act.

(viii) SETTLEMENT OFFER.—Any defendant or defendants may, within 30 days after receipt of such notice as provided under clause (vi) or (vii), file and serve on all parties and the Administrator a good faith settlement offer in an aggregate amount not to exceed the total amount to which the claimant may be entitled under section 131. If the aggregate amount offered by all defendants exceeds the award determined by the Administrator, all offers shall be deemed reduced pro-rata until the aggregate amount equals the award amount. An acceptance of such settlement offer in a 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).

(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, the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund before the stay being lifted under subparagraph (B). If the amount of the amended settlement offer made by the Administrator, claims facility, or defendants equals 150 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(x) ACCEPTANCE OR REJECTION.—Within 20 days after receipt of the settlement offer, or the amended settlement offer, the claimant shall either accept or reject such offer in writing. If the amount of the settlement offer made by the Administrator, claims facility, or defendants equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xi) PAYMENT SCHEDULE.—

(I) MESOTHELIOMA CLAIMANTS.—For mesothelioma claimants—

(aa) an initial payment of 50 percent shall be made within 30 days after the date the settlement is accepted and the second and final payment shall be made 6 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the defendant, the payments may be extended 50 percent in 6 months and 50 percent 11 months after the date the settlement offer is accepted.

(II) OTHER EXIGENT CLAIMANTS.—For other exigent claimants, as defined under section 106(c)(2)(B and (C)—

(aa) the initial payment of 50 percent shall be made within 6 months after the date the settlement is accepted and the second and final payment shall be made 12 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the defendants, the payments may be extended 50 percent within 1 year after the date the settlement offer is accepted and 50 percent in 2 years after date the settlement offer is accepted.

(III) RELEASE.—Once a claimant has received final payment of the accepted settlement offer the claimant shall release any outstanding asbestos claims.

(xii) RECOVERY OF COSTS.—

(I) IN GENERAL.—Any defendant whose settlement offer is accepted may recover the cost of such settlement by deducting from the defendant's next and subsequent contributions to the Fund the full amount of the payment made by

such defendant to the exigent health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that the defendant's offer is not in good faith. Any such payment shall be considered a payment to the Fund for purposes of section 404(e)(1) and in response to the payment obligations imposed on defendant and insurer participants in title II.

(II) REIMBURSEMENT.—Notwithstanding subclause (I), if the deductions from the defendant participant's next and subsequent contributions to the Fund do not fully recover the cost of such payments on or before its third annual contribution to the Fund, the Fund shall reimburse such defendant for such remaining cost not later than 6 months after the date of the third scheduled Fund contribution.

(xiii) FAILURE TO MAKE OFFER.—If defendants fail to make a settlement offer within the 30-day period described under clause (viii) or make amended offers within the 10 business day cure period described under clause (ix), the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund before the stay being lifted under subparagraph (B).

(xiv) FAILURE TO PAY.—If defendants fail to pay an accepted settlement offer within the payment schedule under clause (xi), the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund before the stay being lifted under subparagraph (B). If the stay is lifted under subparagraph (B) the claimant may seek a judgment or order for monetary damages from the court where the case is currently pending or the appropriate Federal or State court for claims arising after the date of enactment of this Act.

(B) CONTINUATION OF EXIGENT HEALTH CLAIMS.—If 9 months after an exigent health claim has been filed under subparagraph (A)(ii), a claimant has not received a settlement under subparagraph (A)(xi) and the Administrator has not certified to Congress that the Fund or claims facility is operational and paying exigent health claims at a reasonable rate, such exigent health claimant, may seek a judgment or order for monetary damages from the court where the case is currently pending or the appropriate Federal or State court for claims arising after the date of enactment of this Act.

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

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

(ii) RECOVERY OF COSTS.—Any defendant may recover the cost of any claim continued in court for up to the amount the claimant would receive under the Fund by deducting from the defendant's next and subsequent contributions to the Fund for the full amount of the payment made by such defendant to the exigent health claimant.

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

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

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

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

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

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

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

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

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

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

(iii) OPERATIONAL PRECONDITIONS.—

(I) The Administrator may not issue a operational certification until—

(aa) 60 days after the funding allocation information required under section 221(e) has been published in the Federal Register; and

(bb) insurers subject to section 212(a)(3) submit their names and information to the Administrator within 30 days after the date of enactment of this Act and 60 days after the Administrator publishes such information in the Federal Register.

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

(v) NONOPERATIONAL FUND.—Notwithstanding any other provision of this Act, if the Administrator subsequently issues a nonoperational certification and notifies Congress that the Fund is unable to become operational and pay all valid asbestos claims at a reasonable rate, all asbestos claims that have a stay may be filed or reinstated.

SEC. 107. AUTHORITY OF THE ADMINISTRATOR.

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

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

(2) administer oaths;

(3) examine witnesses;

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

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

Subtitle B—Asbestos Disease Compensation Procedures

SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.

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

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

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

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

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

SEC. 113. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

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

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

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

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—A claimant who receives an award for an eligible disease or condition shall not be precluded from submitting claims for and receiving additional awards under this title for any higher disease level for which the claimant becomes eligible, subject to appropriate setoffs as provided under section 134.

(B) LIBBY, MONTANA CLAIMS.—

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

(I) a diagnosis of bilateral asbestos related nonmalignant disease;

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

(III) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(ii) SUBSEQUENT MALIGNANT DISEASE.—If a Libby, Montana, claimant develops malignant disease, such that the claimant qualifies for Level VI, VII, VIII, or IX, subparagraph (A) shall apply.

(b) STATUTE OF LIMITATIONS.—

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

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

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

[any claim relating to that injury,] and any other asbestos claim related to that injury,] *If a claim is not filed with the Office within the limitations period specified in this subsection for that category of claim, such claim* shall be extinguished, and any recovery thereon shall be prohibited.

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

(3) CLAIMS FOR ADDITIONAL AWARDS.—

(A) NON-MALIGNANT DISEASES.—If a claimant has previously filed a timely initial claim for compensation for any non-malignant disease level, there shall be no limitations period applicable to the filing of claims by the claimant for

additional awards for higher disease levels based on the progression of the non-malignant disease.

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

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

[(3)] *(4)* EFFECT ON PENDING CLAIMS.—

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

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

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

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

[(4) EFFECT OF MULTIPLE INJURIES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) IN GENERAL.—

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

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

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

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

(d) REVIEW OF PROPOSED DECISIONS.—

(1) RIGHT TO HEARING.—

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

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

(C) REQUEST FOR SUBPOENAS.—

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

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

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

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

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

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

review is requested, the claimant shall be afforded an opportunity to submit any written evidence or argument which the claimant believes relevant.

(e) FINAL DECISIONS.—

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

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

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

SEC. 115. MEDICAL EVIDENCE AUDITING PROCEDURES.

(a) IN GENERAL.—

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

(2) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

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

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

(b) REVIEW OF CERTIFIED B-READERS.—

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

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

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

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

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

(c) SMOKING ASSESSMENT.—

(1) IN GENERAL.—

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

(i) records of past medical treatment and evaluation;

(ii) affidavits of appropriate individuals;

(iii) applications for insurance and supporting materials; and

(iv) employer records of medical examinations.

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

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

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

(3) CONSENT.—

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

(B) SERUM COTININE SCREENING.—The Administrator shall require the performance of serum cotinine screening on all claimants who assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

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

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

Subtitle C—Medical Criteria

SEC. 121. MEDICAL CRITERIA REQUIREMENTS.

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

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

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

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

(B) bilateral pleural plaques;

(C) bilateral pleural thickening; or

(D) bilateral pleural calcification.

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

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

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

(6) DLCO.—The term ''DLCO'' means the single-breath diffusing capacity of the lung (carbon monoxide) technique used to measure the volume of carbon monoxide transferred from the alveoli to blood in the pulmonary capillaries for each unit of driving pressure of the carbon monoxide.

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

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

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

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

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

(A) never smoked; or

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

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

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

(14) SUBSTANTIAL OCCUPATIONAL EXPOSURE TO ASBESTOS.—

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

(i) handled raw asbestos fibers;

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

(iii) altered, repaired, or otherwise worked with an asbestos-containing product such

that the claimant was exposed on a regular basis to asbestos fibers; or

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

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

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

(16) WEIGHTED OCCUPATIONAL EXPOSURE.—

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

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

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

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

(E) DATES OF EXPOSURE.—Each year of exposure calculated under subparagraphs (B), (C), and (D) that occurred before 1976 shall be counted at its full value. Each year from 1976 to 1986 shall be counted as ½ of its value. Each year after 1986 shall be counted as ⅒ of its value.

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

(b) MEDICAL EVIDENCE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) x-rays or computerized tomography;

(B) detailed results of pulmonary function tests;

(C) laboratory tests;

(D) tissue samples;

(E) results of medical examinations;

(F) reviews of other medical evidence; and

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

(c) EXPOSURE EVIDENCE.—

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

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

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

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

(2) PROOF OF EXPOSURE.—

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

(i) the claimant; or

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

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

(3) TAKE-HOME EXPOSURE.—

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

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

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

(5) EXPOSURE PRESUMPTIONS.—

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

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

(C) CRITERIA REQUIREMENTS.—Nothing in subparagraphs (A) or (B) shall negate the exposure or medical criteria requirements in section 121, for the purpose of receiving compensation from the Fund.

(6) PENALTY FOR FALSE STATEMENT.—Any false information submitted under this subsection shall be subject to section 1348 of

title 18, United States Code (as added by this Act).

(d) ASBESTOS DISEASE LEVELS.—

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

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

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

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

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

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

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

(D) supporting medical documentation, *such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2),* establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question.

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

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

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

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

(D) supporting medical documentation, *such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)*—

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

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

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

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

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

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

(D) supporting medical documentation, *such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)*—

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

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

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

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

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

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

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

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

(D) supporting medical documentation, *such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)*—

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

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

(6) MALIGNANT LEVEL VI.—

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

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

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

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

(iv) supporting medical documentation, *such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2),* establishing asbestos exposure as a substantial contributing factor in causing the cancer in question.

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

(7) MALIGNANT LEVEL VII.—

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

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

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

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

(iv) supporting medical documentation, *such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2),* establishing asbestos exposure as a substantial contributing factor in causing the lung cancer in question.

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

(8) MALIGNANT LEVEL VIII.—

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

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

(ii)(I) of—

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

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

(II) of—

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

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

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

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

(iii) supporting medical documentation, *such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2),* establishing asbestos exposure as a substantial contributing factor in causing the lung cancer in question; and 10 or more weighted years of substantial occupational exposure to asbestos.

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

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

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

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

(i) occupational exposure to asbestos;

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

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

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

(e) INSTITUTE OF MEDICINE STUDY.—Not later than April 1, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health [of the] *to determine whether there is a* causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers. The Institute of Medicine shall issue a report on its findings on causation, which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels. The Institute of Medicine report shall be binding on the Administrator and the Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor [under section 121(d)(6)(B).] *in causing the other cancerous disease in question under subsection (d)(6). If asbestos is not a substantial contributing factor to the particular cancerous disease under subsection (d)(6), subsection (d)(6) shall not apply with respect to that disease and no claim may be filed with, or award paid from, the Fund with respect to that disease under malignant Level VI.*

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

(1) IN GENERAL.—Not later than April 1, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health of the use of CT scans as a diagnostic tool for bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification.

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

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

(B) professional standards of practice exist to allow for the Administrator's reasonable reliance on such as evidence of bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification under the Fund.

(3) REPORT.—The Institute of Medicine shall issue a report on the findings required under paragraph (2), which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(4) REPORT BINDING ON THE ADMINISTRATOR.—The Institute of Medicine report required under paragraph (3) shall be binding on the Administrator and the Physicians Panels for purposes of determining reliable and acceptable evidence that may be submitted for a Level VII claim under subsection (d)(7).

[(f)]*(g)* EXCEPTIONAL MEDICAL CLAIMS.—

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

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

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

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

(3) REPORT OF PHYSICIAN.—

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

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

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

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

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

(4) REVIEW.—

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

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

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

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

(5) APPROVAL.—

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

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

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

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

(8) LIBBY, MONTANA.—

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

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

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

(i) a diagnosis of bilateral asbestos related nonmalignant disease;

(ii) evidence of TLC or FVC less than 80 percent; and

(iii) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(9) STUDY OF VERMICULITE PROCESSING FACILITIES.—

(A) IN GENERAL.—As part of the ongoing National Asbestos Exposure Review (in this section referred to as ''NAER'') being conducted by the Agency for Toxic Substances and Disease Registry (in this section referred to as ''ATSDR'') of facilities that received vermiculite ore from Libby, Montana, the ATSDR shall conduct a study of all Phase 1 sites where—

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

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

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

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

(ii) the resulting asbestos contamination in areas surrounding such facilities;

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

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

(v) the risk of asbestos-related mortality to residents living in the vicinity of such facilities, to the emissions, contamination, exposures, and risks resulting from the mining of vermiculite ore in Libby, Montana.

(C) RESULTS OF STUDY.—The results of the study required under this paragraph shall be transmitted to the Administrator. If the ATSDR finds as a result of such study that, for any particular facility, the levels of emissions from, the resulting contamination caused by, the levels of exposure to nearby residents from, and the risks of asbestos-related disease and asbestos-related mortality to nearby residents from such facility are substantially equivalent to those of Libby, Montana, then the Administrator shall treat claims from residents surrounding such facilities the same as claims of residents of Libby, Montana, and such residents shall have all the rights of residents of Libby, Montana, under this Act. As part of the results of its study, the ATSDR shall prescribe for any such facility the relevant geographic and temporal criteria under which the exposures and risks to the surrounding residents are substantially equivalent

to those of residents of Libby, Montana, and therefore qualify for treatment under this paragraph.

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

(h) GUIDELINES FOR CT SCANS.—The Administrator shall commission the American College of Radiology to develop, in consultation with the American Thoracic Society, American College of Chest Physicians, and Institute of Medicine, guidelines and a methodology for the use of CT scans as a diagnostic tool for bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification under the Fund. After development, such guidelines and methodology shall be used for diagnostic purposes under the Fund.

Subtitle D—Awards

SEC. 131. AMOUNT.

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

(b) BENEFIT TABLE.—

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

Level	Scheduled Condition or Disease	Scheduled Value
I	Asbestosis/Pleural Disease A	Medical Monitoring
II	Mixed Disease With Impairment	$25,000
III	Asbestosis/Pleural Disease B	$100,000
IV	Severe Asbestosis	$400,000
V	Disabling Asbestosis	$850,000
VI	Other Cancer	$200,000
VII	Lung Cancer With Pleural Disease	smokers, $300,000; ex-smokers, $725,000; non-smokers, $800,000
VIII	Lung Cancer With Asbestosis	smokers, $600,000; ex-smokers, $975,000; non-smokers, $1,100,000
IX	Mesothelioma	$1,100,000

(2) DEFINITIONS.—In this section—

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

(i) never smoked; or

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

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

(3) LEVEL IX ADJUSTMENTS.—

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

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

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

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

(4) SPECIAL ADJUSTMENT FOR FELA CASES.—

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

(B) REGULATIONS.—

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

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

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

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

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

(D) AMOUNT.—

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

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

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

(F) DEMONSTRATION OF ELIGIBILITY.—

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

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

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

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

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

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

(6) COST-OF-LIVING ADJUSTMENT.—

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

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

(C) CONSUMER PRICE INDEX.—

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

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

SEC. 132. MEDICAL MONITORING.

(a) RELATION TO STATUTE OF LIMITATIONS.—The filing of a claim under this Act that

seeks reimbursement for medical monitoring shall not be considered as evidence that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations under section 113(b).

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

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

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

(2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENT.

(a) STRUCTURED PAYMENTS.—

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

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

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

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

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

(3) EXTENSION OF PAYMENT PERIOD.—

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

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

(4) [ACCELERATED] *LUMP-SUM* payments.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for [accelerated payments] *1 lump-sum payment* to asbestos claimants who are mesothelioma victims and who are alive on the date on which the Administrator receives notice of the eligibility of the claimant. [Such payments shall be credited against the first regular payment under the structured payment plan for the claimant.]

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

(i) not later than 30 days after the date the claim is approved by the Administrator; or

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

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

(i) not later than 6 months after the date the claim is approved by the Administrator; or

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

(5) EXPEDITED PAYMENTS.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of exigent [circumstances or extreme hardship caused by asbestos-related injury.] *health claims as described under section 106(c)(2)(B) and (C).*

(B) TIMING OF PAYMENTS.—Total payments shall be made within the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

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

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

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

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

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

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

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

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

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

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

SEC. 134. [REDUCTION IN BENEFIT PAYMENTS FOR COLLATERAL SOURCES.] *SETOFFS FOR COLLATERAL SOURCE COMPENSATION AND PRIOR AWARDS.*

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of *any* collateral source compensation *and by any amounts paid or to be paid to the claimant for a prior award under this Act.*

(b) EXCLUSIONS.—

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

(2) PRIOR AWARD PAYMENTS.—Any amounts paid or to be paid for a prior claim for a nonmalignant disease (Levels I through V) filed against the Fund shall not be deducted as a setoff against amounts payable for the second injury claims for a malignant disease (Levels VI through IX), unless the malignancy was diagnosed before the date on which the nonmalignancy claim was compensated.

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

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

(1) insurance carrier for insurance payments; or

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

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

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

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

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

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

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

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

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

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

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

(3) DEBTOR.—The term ''debtor''—

(A) means—

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

(ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and

(B) shall not include an entity—

(i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or

(ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(4) INDEMNIFIABLE COST.—The term ''indemnifiable cost'' means a cost, expense, debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.

(5) INDEMNITEE.—The term ''indemnitee'' means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity

in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(6) INDEMNITOR.—The term ''indemnitor'' means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(7) PRIOR ASBESTOS EXPENDITURES.—The term ''prior asbestos expenditures''—

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

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

(C) shall not include any payment made by a person in connection with or as a result of changes in insurance reserves required by contract or any activity or dispute related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad, including settlement, judgment, defense, or indemnity costs associated with these claims.

(8) TRUST.—The term ''trust'' means any trust, as described in sections 524(g)(2)(B)(i) or 524(h) of title 11, United States Code, or established in conjunction with an order issued under section 105 of title 11, United States Code, established or formed under the terms of a chapter 11 plan of reorganization, which in whole or in part provides compensation for asbestos claims.

(9) ULTIMATE PARENT.—The term ''ultimate parent'' means a person—

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

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person (other than a natural person).

SEC. 202. AUTHORITY AND TIERS.

(a) LIABILITY FOR PAYMENTS TO THE FUND.—

(1) IN GENERAL.—Defendant participants shall be liable for payments to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE PAYMENT OBLIGATIONS LEVEL.—The total payments required of all defendant participants over the life of the Fund shall not exceed a sum equal to $90,000,000,000 less any bankruptcy trust credits under section 222[(e)]*(d)*. The Administrator shall have the authority to allocate the payments required of the defendant participants among the tiers as provided in this title.

(3) ABILITY TO ENTER REORGANIZATION.—Notwithstanding any other provision of this Act, all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures less than $1,000,000 may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code. Any asbestos claim made in conjunction with a plan of reorganization allowable under the preceding sentence shall be subject to section 403(d) of this Act.

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

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

(1) DEFINITION.—

(A) IN GENERAL.—In this subsection, the term ''bankrupt business entity'' means a person that is not a natural person that—

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

(ii) has not substantially consummated, as such term is defined under section 1101(2) of title 11, United States Code, a plan of reorganization as of the date of enactment of this Act; and

(iii) the bankruptcy court presiding over the business entity's case determines, after notice and a hearing upon motion filed by the entity within 30 days after the date of enactment of this Act, that asbestos liability was not the sole or precipitating cause of the entity's chapter 11 filing.

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

(i) an affidavit or declaration of the chief executive officer, chief financial officer, or chief legal officer of the business entity; and

(ii) copies of the entity's public statements and securities filings made in connection with the entity's filing for chapter 11 protection.

Notice of such motion shall be as directed by the bankruptcy court, and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity's chapter 11 filing. The bankruptcy court shall hold a hearing and make its determination with respect to the motion within 60 days after the date the motion is filed. In making its determination, the bankruptcy court shall take into account the affidavits, public statements, and securities filings, and other information, if any, submitted by the entity and all other facts and circumstances presented by an objecting party. Any review of this determination shall be an expedited appeal and limited to whether the decision was against the weight of the evidence. Any appeal of a determination shall be an expedited review to the United States Circuit Court of Appeals for the circuit in which the bankruptcy is filed.

(2) PROCEEDING WITH REORGANIZATION PLAN.—A bankrupt business entity may proceed with the filing, solicitation, confirmation, and consummation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction described in section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if the bankruptcy court makes a favorable determination under paragraph (1)(B), unless the bankruptcy court's determination is overruled on appeal and all appeals are final. Such a bankrupt business entity may continue to so proceed, if—

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

[(i) confirmation is necessary to permit the reorganization of that entity and assure that all creditors and that entity are treated fairly and equitably; and

[(ii) confirmation is clearly favored by the balance of the equities; and]

such confirmation is required to avoid the liquidation or the need for further financial reorganization of that entity; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

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

(4) OFFSETS.—

(A) PAYMENTS BY INSURERS.—To the extent that a bankrupt business entity or debtor successfully confirms a plan of reorganization, including a trust, and channeling injunction that involves payments by insurers who are otherwise subject to this Act as described under section 524(g) of title 11, United States Code, an insurer who makes payments to the trust shall obtain a dollar-for-dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

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

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

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

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

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

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

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

(e) TIER PLACEMENT AND COSTS.—

(1) PERMANENT TIER PLACEMENT.—After a defendant participant or affiliated group is assigned to a tier and subtier under section 204(i)(6), the participant or affiliated group shall remain in that tier and subtier throughout the life of the Fund, regardless of subsequent events, including—

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

(B) a discharge of debt in bankruptcy;

(C) the confirmation of a plan of reorganization; or

(D) the sale or transfer of assets to any other person or affiliated group, unless the Administrator finds that the information submitted by the participant or affiliated group to support its inclusion in that tier was inaccurate.

(2) COSTS.—Payments to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act—

(A) shall constitute costs and expenses of administration of the case under section 503 of title 11, United States Code, and shall be

payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;

(B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and

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

(f) SUPERSEDING PROVISIONS.—

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

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

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

(C) Any agreement, understanding, or undertaking by any such debtor or any third party with respect to the treatment of any asbestos claim filed in a debtor's bankruptcy case or with respect to a debtor before the date of enactment of this Act, whenever such debtor's case is either still pending, if such case is pending under a chapter other than chapter 11 of title 11, United States Code, or subject to confirmation or substantial consummation of a plan of reorganization under chapter 11 of title 11, United States Code.

(2) PRIOR AGREEMENTS OF NO EFFECT.—Notwithstanding section 403(c)(3), any plan of reorganization, agreement, understanding, or undertaking by any debtor (including any pre-petition agreement, understanding, or undertaking that requires future performance) or any third party under paragraph (1), and any agreement, understanding, or undertaking entered into in anticipation, contemplation, or furtherance of a plan of reorganization, to the extent it relates to any asbestos claim, shall be of no force or effect, and no person shall have any right or claim with respect to any such agreement, understanding, or undertaking.

SEC. 203. SUBTIERS.

(a) IN GENERAL.—

(1) SUBTIER LIABILITY.—Except as otherwise provided under subsections (b), (d), and (l) of section 204, persons or affiliated groups shall be included within Tiers I through VII and shall pay amounts to the Fund in accordance with this section.

(2) REVENUES.—

(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant or affiliated group would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

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

(C) DEBTORS.—Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is included in Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person. If a debtor or affiliated group includes a person in respect of whose liabilities for asbestos claims a class action trust has been established, there shall be excluded from the 2002 revenues of such debtor or affiliated group—

(i) all revenues of the person in respect of whose liabilities for asbestos claims the class action trust was established; and

(ii) all revenues of the debtor and affiliated group attributable to the historical business operations or assets of such person, regardless of whether such business operations or assets were owned or conducted during the year 2002 by such person or by any other person included within such debtor and affiliated group.

(b) TIER I SUBTIERS.—

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

(2) SUBTIER 1.—

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

(B) PAYMENT.—

(i) IN GENERAL.—Each debtor included in Subtier 1 shall pay on an annual basis 1.67024 percent of the debtor's 2002 revenues.

(ii) EXCEPTION TO PAYMENT PERCENTAGE.—Notwithstanding clause (i), a debtor in Subtier 1 shall pay, on an annual basis, $500,000 if—

(I) such debtor, including its direct or indirect majority-owned subsidiaries, has less than $10,000,000 in prior asbestos expenditures;

(II) at least 95 percent of such debtors revenues derive from the provision of engineering and construction services; and

(III) such debtor, including its direct or indirect majority-owned subsidiaries, never manufactured, sold, or distributed asbestos-containing products in the stream of commerce.

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

(D) LIABILITY.—

(i) IN GENERAL.—If a person who is subject to a case pending under a chapter of title 11, United States Code, as defined in section 201(3)(A)(i), does not pay when due any payment obligation for the debtor, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the debtor may be liable under sections 223 and 224) from any of the direct or indirect majority-owned subsidiaries under section 201(3)(A)(ii).

(ii) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within a debtor under section 201(3)(A) (i) and (ii) with respect to the payment obligations under this Act.

(iii) RIGHT OF CONTRIBUTION.—

(I) IN GENERAL.—Notwithstanding any other provision of this Act, if a direct or indirect majority-owned foreign subsidiary of a debtor participant (with such relationship to the debtor participant as determined on the date of enactment of this Act) is or becomes subject to any foreign insolvency proceedings, and such foreign direct or indirect-majority owned subsidiary is liquidated in connection with such foreign insolvency proceedings (or if the debtor participant's interest in such foreign subsidiary is otherwise canceled or terminated in connection with such foreign insolvency proceedings), the debtor participant shall have a claim against such foreign subsidiary or the estate of such foreign subsidiary in an amount equal to the greater of—

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

(bb) the foreign subsidiary's allocable share of the debtor participant's funding obligations to the Fund as determined by such foreign subsidiary's allocable share of the debtor participant's 2002 gross revenue.

(II) DETERMINATION OF CLAIM AMOUNT.—The claim amount under subclause (I) (aa) or (bb) shall be determined by a court of competent jurisdiction in the United States.

(III) EFFECT ON PAYMENT OBLIGATION.—The right to, or recovery under, any such claim shall not reduce, limit, delay, or otherwise affect the debtor participant's payment obligations under this Act.

(iv) MAXIMUM ANNUAL PAYMENT OBLIGATION.—Subject to any payments under sections 204(l) and 222[(d)]*(c)*, and paragraphs (3), (4), and (5) of this subsection, the annual payment obligation by a debtor under subparagraph (B) of this paragraph shall not exceed $80,000,000.

(3) SUBTIER 2.—

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

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

(4) SUBTIER 3.—

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

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

[(C) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, less—

(i) all allowable administrative expenses;

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

(iii) allowable secured claims.]

(5) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, jointly held, in trust or otherwise, with a defendant participant, less—

(A) all allowable administrative expenses;

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

(C) allowable secured claims.

[(5)]*(6)* CLASS ACTION TRUST.—The assets of any class action trust that has been established in respect of the liabilities for asbestos claims of any person included within a debtor and affiliated group that has been included in Tier I (exclusive of any assets needed to pay previously incurred expenses and asbestos claims within the meaning of section 403(d)(1), before the date of enactment of this Act) shall be transferred to the Fund not later than [6 months] *60 days* after the date of enactment of this Act.

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers

shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

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

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

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

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

(E) those persons or affiliated groups remaining included in Subtier 3.

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

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

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

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

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

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

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

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

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

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

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

(E) those persons or affiliated groups remaining included in Subtier 3.

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

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

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

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

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

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

(e) TIER IV SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier IV shall be included in 1 of the 4 subtiers of Tier IV, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

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

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

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

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

(D) Subtier 4: $550,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 3 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

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

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

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 3 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

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

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(3) OTHER PAYMENT FOR CERTAIN PERSONS AND AFFILIATED GROUPS.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, and if an adjustment authorized by this subsection does not impair the overall solvency of the Fund, any person or affiliated group within Tier VI whose required subtier payment in any given year would exceed such person's or group's average annual expenditure on settlements, and judgments of asbestos disease-related claims over the 8 years before the date of enactment of this Act shall make the payment required of the immediately lower subtier or, if the person's or group's average annual expenditures on settlements and judgments over the 8 years before the date of enactment of this Act is less than $100,000, shall not be required to make a payment under this Act.

(B) NO FURTHER ADJUSTMENT.—Any person or affiliated group that receives an adjustment under this paragraph shall not be eligible to receive any further adjustment under section 204(d).

(h) TIER VII.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, or VI, a person or affiliated group shall also be included in Tier VII, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims.

(2) ADDITIONAL AMOUNT.—The payment requirement for persons or affiliated groups included in Tier VII shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VI.

(3) SUBTIER 1.—Each person or affiliated group in Tier VII with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated group in Tier VII with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated group in Tier VII with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) IN GENERAL.—Each defendant participant or affiliated group shall pay to the Fund in the amounts provided under this subtitle as appropriate for its tier and subtier each year until the earlier to occur of the following:

(1) The participant or affiliated group has satisfied its obligations under this subtitle during the 30 annual payment cycles of the operation of the Fund.

(2) The amount received by the Fund from defendant participants, excluding any amounts rebated to defendant participants under [subsection (d)] *subsections (d) and (m)*, equals the maximum aggregate payment obligation of section 202(a)(2).

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

(c) PROCEDURES.—The Administrator shall prescribe procedures on how amounts payable under this subtitle are to be paid, including, to the extent the Administrator determines appropriate, procedures relating to payment in installments.

(d) ADJUSTMENTS.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Administrator's determination under this subsection under the procedures prescribed in subsection (i)(10). The Administrator may adjust a defendant participant's payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (j) after payment of the otherwise applicable payment obligation, at the discretion of the Administrator.

(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant may apply for an adjustment based on financial hardship at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such adjustment by demonstrating that the amount of its payment obligation under the statutory allocation would constitute a severe financial hardship.

(B) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), a financial hardship adjustment under this subsection shall have a term of 3 years.

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

(D) REINSTATEMENT.—Following the expiration of the hardship adjustment period provided for under this section and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in the financial condition of the defendant participant such that the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate under terms and conditions established by the Administrator any part or all of the defendant participant's payment obligation under the statutory allocation that was not paid during the hardship adjustment term.

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of its payment obligation under the statutory allocation is exceptionally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund;

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

(III) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant;

(ii) shall qualify for a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote, and for purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act; and

(iii) shall be granted a two-tier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such participant's prior asbestos expenditures arose from asbestos claims based on successor liability arising from a merger to which the participant or its predecessor was a party that occurred at least 30 years before the date of enactment of this Act, and that such prior asbestos expenditures exceed the inflation-adjusted value of the assets of the company from which such liability was derived in such merger, and upon such demonstration the Administrator shall grant such adjustment for the life of the Fund and amounts paid by such defendant participant prior to such adjustment in excess of its adjusted payment obligation under this clause shall be credited against next succeeding required payment obligations.

(B) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(C) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), an inequity adjustment under this subsection shall have a term of 3 years.

(D) RENEWAL.—A defendant participant may renew an inequity adjustment every 3 years by demonstrating that the adjustment remains justified.

(E) REINSTATEMENT.—

(i) IN GENERAL.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant participant's payment under the statutory allocation was not inequitable. Based on this determination, the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 3-year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Administrator may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Administrator.

(4) LIMITATION ON ADJUSTMENTS.—The aggregate total of financial hardship adjustments under paragraph (2) and inequity adjustments under paragraph (3) in effect in any given year shall not exceed $300,000,000, except to the extent *that*—

(A) additional monies are available for such adjustments as a result of carryover of prior years' funds under subsection (j)(3) or as a result of monies being made available in that year under subsection (k)(1)(A)**[**.**]***; or*

(B) the Administrator determines that the $300,000,000 is insufficient and additional adjustments as provided under paragraph (5) are needed to address situations in which a defendant participant would otherwise be rendered insolvent by its payment obligations without such adjustment.

(5) BANKRUPTCY RELIEF.—

(A) IN GENERAL.—Any defendant participant may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such adjustment by demonstrating, to a reasonable degree of certainty, evidence that the amount of its payment obligation would render the defendant participant insolvent, as defined under section 101 of title 11, United States Code, and unable to pay its debts as they become due.

(B) INFORMATION REQUIRED.—Any defendant participant seeking an adjustment or renewal of an adjustment under this paragraph shall provide the Administrator with the information required under section 521(1) of title 11 of the United States Code.

(C) LIMITATION.—Any adjustment granted by the Administrator under subparagraph (A) shall be limited to the extent reasonably necessary to prevent insolvency of a defendant participant.

(D) TERM.—To the extent the Administrator grants any relief under this paragraph, such adjustments shall have a term of 1 year. An adjustment may be renewed or modified on an annual basis upon the defendant participant demonstrating that the adjustment or modification remains justified under this paragraph.

(E) REINSTATEMENT.—During the funding period prescribed under subparagraph (A), the Administrator shall annually determine whether there has been a material change in the financial condition of any defendant participant granted an adjustment under this paragraph such that the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate under terms and conditions established by the Administrator any part or all of the defendant participant's payment obligation under the statutory allocation that was not paid during the adjustment term.

[(5)**]***(6)* ADVISORY PANELS.—

(A) APPOINTMENT.—The Administrator shall appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

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

(C) COORDINATION.—The panels appointed under subparagraph (A) shall coordinate their deliberations and advice.

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

(f) CONSOLIDATION OF PAYMENTS.—

(1) IN GENERAL.—For purposes of determining the payment levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submissions to be made under paragraphs (1) and (3) of subsection (i), to report on a consolidated basis all of the information necessary to determine the payment level under this subtitle and pay to the Fund on a consolidated basis.

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

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including with respect to the assessment of a single annual payment under this subtitle for the entire affiliated group;

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

(C) all members of the affiliated group shall be identified in the submission under subsection (i) and shall certify compliance with this subsection and the Administrator's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(3) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within an affiliated group with respect to the payment obligations under this Act.

(g) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES.—

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

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

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

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee; and

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

(4) TREATMENT OF CERTAIN EXPENDITURES.—Notwithstanding any other provision of this Act, where—

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

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

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

(ii) filed after the date of the agreement and prior to the 10-year anniversary of the stock sale,

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

(h) MINIMUM ANNUAL PAYMENTS.—

(1) IN GENERAL.—The aggregate annual payments of defendant participants to the Fund shall be at least $3,000,000,000 for each calendar year in the first 30 years of the Fund, or until such shorter time as the condition set forth in subsection (a)(2) is attained.

(2) GUARANTEED PAYMENT ACCOUNT.—To the extent payments in accordance with sections 202 and 203 [(as modified by subsections (b), (d), (f) and (g) of this section)] *(as modified by subsections (b), (d), (f), (g), and (m) of this section)* fail in any year to raise at least $3,000,000,000 [net of any adjustments under subsection (d)], *after applicable reductions or adjustments have been taken according to subsections (d) and (m)*, the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(3) GUARANTEED PAYMENT SURCHARGE.—To the extent the procedure set forth in paragraph (2) is insufficient to satisfy the required minimum aggregate annual payment [net of any adjustments under subsection (d)], *after applicable reductions or adjustments have been taken according to subsections (d) and (m)*, the Administrator [may] *shall unless the Administrator implements a funding holiday under section 205(b)*, assess a guaranteed payment surcharge under subsection (l).

(i) PROCEDURES FOR MAKING PAYMENTS.—

(1) INITIAL YEAR: TIERS II–VI.—

(A) IN GENERAL.—Not later than [120] *90* days after enactment of this Act, each defendant participant that is included in Tiers II, III, IV, V, or VI shall file with the Administrator—

(i) a statement of whether the defendant participant irrevocably elects to report on a consolidated basis under subsection (f);

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

(iii) a statement of its 2002 revenues, determined in accordance with section 203(a)(2); [and]

(iv) payment in the amount specified in section 203 for the lowest subtier of the tier within which the defendant participant falls, except that if the defendant participant, or the affiliated group including the defendant participant, had 2002 revenues exceeding $3,000,000,000, it or its affiliated group shall pay the amount specified for Subtier 3 of Tiers II, III, or IV or Subtier 2 of Tiers V or VI, depending on the applicable Tier[.]*; and*

(v) a signature page personally verifying the truth of the statements and estimates described under this subparagraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(B) RELIEF.—

(i) IN GENERAL.—The Administrator shall establish procedures to grant a defendant participant relief from its initial payment obligation if the participant shows that—

(I) the participant is likely to qualify for a financial hardship adjustment; and

(II) failure to provide interim relief would cause severe irreparable harm.

(ii) JUDICIAL RELIEF.—The Administrator's refusal to grant relief under clause (i) is subject to immediate judicial review under section 303.

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

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

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

(C) a statement whether it has material continuing business operations and, if not, whether it holds cash or other assets that have been allocated or earmarked for asbestos settlements;

(D) in the case of debtors falling within Subtier 1 of Tier I—

(i) a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2)[.]*;*

(ii) for those debtors subject to the payment requirement of section 203(b)(2)(B)(ii), a statement whether its prior asbestos expenditures do not exceed $10,000,000, and a description of its business operations sufficient to show the requirements of that section are met; and

(iii) a payment under section 203(b)(2)(B);

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

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

(G) a signature page personally verifying the truth of the statements and estimates described under this paragraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(3) INITIAL YEAR: TIER VII.—Not later than 90 days after enactment of this Act, each defendant participant in Tier VII shall file with the Administrator—

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

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

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

(4) NOTICE TO PARTICIPANTS.—Not later than 240 days after enactment of this Act, the Administrator shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund; and

(B) publish in the Federal Register a notice—

(i) setting forth the criteria in this Act, and as prescribed by the Administrator in accordance with this Act, for paying under this subtitle as a defendant participant and requiring any person who may be a defendant participant to submit such information; and

(ii) that includes a list of all defendant participants notified by the Administrator under subparagraph (A), and provides for 30 days for the submission by the public of comments or information regarding the completeness and accuracy of the list of identified defendant participants.

(5) RESPONSE REQUIRED.—

(A) IN GENERAL.—Any person who receives notice under paragraph (4)(A), and any other person meeting the criteria specified in the notice published under paragraph (4)(B), shall provide the Administrator with an address to send any notice from the Administrator in accordance with this Act and all the information required by the Administrator in accordance with this subsection no later than the earlier of—

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

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

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(C) CONSENT TO AUDIT AUTHORITY.—The response submitted under subparagraph (A) shall include, on behalf of the defendant participant or affiliated group, a consent to the Administrator's audit authority under section 221(d).

(6) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INDIVIDUAL.—Not later than 60 days after receiving a response under paragraph (5), the Administrator shall send the person a notice of initial determination identifying the tier and subtier, if any, into which the person falls and the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Administrator and identified to the defendant participant.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to defendant participants, the Administrator shall publish in the Federal Register a notice listing the defendant participants that have been sent such notification, and the initial determination identifying the tier and subtier assignment and annual payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response in accordance with paragraph (5) is received from a defendant participant, or if the response is incomplete, the initial determination shall be based on the best information available to the Administrator.

(C) PAYMENTS.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Administrator the amount required by the notice, after deducting any previous payment made by the participant under this subsection. If the amount that the defendant participant is required to pay is less than

any previous payment made by the participant under this subsection, the Administrator shall credit any excess payment against the future payment obligations of that defendant participant. The pendency of a petition for rehearing under paragraph (10) shall not stay the obligation of the participant to make the payment specified in the Administrator's notice.

(7) EXEMPTIONS FOR INFORMATION REQUIRED.—

(A) PRIOR ASBESTOS EXPENDITURES.—In lieu of submitting information related to prior asbestos expenditures as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Tier II.

(B) REVENUES.—In lieu of submitting information related to revenues as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Subtier 1 of the defendant participant's applicable tier.

(8) NEW INFORMATION.—

(A) EXISTING PARTICIPANT.—The Administrator shall adopt procedures for requiring additional payment, or refunding amounts already paid, based on new information received.

(B) ADDITIONAL PARTICIPANT.—If the Administrator, at any time, receives information that an additional person may qualify as a defendant participant, the Administrator shall require such person to submit information necessary to determine whether that person is required to make payments, and in what amount, under this subtitle and shall make any determination or take any other act consistent with this Act based on such information or any other information available to the Administrator with respect to such person.

(9) SUBPOENAS.—The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(10) REHEARING.—A defendant participant has a right to obtain rehearing of the Administrator's determination under this subsection of the applicable tier or subtier [and], of the Administrator's determination under subsection (d) of a financial hardship or inequity adjustment, *and of the Administrator's determination under subsection (m) of a distributor's adjustment*, if the request for rehearing is filed within 30 days after the defendant participant's receipt of notice from the Administrator of the determination. A defendant participant may not file an action under section 303 unless the defendant participant requests a rehearing under this paragraph. The Administrator shall publish a notice in the Federal Register of any change in a defendant participant's tier or subtier assignment or payment obligation as a result of a rehearing.

(j) DEFENDANT HARDSHIP AND INEQUITY ADJUSTMENT ACCOUNT.—

(1) IN GENERAL.—To the extent the total payments by defendant participants in any given year exceed the minimum aggregate annual payments *required* under subsection (h), excess monies up to a maximum of $300,000,000 in any such year shall be placed in a defendant hardship and inequity adjustment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant hardship and inequity adjustment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to make up for any relief granted to a defendant participant for severe financial hardship or demonstrated inequity under subsection (d) or to reimburse any defendant participant granted such relief after its payment of the amount otherwise due; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(3) CARRYOVER OF UNUSED FUNDS.—To the extent the Administrator does not, in any given year, use all of the funds allocated to the account under paragraph (1) for adjustments granted under subsection (d), remaining funds in the account shall be carried forward for use by the Administrator for adjustments in subsequent years.

(k) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (h) and (j), if there are excess monies paid by defendant participants in any given year, including any bankruptcy trust credits that may be due under section 222[(e)]*(d)*, such monies—

(A) at the discretion of the Administrator, may be used to provide additional adjustments under subsection (d), up to a maximum aggregate of $50,000,000 in such year; and

(B) to the extent not used under subparagraph (A), shall be placed in a defendant guaranteed payment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant guaranteed payment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to ensure the minimum aggregate annual payment [set forth in] *required under* subsection (h) [net of any adjustments under subsection (d)], *after applicable reductions or adjustments have been taken according to subsections (d) and (m)* is reached each year; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(l) GUARANTEED PAYMENT SURCHARGE.—

(1) IN GENERAL.—To the extent there are insufficient monies in the defendant guaranteed payment account established in subsection (k) to attain the minimum aggregate annual payment *required under subsection (h)* [net of any adjustments under subsection (d)] in any given year, the Administrator [may] *shall, unless the Administrator implements a funding holiday under section 205(b)*, impose on each defendant participant a surcharge as necessary to raise the balance required to attain the minimum aggregate annual payment *required under subsection (h)* [net of any adjustments under subsection (d)] as provided in this subsection. Any such surcharge shall be imposed on a pro rata basis, in accordance with each defendant participant's relative annual liability under sections 202 and 203 [(as modified by subsections (b), (d), (f), and (g) of this section)] *(as modified by subsections (b), (d), (f), (g), and (m) of this section)*.

(2) LIMITATION.—

(A) IN GENERAL.—In no case shall the Administrator impose a surcharge under this subsection on any defendant participant included in Subtier 3 of Tiers V or VI as described under section 203.

(B) REALLOCATION.—Any amount not imposed under subparagraph (A) shall be reallocated on a pro-rata basis, in accordance with each defendant participant's (other than a defendant participant described under subparagraph (A)) relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), and (g) of this section).

[(2)]*(3)* CERTIFICATION.—

(A) IN GENERAL.—Before imposing a guaranteed payment surcharge under this subsection, the Administrator shall certify that he or she has used all reasonable efforts to collect mandatory payments for all defendant participants, including by using the authority in subsection (i)(9) of this section and section 223.

(B) NOTICE AND COMMENT.—Before making a final certification under subparagraph (C), the Administrator shall publish a notice in the Federal Register of a proposed certification and provide in such notice for a public comment period of 30 days.

(C) FINAL CERTIFICATION.—

(i) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of all comments submitted under subparagraph (B).

(ii) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under clause (i), the Administrator shall provide each defendant participant with written notice of that defendant participant's payment, including the amount of any surcharge.

(m) ADJUSTMENTS FOR DISTRIBUTORS.—

(1) DEFINITION.—In this subsection, the term ''distributor'' means a person—

(A) whose prior asbestos expenditures arise exclusively from the sale of products manufactured by others;

(B) who did not prior to December 31, 2002, sell raw asbestos or a product containing more than 95 percent asbestos by weight;

(C) whose prior asbestos expenditures did not arise out of—

(i) the manufacture, installation, repair, reconditioning, maintaining, servicing, constructing, or remanufacturing of any product;

(ii) the control of the design, specification, or manufacture of any product; or

(iii) the sale or resale of any product under, as part of, or under the auspices of, its own brand, trademark, or service mark; and

(D) who is not subject to assignment under section 202 to Tier I, II, III or VII.

(2) TIER REASSIGNMENT FOR DISTRIBUTORS.—

(A) IN GENERAL.—Notwithstanding section 202, the Administrator shall assign a distributor to a Tier for purposes of this title under the procedures set forth in this paragraph.

(B) DESIGNATION.—After a final determination by the Administrator under section 204(i), any person who is, or any affiliated group in which every member is, a distributor may apply to the Administrator for adjustment of its Tier assignment under this subsection. Such application shall be prepared in accordance with such procedures as the Administrator shall promulgate by rule. Once the Administrator designates a person or affiliated group as a distributor under this subsection, such designation and the adjustment of tier assignment under this subsection are final.

(C) PAYMENTS.—Any person or affiliated group that seeks adjustment of its Tier assignment under this subsection shall pay all amounts required of it under this title until a final determination by the Administrator is made under this subsection. Such payments may not be stayed pending any appeal. The Administrator shall grant any person or affiliated group a refund or credit of any payments made if such adjustment results in a lower payment obligation.

(D) ADJUSTMENT.—Subject to paragraph (3), any person or affiliated group that the Administrator has designated as a distributor under this subsection shall be given an adjustment of Tier assignment as follows:

(i) A distributor that but for this subsection would be assigned to Tier IV shall be deemed assigned to Tier V.

(ii) A distributor that but for this subsection would be assigned to Tier V shall be deemed assigned to Tier VI.

(iii) A distributor that but for this subsection would be assigned to Tier VI shall be deemed assigned to no Tier and shall have no obligation to make any payment to the Fund under this Act.

(E) EXCLUSIVE TO INEQUITY ADJUSTMENT.—Any person or affiliated group designated by the Administrator as a distributor under this subsection shall not be eligible for an inequity adjustment under subsection 204(d).

(3) LIMITATION ON ADJUSTMENTS.—The aggregate total of distributor adjustments under this subsection in effect in any given year shall not exceed $50,000,000. If the aggregate total of distributors adjustments under this subsection would otherwise exceed $50,000,000, then each distributor's adjustment shall be reduced pro rata until the aggregate of all adjustments equals $50,000,000.

(4) REHEARING.—A defendant participant has a right to obtain a rehearing of the Administrator's determination on an adjustment under this subsection under the procedures prescribed in subsection (i)(10).

SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.

(a) STEPDOWNS.—

(1) IN GENERAL.—Subject to paragraph (2), the minimum aggregate annual funding obligation under section 204(h) shall be reduced by 10 percent of the initial minimum aggregate funding obligation at the end of the tenth, fifteenth, twentieth, and twenty-fifth years after the date of enactment of this Act. The reductions under this paragraph shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant participants in Tier 1, Subtiers 2 and 3, and class action trusts.

(2) LIMITATION.—The Administrator shall suspend, cancel, reduce, or delay any reduction under paragraph (1) if at any time the Administrator finds, in accordance with subsection (c), that such action is necessary and appropriate to ensure that the assets of the Fund and expected future payments remain sufficient to satisfy the Fund's anticipated obligations.

(b) FUNDING HOLIDAYS.—

(1) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments, taking into consideration any reductions under subsection (a), are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from defendant participants for that year.

(2) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under paragraph (1) every year.

(3) LIMITATIONS ON FUNDING HOLIDAYS.—Any reduction or waiver of the defendant participants' funding obligations shall—

(A) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(B) be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(4) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(c) CERTIFICATION.—

(1) IN GENERAL.—Before suspending, canceling, reducing, or delaying any reduction under subsection (a) or granting or revoking a reduction or waiver under subsection (b), the Administrator shall certify that the requirements of this section are satisfied.

(2) NOTICE AND COMMENT.—Before making a final certification under this subsection, the Administrator shall publish a notice in the Federal Register of a proposed certification and a statement of the basis therefor and provide in such notice for a public comment period of 30 days.

(3) FINAL CERTIFICATION.—

(A) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of all comments submitted under paragraph (2).

(B) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under subparagraph (A), the Administrator shall provide each defendant participant with written notice of that defendant's funding obligation for that year.

SEC. 206. ACCOUNTING TREATMENT.

Defendant participants payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each defendant participant. This section shall in no way reduce the amount of monetary payments to the Fund by defendant participants as required under section 202(a)(2).

Subtitle B—Asbestos Insurers Commission

SEC. 210. DEFINITION.

In this subtitle, the term ''captive insurance company'' means a company—

(1) whose entire beneficial interest is owned on the date of enactment of this Act, directly or indirectly, by a defendant participant or by the ultimate parent or the affiliated group of a defendant participant;

(2) whose primary commercial business during the period from calendar years 1940 through 1986 was to provide insurance to its ultimate parent or affiliated group, or any portion of the affiliated group or a combination thereof; and

(3) that was incorporated or operating no later than December 31, 2003.

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.

(a) ESTABLISHMENT.—There is established the Asbestos Insurers Commission (referred to in this subtitle as the ''Commission'') to carry out the duties described in section 212.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—

(A) EXPERTISE.—Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST.—

(i) IN GENERAL.—No member of the Commission appointed under paragraph (1) may be an employee or immediate family member of an employee of an insurer participant. No member of the Commission shall be a shareholder of any insurer participant. No member of the Commission shall be a former officer or director, or a former employee or former shareholder of any insurer participant who was such an employee, shareholder, officer, or director at any time during the 2-year period ending on the date of the appointment, unless that is fully disclosed before consideration in the Senate of the nomination for appointment to the Commission.

(ii) DEFINITION.—In clause (i), the term ''shareholder'' shall not include a broadly based mutual fund that includes the stocks of insurer participants as a portion of its overall holdings.

(C) FEDERAL EMPLOYMENT.—A member of the Commission may not be an officer or employee of the Federal Government, except by reason of membership on the Commission.

(3) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Commission.

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) CHAIRMAN.—The President shall select a Chairman from among the members of the Commission.

(c) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) SUBSEQUENT MEETINGS.—The Commission shall meet at the call of the Chairman, as necessary to accomplish the duties under section 212.

(3) QUORUM.—No business may be conducted or hearings held without the participation of a majority of the members of the Commission.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.

(a) DETERMINATION OF INSURER PAYMENT OBLIGATIONS.—

(1) IN GENERAL.—

(A) DEFINITIONS.—For the purposes of this Act, the terms ''insurer'' and ''insurer participant'' shall, unless stated otherwise, include direct insurers and reinsurers, as well as any run-off entity established, in whole or in part, to review and pay asbestos claims.

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—The Commission shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Commission shall make this determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such methodology to determine the individual payment for each insurer participant. The methodology may include 1 or more allocation formulas to be applied to all insurer participants or groups of similarly situated participants. The Commission's rule shall include a methodology for adjusting payments by insurer participants [to make up, during any applicable payment year, any amount by which aggregate insurer payments fall below the level required in paragraph (3)(C).] *to make up, during the first 5 years of the life of the Fund and any subsequent years as provided in section 405(e) for any reduction in an insurer participant's annual allocated amount caused by the granting of a financial hardship or exceptional circumstance adjustment under this section, and any amount by which aggregate insurer payments fall below the level required under paragraph (3)(C) by reason of the failure or refusal of any insurer participant to make a required payment, or for any other reason that causes such payments to fall below the level required under paragraph (3)(C).* The Commission shall conduct a thorough study (within the time limitations under this subparagraph) of the accuracy of the reserve allocation of each insurer participant, and may request information from the Securities and Exchange Commission or any State regulatory agency. Under this procedure, not later than 120 days after the initial meeting of the Commission, the Commission shall commence a rulemaking proceeding under

section 213(a) to propose and adopt a methodology for allocating payments among insurer participants. In proposing an allocation methodology, the Commission may consult with such actuaries and other experts as it deems appropriate. After hearings and public comment on the proposed allocation methodology, the Commission shall as promptly as possible promulgate a final rule establishing such methodology. After promulgation of the final rule, the Commission shall determine the individual payment of each insurer participant under the procedures set forth in subsection (b).

(C) SCOPE.—Every insurer, reinsurer, and runoff entity with asbestos-related obligations in the United States shall be subject to the Commission's and Administrator's authority under this Act, including allocation determinations, and shall be required to fulfill its payment obligation without regard as to whether it is licensed in the United States. Every insurer participant not licensed or domiciled in the United States shall, upon the first payment to the Fund, submit a written consent to the Commission's and Administrator's authority under this Act, and to the jurisdiction of the courts of the United States for purposes of enforcing this Act, in a form determined by the Administrator. Any insurer participant refusing to provide a written consent shall be subject to fines and penalties as provided in section 223.

(D) ISSUERS OF FINITE RISK POLICIES.—

(i) IN GENERAL.—The issuer of any policy of *retrospective* reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a *risk or* loss transfer to insure for [incurred] asbestos losses and other losses (both known and unknown), including those policies commonly referred to as ''finite risk'', ''aggregate stop loss'', ''aggregate excess of loss'', or ''loss portfolio transfer'' policies, shall be obligated to make payments required under this Act directly to the Fund on behalf of the insurer participant who is the beneficiary of such policy, subject to the underlying retention and the limits of liability applicable to such policy.

(ii) PAYMENTS.—Payments to the Fund required under this Act shall be treated as loss payments for asbestos bodily injury (as if such payments were incurred as liabilities imposed in the tort system) and shall not be subject to exclusion under policies described under clause (i) as a liability with respect to tax or assessment. Within 90 days after the scheduled date to make an annual payment to the Fund, the insurer participant shall, at its discretion, direct the reinsurer issuing such policy to pay all or a portion of the annual payment directly to the Fund up to the full applicable limits of liability under the policy. The reinsurer issuing such policy shall be obligated to make such payments directly to the Fund and shall be subject to the enforcement provisions under section 223. The insurer participant shall remain obligated to make payment to the Fund of that portion of the annual payment not directed to the issuer of such reinsurance policy.

(2) AMOUNT OF PAYMENTS.—

(A) AGGREGATE PAYMENT OBLIGATION.—The total payment required of all insurer participants over the life of the Fund shall be equal to $46,025,000,000, *less any bankruptcy trust credits under section 222(d)*.

(B) ACCOUNTING STANDARDS.—In determining the payment obligations of participants that are not licensed or domiciled in the United States or that are runoff entities, the Commission shall use accounting standards required for United States licensed direct insurers.

(C) CAPTIVE INSURANCE COMPANIES.—No payment to the Fund shall be required from a captive insurance company, unless and only to the extent a captive insurance company, on the date of enactment of this Act, has liability, directly or indirectly, for any asbestos claim of a person or persons other than and unaffiliated with its ultimate parent or affiliated group or pool in which the ultimate parent participates or participated, or unaffiliated with a person that was its ultimate parent or a member of its affiliated group or pool at the time the relevant insurance or reinsurance was issued by the captive insurance company.

(D) SEVERAL LIABILITY.—Unless otherwise provided under this Act, each insurer participant's obligation to make payments to the Fund is several. Unless otherwise provided under this Act, there is no joint liability, and the future insolvency by any insurer participant shall not affect the payment required of any other insurer participant.

(3) PAYMENT OF CRITERIA.—

(A) INCLUSION IN INSURER PARTICIPANT CATEGORY.—

(i) IN GENERAL.—Insurers that have paid, or been assessed by a legal judgment or settlement, at least $1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance shall be insurer participants in the Fund. Other insurers shall be exempt from mandatory payments.

(ii) INAPPLICABILITY OF SECTION 202.—Since insurers may be subject in certain jurisdictions to direct action suits, and it is not the intent of this Act to impose upon an insurer, due to its operation as an insurer, payment obligations to the Fund in situations where the insurer is the subject of a direct action, no insurer subject to mandatory payments under *this* section [212] shall also be liable for payments to the Fund as a defendant participant under section 202.

(B) INSURER PARTICIPANT ALLOCATION METHODOLOGY.—

(i) IN GENERAL.—The Commission shall establish the payment obligations of individual insurer participants to reflect, on an equitable basis, the relative tort system liability of the participating insurers in the absence of this Act, considering and weighting, as appropriate (but exclusive of workers' compensation), such factors as—

(I) historic premium for lines of insurance associated with asbestos exposure over relevant periods of time;

(II) recent loss experience for asbestos liability;

(III) amounts reserved for asbestos liability;

(IV) the likely cost to each insurer participant of its future liabilities under applicable insurance policies; and

(V) any other factor the Commission may determine is relevant and appropriate.

(ii) DETERMINATION OF RESERVES.—The Commission may establish procedures and standards for determination of the asbestos reserves of insurer participants. The reserves of a United States licensed reinsurer that is wholly owned by, or under common control of, a United States licensed direct insurer shall be included as part of the direct insurer's reserves when the reinsurer's financial results are included as part of the direct insurer's United States operations, as reflected in footnote 33 of its filings with the National Association of Insurance Commissioners or in published financial statements prepared in accordance with generally accepted accounting principles.

(C) PAYMENT SCHEDULE.—The aggregate annual amount of payments by insurer participants over the life of the Fund shall be as follows:

(i) For years 1 and 2, $2,700,000,000 annually.

(ii) For years 3 through 5, $5,075,000,000 annually.

(iii) For years 6 through 27, $1,147,000,000 annually.

(iv) For year 28, $166,000,000.

(D) CERTAIN RUNOFF ENTITIES.—

[(i) IN GENERAL.—Whenever the Commission requires payments by a runoff entity that has assumed asbestos-related liabilities from a Lloyd's syndicate or names that are members of such a syndicate, the Commission shall not require payments from such syndicates and names to the extent that the runoff entity makes its required payments. In addition, such syndicates and names shall be required to make payments to the Fund in the amount of any adjustment granted to the runoff entity for severe financial hardship or exceptional circumstances.]

[(ii) INCLUDED RUNOFF ENTITIES.—Subject to clause (i), a] A runoff entity shall include any direct insurer or reinsurer whose asbestos liability reserves have been transferred, directly or indirectly, to the runoff entity and on whose behalf the runoff entity handles or adjusts and, where appropriate, pays asbestos claims.

(E) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—

(i) IN GENERAL.—Under the procedures established in subsection (b), an insurer participant may seek adjustment of the amount of its payments based on exceptional circumstances or severe financial hardship.

(ii) FINANCIAL ADJUSTMENTS.—An insurer participant may qualify for an adjustment based on severe financial hardship by demonstrating that payment of the amounts required by the Commission's methodology would jeopardize the solvency of such participant.

(iii) EXCEPTIONAL CIRCUMSTANCE ADJUSTMENT.—An insurer participant may qualify for an adjustment based on exceptional circumstances by demonstrating—

(I) that the amount of its payments under the Commission's allocation methodology is exceptionally inequitable when measured against the amount of the likely cost to the participant of its future liability in the tort system in the absence of the Fund;

(II) an offset credit as described in subparagraphs (A) and (C) of subsection (b)(4); or

(III) other exceptional circumstances.

The Commission may determine whether to grant an adjustment and the size of any [such adjustment, but adjustments shall not reduce the aggregate payment obligations] *such adjustment, but except as provided under paragraph (1)(B), subsection (f)(3), and section 405(e), any such adjustment shall not affect the aggregate payment obligations* of insurer participants specified in paragraph (2)(A) and subparagraph (C) of this paragraph.

(iv) TIME PERIOD OF ADJUSTMENT.—Except for adjustments for offset credits, adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating to the Administrator that it remains justified.

(F) FUNDING HOLIDAYS.—

(i) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from insurer participants for that year.

(ii) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under clause (i) every year.

(iii) LIMITATIONS OF FUNDING HOLIDAYS.—Any reduction or waiver of the insurer participants' funding obligations shall—

(I) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(II) be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(iv) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(b) PROCEDURE FOR NOTIFYING INSURER PARTICIPANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

(1) NOTICE TO PARTICIPANTS.—Not later than 30 days after promulgation of the final rule establishing an allocation methodology under subsection (a)(1), the Commission shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund under the allocation methodology; and

(B) publish in the Federal Register a notice—

(i) requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information; and

(ii) that includes a list of all insurer participants notified by the Commission under subparagraph (A), and provides for 30 days for the submission of comments or information regarding the completeness and accuracy of the list of identified insurer participants.

(2) RESPONSE REQUIRED BY INDIVIDUAL INSURER PARTICIPANTS.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice under a schedule or by a date established by the Commission.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE TO INSURER PARTICIPANTS OF INITIAL PAYMENT DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INSURERS.—Not later than 120 days after receipt of the information required by paragraph (2), the Commission shall send each insurer participant a notice of initial determination requiring payments to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information. An insurer participant's payments shall be payable over the schedule established in subsection (a)(3)(C), in annual amounts proportionate to the aggregate annual amount of payments for all insurer participants for the applicable year.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to insurer participants, the Commission shall publish in the Federal Register a notice listing the insurer participants that have been sent such notification, and the initial determination on the payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination requiring a payment from the insurer participant shall be based on the best information available to the Commission.

(4) COMMISSION REVIEW, REVISION, AND FINALIZATION OF INITIAL PAYMENT DETERMINATIONS.—

(A) COMMENTS FROM INSURER PARTICIPANTS.—Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support adjustments to the required payments to reflect severe financial hardship or exceptional circumstances, including the provision of an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy judicially confirmed after May 22, 2003, but before the date of enactment of this Act.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Commission, the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether payments from that person should be required, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Commission shall adopt procedures for revising initial payments based on information received under subparagraphs (A) and (B), including a provision requiring an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy confirmed after May 22, 2003, but before the date of enactment of this Act.

(5) EXAMINATIONS AND SUBPOENAS.—

(A) EXAMINATIONS.—The Commission may conduct examinations of the books and records of insurer participants to determine the completeness and accuracy of information submitted, or required to be submitted, to the Commission for purposes of determining participant payments.

(B) SUBPOENAS.—The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) ESCROW PAYMENTS.—Without regard to an insurer participant's payment obligation under this section, any escrow or similar account established before the date of enactment of this Act by an insurer participant in connection with an asbestos trust fund that has not been judicially confirmed by final order by the date of enactment of this Act shall be the property of the insurer participant and returned to that insurer participant.

(7) NOTICE TO INSURER PARTICIPANTS OF FINAL PAYMENT DETERMINATIONS.—Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Commission shall send each insurer participant a notice of final determination.

(c) INSURER PARTICIPANTS VOLUNTARY ALLOCATION AGREEMENT.—

(1) IN GENERAL.—Not later than 30 days after the Commission proposes its rule establishing an allocation methodology under subsection (a)(1), direct insurer participants licensed or domiciled in the United States, other direct insurer participants, reinsurer participants licensed or domiciled in the United States, or other reinsurer participants, may submit an allocation agreement, approved by all of the participants in the applicable group, to the Commission.

(2) ALLOCATION AGREEMENT.—To the extent the participants in any such applicable group voluntarily agree upon an allocation arrangement, any such allocation agreement shall only govern the allocation of payments within that group and shall not determine the aggregate amount due from that group.

(3) CERTIFICATION.—The Commission shall determine whether an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle and, if so, shall certify the agreement as establishing the allocation methodology governing the individual payment obligations of the participants who are parties to the agreement. The authority of the Commission under this subtitle shall, with respect to participants who are parties to a certified allocation agreement, terminate on the day after the Commission certifies such agreement. Under subsection (f), the Administrator shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) COMMISSION REPORT.—

(1) RECIPIENTS.—Until the work of the Commission has been completed and the Commission terminated, the Commission shall submit an annual report, containing the information described under paragraph (2), to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Administrator.

(2) CONTENTS.—The report under paragraph (1) shall state the amount that each insurer participant is required to pay to the Fund, including the payment schedule for such payments.

[(e) INTERIM PAYMENTS.—

[(1) AUTHORITY OF ADMINISTRATOR.—During the period between the date of enactment of this Act and the date when the Commission issues its final determinations of payments, the Administrator shall have the authority to require insurer participants to make interim payments to the Fund to assure adequate funding by insurer participants during such period.

[(2) AMOUNT OF INTERIM PAYMENTS.—During any applicable year, the Administrator may require insurer participants to make aggregate interim payments not to exceed the annual aggregate amount specified in subsection (a)(3)(C).

[(3) ALLOCATION OF PAYMENTS.—Interim payments shall be allocated among individual insurer participants on an equitable basis as determined by the Administrator. All payments required under this subparagraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Commission. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Administrator. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established in subsection (a)(3)(D).

[(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Administrator to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.]

(e) INTERIM PAYMENTS.—

(1) AMOUNT OF INTERIM PAYMENT.—Within 90 days after the date of enactment of this Act, insurer participants shall make an aggregate payment to the Fund not to exceed 50 percent of the aggregate funding obligation specified under subsection (a)(3)(C) for year 1.

(2) RESERVE INFORMATION.—Within 30 days after the date of enactment of this Act, each insurer participant shall submit to the Administrator a certified statement of its net held reserves for asbestos liabilities as of December 31, 2004.

(3) ALLOCATION OF INTERIM PAYMENT.—The Administrator shall allocate the interim payment among the individual insurer participants on an equitable basis using the net held asbestos reserve information provided by insurer participants under subsection (a)(3)(B). Within 60 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register the name of each insurer participant, and the amount of the insurer participant's allocated share of the interim payment. The use of net held asbestos reserves as the basis to determine an interim allocation shall not be binding on the Administrator in the determination of an appropriate final allocation methodology under this section. All payments required under this paragraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Commission. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Administrator. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established under subsection (a)(3)(E).

(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Administrator to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.

(f) TRANSFER OF AUTHORITY FROM THE COMMISSION TO THE ADMINISTRATOR.—

(1) IN GENERAL.—Upon termination of the Commission under section 215, the Administrator shall assume all the responsibilities and authority of the Commission, except that the Administrator shall not have the power to modify the allocation methodology established by the Commission or by certified agreement or to promulgate a rule establishing any such methodology.

(2) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—Upon termination of the Commission under section 215, the Administrator shall have the authority, upon application by any insurer participant, to make adjustments to annual payments upon the same grounds as provided in subsection (a)(3)(D). Adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating that it remains justified. Upon the grant of any adjustment, the Administrator shall increase the payments, *consistent with subsection (a)(1)(B),* required of all other insurer participants so that there is no reduction in the aggregate payment required of all insurer participants for the applicable years. The increase in an insurer participant's required payment shall be in proportion to such participant's share of the aggregate payment obligation of all insurer participants.

(3) CREDITS FOR SHORTFALL ASSESSMENTS.—If insurer participants are required during the first 5 years of the life of the Fund to make up any shortfall in required insurer payments under subsection (a)(1)(B), then, beginning in year 6, the Administrator shall grant each insurer participant a credit against its annual required payments during the applicable years that in the aggregate equal the amount of shortfall assessments paid by such insurer participant during the first 5 years of the life of the Fund. The credit shall be prorated over the same number of years as the number of years during which the insurer participant paid a shortfall assessment. Insurer participants which did not pay all required payments to the Fund during the first 5 years of the life of the Fund shall not be eligible for a credit. The Administrator shall not grant a credit for shortfall assessments imposed under section 405(e).

[(3)]*(4)* FINANCIAL SECURITY REQUIREMENTS.—Whenever an insurer participant's A.M. Best's claims payment rating or Standard and Poor's financial strength rating falls below A−, and until such time as either the insurer participant's A.M. Best's Rating or Standard and Poor's rating is equal to or greater than A−, the Administrator shall have the authority to require that the participating insurer either—

(A) pay the present value of its remaining Fund payments at a discount rate determined by the Administrator; or

(B) provide an evergreen letter of credit or financial guarantee for future payments issued by an institution with an A.M. Best's claims payment rating or Standard & Poor's financial strength rating of at least A+.

(g) ACCOUNTING TREATMENT.—Insurer participants' payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each insurer participant. This subsection shall in no way reduce the amount of monetary payments to the Fund by insurer participants as required under subsection (a).

[(g)]*(h)* JUDICIAL REVIEW.—The Commission's rule establishing an allocation methodology, its final determinations of payment obligations and other final action shall be judicially reviewable as provided in title III.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.

(a) RULEMAKING.—The Commission shall promulgate such rules and regulations as necessary to implement its authority under this Act, including regulations governing an allocation methodology. Such rules and regulations shall be promulgated after providing interested parties with the opportunity for notice and comment.

(b) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Commission's adoption of a final regulation.

(c) INFORMATION FROM FEDERAL AND STATE AGENCIES.—The Commission may secure directly from any Federal or State department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(d) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) GIFTS.—The Commission may not accept, use, or dispose of gifts or donations of services or property.

(f) EXPERT ADVICE.—In carrying out its responsibilities, the Commission may enter into such contracts and agreements as the Commission determines necessary to obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 90 days after the last date on which the Commission makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Commission is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMISSION.

All expenses of the Commission shall be paid from the Fund.

Subtitle C—Asbestos Injury Claims Resolution Fund

SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION FUND.

(a) ESTABLISHMENT.—There is established in the Office of Asbestos Disease Compensation the Asbestos Injury Claims Resolution Fund, which shall be available to pay—

(1) claims for awards for an eligible disease or condition determined under title I;

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (b);

(4) the remaining obligations to the asbestos trust of a debtor and the class action trust under section 405(f)(8); and

(5) administrative expenses to carry out the provisions of this Act.

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The Administrator is authorized to borrow from time to time amounts as set forth in this subsection, for purposes of enhancing liquidity available to the Fund for carrying out the obligations of the Fund under this Act. The Administrator may authorize borrowing in such form, over such term, with such necessary disclosure to its lenders as will most efficiently enhance the Fund's liquidity.

(2) FEDERAL FINANCING BANK.—In addition to the general authority in paragraph (1), the Administrator may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285), as needed for performance of the Administrator's duties under this Act for the first 5 years.

(3) BORROWING CAPACITY.—The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations of the Fund at the time of borrowing, can be repaid in full (with interest) in a timely fashion from—

(A) the available assets of the Fund as of the time of borrowing; and

(B) all amounts expected to be paid by participants during the subsequent 10 years.

[(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Administrator under this subsection is limited solely to amounts available in the Asbestos Injury Claims Resolution Fund established under this section.**]**

(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Administrator under this subsection shall be repaid in full by the Fund contributors and is limited solely to amounts available, present or future, in the Fund.

(c) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY CLAIMANTS.—

(1) IN GENERAL.—Within the Fund, the Administrator shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IX.

(B) A Lung Cancer Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level VIII.

(C) A Severe Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level V.

(D) A Moderate Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IV.

(2) ALLOCATION.—The Administrator shall allocate to each of the 4 accounts established under paragraph (1) a portion of payments made to the Fund adequate to compensate all anticipated claimants for each account. Within 60 days after the date of enactment of this Act, and periodically during the life of the Fund, the Administrator shall determine an appropriate amount to allocate to each account after consulting appropriate epidemiological and statistical studies.

(d) AUDIT AUTHORITY.—

(1) IN GENERAL.—For the purpose of ascertaining the correctness of any information provided or payments made to the Fund, or determining whether a person who has not made a payment to the Fund was required to do so, or determining the liability of any person for a payment to the Fund, or collecting any such liability, or inquiring into any offense connected with the administration or enforcement of this title, the Administrator is authorized—

(A) to examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(B) to summon the person liable for a payment under this title, or officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable or any other person the Administrator may deem proper, to appear before the Administrator at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(C) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(2) FALSE, FRAUDULENT, OR FICTITIOUS STATEMENTS OR PRACTICES.—If the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by persons submitting information to the Administrator or to the Asbestos Insurers Commission or any other person who provides evidence in support of such submissions for purposes of determining payment obligations under this Act, the Administrator may impose a civil penalty not to exceed $10,000 on any person found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall promulgate appropriate regulations to implement this paragraph.

(e) IDENTITY OF CERTAIN DEFENDANT PARTICIPANTS; TRANSPARENCY.—

(1) SUBMISSION OF INFORMATION.—Not later than 60 days after the date of enactment of this Act, any person who, acting in good faith, has knowledge that such person or such person's affiliated group has prior asbestos expenditures of $1,000,000 or greater, shall submit to the Administrator—

(A) either the name of such person, or such person's ultimate parent; and

(B) the likely tier to which such person or affiliated group may be assigned under this Act.

(2) PUBLICATION.—Not later than 20 days after the end of the 60-day period referred to in paragraph (1), the Administrator or Interim Administrator, if the Administrator is not yet appointed, shall publish in the Federal Register a list of submissions required by this subsection, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned. After publication of such list, any person who, acting in good faith, has knowledge that any other person has prior asbestos expenditures of $1,000,000 or greater may submit to the Administrator or Interim Administrator information on the identity of that person and the person's prior asbestos expenditures.

(f) NO PRIVATE RIGHT OF ACTION.—Except as provided in sections 203(b)(2)(D)(ii) and 204(f)(3), there shall be no private right of action under any Federal or State law against any participant based on a claim of compliance or noncompliance with this Act or the involvement of any participant in the enactment of this Act.

SEC. 222. MANAGEMENT OF THE FUND.

(a) IN GENERAL.—Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries**[**, including those provided in subsection (c)**]** and to otherwise defray the reasonable expenses of administering the Fund.

(b) INVESTMENTS.—

(1) IN GENERAL.—Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(2) STRATEGY.—The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action—

(A) the size of the Fund;

(B) the nature and estimated duration of the Fund;

(C) the liquidity and distribution requirements of the Fund;

(D) general economic conditions at the time of the investment;

(E) the possible effect of inflation or deflation on Fund assets;

(F) the role that each investment or course of action plays with respect to the overall assets of the Fund;

(G) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and

(H) the needs of asbestos claimants for current and future distributions authorized under this Act.

[(c) MESOTHELIOMA RESEARCH AND TREATMENT CENTERS.—

[(1) IN GENERAL.—The Administrator shall provide $1,000,000 from the Fund for each of fiscal years 2005 through 2009 for each of up to 10 mesothelioma disease research and treatment centers.

[(2) REQUIREMENTS.—The Centers shall—

[(A) be chosen by the Director of the National Institutes of Health;

[(B) be chosen through competitive peer review;

[(C) be geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

[(D) be closely associated with Department of Veterans Affairs medical centers to provide research benefits and care to veterans who have suffered excessively from mesothelioma;

[(E) be engaged in research to provide mechanisms for detection and prevention of mesothelioma, particularly in the areas of pain management and cures;

[(F) be engaged in public education about mesothelioma and prevention, screening, and treatment;

[(G) be participants in the National Mesothelioma Registry; and

[(H) be coordinated in their research and treatment efforts with other Centers and institutions involved in exemplary mesothelioma research.

(d)**]***(c)* BANKRUPTCY TRUST GUARANTEE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, the Administrator shall have the authority to impose a pro rata surcharge on all participants under this subsection to ensure the liquidity of the Fund, if—

(A) the declared assets from 1 or more bankruptcy trusts established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, are not available to the Fund because a final judgment that has been entered by a court and is no longer subject to any appeal or review has enjoined the transfer of assets required under section 524(j)(2) of title 11,

United States Code (as amended by section 402(f) of this Act); and

(B) borrowing is insufficient to assure the Fund's ability to meet its obligations under this Act such that the required borrowed amount is likely to increase the risk of termination of this Act under section 405 based on reasonable claims projections.

(2) ALLOCATION.—Any surcharge imposed under this subsection shall be imposed over a period of 5 years on a pro rata basis upon all participants, [in accordance with each participant's relative annual liability under this subtitle and subtitle B for those 5 years.] *in accordance with the relative aggregate funding obligations under sections 202(a)(2) and 212(a)(2)(A).*

(3) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a surcharge under this subsection, the Administrator shall publish a notice in the Federal Register and provide in such notice for a public comment period of 30 days.

(B) CONTENTS OF NOTICE.—The notice required under subparagraph (A) shall include—

(i) information explaining the circumstances that make a surcharge necessary and a certification that the requirements under paragraph (1) are met;

(ii) the amount of the declared assets from any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, that was not made, or is no longer, available to the Fund;

(iii) the total aggregate amount of the necessary surcharge; and

(iv) the surcharge amount for each tier and subtier of defendant participants and for each insurer participant.

(C) FINAL NOTICE.—The Administrator shall publish a final notice in the Federal Register and provide each participant with written notice of that participant's schedule of payments under this subsection. In no event shall any required surcharge under this subsection be due before 60 days after the Administrator publishes the final notice in the Federal Register and provides each participant with written notice of its schedule of payments.

(4) MAXIMUM AMOUNT.—In no event shall the total aggregate surcharge imposed by the Administrator exceed the lesser of—

(A) the total aggregate amount of the declared assets of the trusts established under a plan of reorganization confirmed and substantially consummated prior to July 31, 2004, that are no longer available to the Fund; or

(B) $4,000,000,000.

(5) DECLARED ASSETS.—

(A) IN GENERAL.—In this subsection, the term ''declared assets'' means—

(i) the amount of assets transferred by any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, to the Fund that is required to be returned to that trust under the final judgment described in paragraph (1)(A); or

(ii) if no assets were transferred by the trust to the Fund, the amount of assets the Administrator determines would have been available for transfer to the Fund from that trust under section 402(f).

(B) DETERMINATION.—In making a determination under subparagraph (A)(ii), the Administrator may rely on any information reasonably available, and may request, and use subpoena authority of the Administrator if necessary to obtain, relevant information from any such trust or its trustees.

[(e)]*(d)* BANKRUPTCY TRUST CREDITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, but subject to paragraph (2) of this subsection, the Administrator shall provide a credit toward the aggregate payment obligations under sections 202(a)(2) and 212(a)(2)(A) for assets received by the Fund from any bankruptcy trust established under a plan of reorganization confirmed and substantially consummated after July 31, 2004.

(2) ALLOCATION OF CREDITS.—The Administrator shall allocate, for each such bankruptcy trust, the credits for such assets between the defendant and insurer aggregate payment obligations as follows:

(A) DEFENDANT PARTICIPANTS.—The aggregate amount that all persons other than insurers contributing to the bankruptcy trust would have been required to pay as Tier I defendants under section 203(b) if the plan of reorganization under which the bankruptcy trust was established had not been confirmed and substantially consummated and the proceeding under chapter 11 of title 11, United States Code, that resulted in the establishment of the bankruptcy trust had remained pending as of the date of enactment of this Act.

(B) INSURER PARTICIPANTS.—The aggregate amount of all credits to which insurers are entitled to under section 202(c)(4)(A) of the Act.

SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.

(a) DEFAULT.—If any participant fails to make any payment in the amount of and according to the schedule under this Act or as prescribed by the Administrator, after demand and a 30-day opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY.—In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code. The United States Bankruptcy Court shall have jurisdiction over any issue or controversy regarding lien priority and lien perfection arising in a bankruptcy case due to a lien imposed under subsection (a).

(c) CIVIL ACTION.—

(1) IN GENERAL.—In any case in which there has been a refusal or failure to pay any liability imposed under this Act, the Administrator may bring a civil action in [the United States District Court for the District of Columbia,] *any appropriate United States District Court,* or any other appropriate lawsuit or proceeding outside of the United States—

(A) to enforce the liability and any lien of the United States imposed under this section;

(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest to the payment of such liability; or

(C) for temporary, preliminary, or permanent relief.

(2) ADDITIONAL PENALTIES.—In any action under paragraph (1) in which the refusal or failure to pay was willful, the Administrator may seek recovery—

(A) of punitive damages;

(B) of the costs of any civil action under this subsection, including reasonable fees incurred for collection, expert witnesses, and attorney's fees; and

(C) in addition to any other penalty, of a fine equal to the total amount of the liability that has not been collected.

(d) ENFORCEMENT AUTHORITY AS TO INSURER PARTICIPANTS.—

(1) IN GENERAL.—In addition to or in lieu of the enforcement remedies described in subsection (c), the Administrator may seek to recover amounts in satisfaction of a payment not timely paid by an insurer participant under the procedures under this subsection.

(2) SUBROGATION.—To the extent required to establish personal jurisdiction over nonpaying insurer participants, the Administrator shall be deemed to be subrogated to the contractual rights of participants to seek recovery from nonpaying insuring participants that are domiciled outside the United States under the policies of liability insurance or contracts of liability reinsurance or retrocessional reinsurance applicable to asbestos claims, and the Administrator may bring an action or an arbitration against the nonpaying insurer participants under the provisions of such policies and contracts, provided that—

(A) any amounts collected under this subsection shall not increase the amount of deemed erosion allocated to any policy or contract under section 404, or otherwise reduce coverage available to a participant; and

(B) subrogation under this subsection shall have no effect on the validity of the insurance policies or reinsurance, and any contrary State law is expressly preempted.

(3) RECOVERABILITY OF CONTRIBUTION.—For purposes of this subsection—

(A) all contributions to the Fund required of a participant shall be deemed to be sums legally required to be paid for bodily injury resulting from exposure to asbestos;

(B) all contributions to the Fund required of any participant shall be deemed to be a single loss arising from a single occurrence under each contract to which the Administrator is subrogated; and

(C) with respect to reinsurance contracts, all contributions to the Fund required of a participant shall be deemed to be payments to a single claimant for a single loss.

(4) NO CREDIT OR OFFSET.—In any action brought under this subsection, the nonpaying insurer or reinsurer shall be entitled to no credit or offset for amounts collectible or potentially collectible from any participant nor shall such defaulting participant have any right to collect any sums payable under this section from any participant.

(5) COOPERATION.—Insureds and cedents shall cooperate with the Administrator's reasonable requests for assistance in any such proceeding. The positions taken or statements made by the Administrator in any such proceeding shall not be binding on or attributed to the insureds or cedents in any other proceeding. The outcome of such a proceeding shall not have a preclusive effect on the insureds or cedents in any other proceeding and shall not be admissible against any subrogee under this section. The Administrator shall have the authority to settle or compromise any claims against a nonpaying insurer participant under this subsection.

(e) BAR ON UNITED STATES BUSINESS.—If any direct insurer or reinsurer refuses to [furnish any information requested by or to pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Administrator [may] *shall* issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States *unless and until it complies. If any direct insurer or reinsurer refuses to furnish any information requested by the Administrator, the Administrator may issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies.* Insurer participants or their affiliates seeking to obtain a license from any State to write any type of insurance shall be barred

from obtaining any such license until payment of all contributions required as of the date of license application.

(f) CREDIT FOR REINSURANCE.—If the Administrator determines that an insurer participant that is a reinsurer is in default in paying any required contribution or otherwise not in compliance with this Act, the Administrator may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer *after the date of the Administrator's determination of default*. Any State law governing credit for reinsurance to the contrary is preempted.

(g) DEFENSE LIMITATION.—In any proceeding under this section, the participant shall be barred from bringing any challenge to any determination of the Administrator or the Asbestos Insurers Commission regarding its liability under this Act, or to the constitutionality of this Act or any provision thereof, if such challenge could have been made during the review provided under section 204(i)(10), or in a judicial review proceeding under section 303.

(h) DEPOSIT OF FUNDS.—

(1) IN GENERAL.—Any funds collected under subsection (c)(2) (A) or (C) shall be—

(A) deposited in the Fund; and

(B) used only to pay—

(i) claims for awards for an eligible disease or condition determined under title I; or

(ii) claims for reimbursement for medical monitoring determined under title I.

(2) NO EFFECT ON OTHER LIABILITIES.—The imposition of a fine under subsection (c)(2)(C) shall have no effect on—

(A) the assessment of contributions under subtitles A and B; or

(B) any other provision of this Act.

(i) PROPERTY OF THE ESTATE.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (4)(B)(ii), by striking ''or'' at the end;

(2) in paragraph (5), by striking ''prohibition.'' and inserting ''prohibition; or''; and

(3) by inserting after paragraph (5) and before the last undesignated sentence the following:

''(6) the value of any pending claim against or the amount of an award granted from the Asbestos Injury Claims Resolution Fund established under the Fairness in Asbestos Injury Resolution Act of 2005.''.

(j) PROPOSED TRANSACTIONS.—

(1) NOTICE OF PROPOSED TRANSACTION.—Any participant that has taken any action to effectuate a proposed transaction or a proposed series of transactions under which a significant portion of such participant's assets, properties or business will, if consummated as proposed, be, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or spliteoff) to 1 or more persons other than the participant shall provide written notice to the Administrator of such proposed transaction (or proposed series of transactions). Upon the request of such participant, and for so long as the participant shall not publicly disclose the transaction or series of transactions and the Administrator shall not commence any action under paragraph (6), the Administrator shall treat any such notice as confidential commercial information under section 552 of title 5, United States Code.

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days before the date of consummation of the proposed transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties or business are being transferred in the proposed transaction (or proposed series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act, or

(ii) the proposed transaction (or proposed series of transactions) would, if consummated, be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person will or has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it will or has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term ''significant portion of the assets, properties or business of a participant'' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) CONSUMMATION OF TRANSACTION.—Any proposed transaction (or proposed series of transactions) with respect to which a participant is required to provide notice under paragraph (1) may not be consummated until at least 30 days after delivery to the Administrator of such notice, unless the Administrator shall earlier terminate the notice period. The Administrator shall endeavor whenever possible to terminate a notice period at the earliest practicable time.

(6) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant proposes to engage or has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status or potential status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person will or has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A)—

(I) a temporary restraining order or a preliminary or permanent injunction against such transaction (or series of transactions); or

(II) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person will not or has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person will or has become a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(7) RULES AND REGULATIONS.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing and content of notices.

SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.

If any amount of payment obligation under this title is not paid on or before the last date prescribed for payment, the liable party shall pay interest on such amount at the Federal short-term rate determined under section 6621(b) of the Internal Revenue Code of 1986, plus 5 percentage points, for the period from such last date to the date paid.

SEC. 225. EDUCATION, CONSULTATION, SCREENING, AND MONITORING.

(a) IN GENERAL.—The Administrator shall establish a program for the education, consultation, medical screening, and medical monitoring of persons with exposure to asbestos. The program shall be funded by the Fund.

(b) OUTREACH AND EDUCATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall establish an outreach and education program, including a website designed to provide information about asbestos-related medical conditions to members of populations at risk of developing such conditions.

(2) INFORMATION.—The information provided under paragraph (1) shall include information about—

(A) the signs and symptoms of asbestos-related medical conditions;

(B) the value of appropriate medical screening programs; and

(C) actions that the individuals can take to reduce their future health risks related to asbestos exposure.

(3) CONTRACTS.—Preference in any contract under this subsection shall be given to providers that are existing nonprofit organizations with a history and experience of providing occupational health outreach and educational programs for individuals exposed to asbestos.

(c) MEDICAL SCREENING PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—Not sooner than 18 months or later than 24 months after the Administrator certifies that the Fund is fully operational and processing claims at a reasonable rate, the Administrator shall adopt guidelines establishing a medical screening program for individuals at high risk of asbestos-related disease resulting from an asbestos-related disease. In promulgating such guidelines, the Administrator shall consider the views of the Advisory Committee on Asbestos Disease Compensation, the Medical Advisory Committee, and the public.

(2) ELIGIBILITY CRITERIA.—

(A) IN GENERAL.—The guidelines promulgated under this subsection shall establish criteria for participation in the medical screening program.

(B) CONSIDERATIONS.—In promulgating eligibility criteria the Administrator shall take into consideration all factors relevant to the individual's effective cumulative exposure to asbestos, including—

(i) any industry in which the individual worked;

(ii) the individual's occupation and work setting;

(iii) the historical period in which exposure took place;

(iv) the duration of the exposure;

(v) the intensity and duration of non-occupational exposures; [and]

(vi) the intensity and duration of exposure to risk levels of naturally occurring asbestos as defined by the Environmental Protection Agency; and

[(vi)]*(vii)* any other factors that the Administrator determines relevant.

(3) PROTOCOLS.—The guidelines developed under this subsection shall establish protocols for medical screening, which shall include—

(A) administration of a health evaluation and work history questionnaire;

(B) an evaluation of smoking history;

(C) a physical examination by a qualified physician with a doctor-patient relationship with the individual;

(D) a chest x-ray read by a certified B-reader as defined under section 121(a)(4); and

(E) pulmonary function testing as defined under section 121(a)(13).

(4) FREQUENCY.—The Administrator shall establish the frequency with which medical screening shall be provided or be made available to eligible individuals, which shall be not less than every 5 years.

(5) PROVISION OF SERVICES.—The Administrator shall provide medical screening to eligible individuals directly or by contract with another agency of the Federal Government, with State or local governments, or with private providers of medical services. The Administrator shall establish strict qualifications for the providers of such services, and shall periodically audit the providers of services under this subsection, to ensure their integrity, high degree of competence, and compliance with all applicable technical and professional standards. No provider of medical screening services may have earned more than 15 percent of their income from the provision of services of any kind in connection with asbestos litigation in any of the 3 years preceding the date of enactment of this Act. All contracts with providers of medical screening services under this subsection shall contain provisions [allowing the Administrator to terminate] *for reimbursement of screening services at a reasonable rate and termination of* such contracts for cause if the Administrator determines that the service provider fails to meet the qualifications established under this subsection.

(6) LIMITATION OF COMPENSATION FOR SERVICES.—The compensation required to be paid to a provider of medical screening services for such services furnished to an eligible individual shall be limited to the amount that would be reimbursed at the time of the furnishing of such services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for similar services if[—

[(A) the individual were entitled to benefits under part A of such title and enrolled under part B of such title; and

(B)] such services are covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(7) FUNDING; PERIODIC REVIEW.—

(A) FUNDING.—The Administrator shall make such funds available from the Fund to implement this section, *with a minimum of $20,000,000* but not more than $30,000,000 each year in each of the 5 years following the effective date of the medical screening program. Notwithstanding the preceding sentence, the Administrator shall suspend the operation of the program or reduce its funding level if necessary to preserve the solvency of the Fund and to prevent the sunset of the overall program under section 405(f).

(B) REVIEW.—*The Administrator may reduce the amount of funding below $20,000,000 each year if the program is fully implemented.* The Administrator's first annual report under section 405 following the close of the 4th year of operation of the medical screening program shall include an analysis of the usage of the program, its cost and effectiveness, its medical value, and the need to continue that program for an additional 5-year period. The Administrator shall also recommend to Congress any improvements that may be required to make the program more effective, efficient, and economical, and shall recommend a funding level for the program for the 5 years following the period of initial funding referred to under subparagraph (A).

(d) LIMITATION.—In no event shall the total amount allocated to the medical screening program established under this subsection over the lifetime of the Fund exceed $600,000,000.

(e) MEDICAL MONITORING PROGRAM AND PROTOCOLS.—

(1) IN GENERAL.—The Administrator shall establish procedures for a medical monitoring program for persons exposed to asbestos who have been approved for level I compensation under section 131.

(2) PROCEDURES.—The procedures for medical monitoring shall include—

(A) specific medical tests to be provided to eligible individuals and the periodicity of those tests, which shall initially be provided every 3 years and include—

(i) administration of a health evaluation and work history questionnaire;

(ii) physical examinations, including blood pressure measurement, chest examination, and examination for clubbing;

(iii) AP and lateral chest x-ray; and

(iv) spirometry performed according to ATS standards;

(B) qualifications of medical providers who are to provide the tests required under subparagraph (A); and

(C) administrative provisions for reimbursement from the Fund of the costs of monitoring eligible claimants, including the costs associated with the visits of the claimants to physicians in connection with medical monitoring, and with the costs of performing and analyzing the tests.

(3) PREFERENCES.—

(A) IN GENERAL.—In administering the monitoring program under this subsection, preference shall be given to medical and program providers with—

(i) a demonstrated capacity for identifying, contacting, and evaluating populations of workers or others previously exposed to asbestos; and

(ii) experience in establishing networks of medical providers to conduct medical screening and medical monitoring examinations.

(B) PROVISION OF LISTS.—Claimants that are eligible to participate in the medical monitoring program shall be provided with a list of approved providers in their geographic area at the time such claimants become eligible to receive medical monitoring.

(f) CONTRACTS.—The Administrator may enter into contracts with qualified program providers that would permit the program providers to undertake large-scale medical screening and medical monitoring programs by means of subcontracts with a network of medical providers, or other health providers.

(g) REVIEW.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Administrator shall review, and if necessary update, the protocols and procedures established under this section.

SEC. 226. NATIONAL MESOTHELIOMA RESEARCH AND TREATMENT PROGRAM.

(a) IN GENERAL.—There is established the National Mesothelioma Research and Treatment Program (referred to in this section as the ''Program'') to investigate and advance the detection, prevention, treatment, and cure of malignant mesothelioma.

(b) MESOTHELIOMA CENTERS.—

(1) IN GENERAL.—The Administrator shall make available $1,500,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015, for the establishment of each of 10 mesothelioma disease research and treatment centers.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, in consultation with the Medical Advisory Committee, shall conduct a competitive peer review process to select sites for the centers described in paragraph (1). The Director shall ensure that sites selected under this paragraph are—

(A) geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

(B) closely associated with Department of Veterans Affairs medical centers, in order to provide research benefits and care to veterans who have suffered excessively from mesothelioma;

(C) engaged in exemplary laboratory and clinical mesothelioma research, including clinical trials, to provide mechanisms for effective therapeutic treatments, as well as detection and prevention, particularly in areas of palliation of disease symptoms and pain management;

(D) participants in the National Mesothelioma Registry and Tissue Bank under subsection (c)

and the annual International Mesothelioma Symposium under subsection (d)(2)(E);

(E) with respect to research and treatment efforts, coordinated with other centers and institutions involved in exemplary mesothelioma research and treatment;

(F) able to facilitate transportation and lodging for mesothelioma patients, so as to enable patients to participate in the newest developing treatment protocols, and to enable the centers to recruit patients in numbers sufficient to conduct necessary clinical trials; and

(G) nonprofit hospitals, universities, or medical or research institutions incorporated or organized in the United States.

(c) MESOTHELIOMA REGISTRY AND TISSUE BANK.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, maintenance, and operation of a National Mesothelioma Registry to collect data regarding symptoms, pathology, evaluation, treatment, outcomes, and quality of life and a Tissue Bank to include the pre- and post-treatment blood (serum and blood cells) specimens as well as tissue specimens from biopsies and surgery. Not less than $500,000 of the amount made available under the preceding sentence in each fiscal year shall be allocated for the collection and maintenance of tissue specimens.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, with the advice and consent of the Medical Advisory Committee, shall conduct a competitive peer review process to select a site to administer the Registry and Tissue Bank described in paragraph (1). The Director shall ensure that the site selected under this paragraph—

(A) is available to all mesothelioma patients and qualifying physicians throughout the United States;

(B) is subject to all applicable medical and patient privacy laws and regulations;

(C) is carrying out activities to ensure that data is accessible via the Internet; and

(D) provides data and tissue samples to qualifying researchers and physicians who apply for such data in order to further the understanding, prevention, screening, diagnosis, or treatment of malignant mesothelioma.

(d) CENTER FOR MESOTHELIOMA EDUCATION.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, with the advice and consent of the Medical Advisory Committee, of a Center for Mesothelioma Education (referred to in this section as the ''Center'') to—

(A) promote mesothelioma awareness and education;

(B) assist mesothelioma patients and their family members in obtaining necessary information; and

(C) work with the centers established under subsection (b) in advancing mesothelioma research.

(2) ACTIVITIES.—The Center shall—

(A) educate the public about the new initiatives contained in this section through a National Mesothelioma Awareness Campaign;

(B) develop and maintain a Mesothelioma Educational Resource Center (referred to in this section as the ''MERCI''), that is accessible via the Internet, to provide mesothelioma patients, family members, and front-line physicians with comprehensive, current information on mesothelioma and its treatment, as well as on the existence of, and general claim procedures for the Asbestos Injury Claims Resolution Fund;

(C) through the MERCI and otherwise, educate mesothelioma patients, family members, and front-line physicians about, and encourage such individuals to participate in, the centers established under subsection (b), the Registry and the Tissue Bank;

(D) complement the research efforts of the centers established under subsection (b) by awarding competitive, peer-reviewed grants for the training of clinical specialist fellows in mesothelioma, and for highly innovative, experimental or pre-clinical research; and

(E) conduct an annual International Mesothelioma Symposium.

(3) REQUIREMENTS.—The Center shall—

(A) be a nonprofit corporation under section 501(c)(3) of the Internal Revenue Code of 1986;

(B) be a separate entity from and not an affiliate of any hospital, university, or medical or research institution; and

(C) demonstrate a history of program spending that is devoted specifically to the mission of extending the survival of current and future mesothelioma patients, including a history of soliciting, peer reviewing through a competitive process, and funding research grant applications relating to the detection, prevention, treatment, and cure of mesothelioma.

(4) CONTRACTS FOR OVERSIGHT.—The Director of the National Institutes of Health may enter into contracts with the Center for the selection and oversight of the centers established under subsection (b), or selection of the director of the Registry and the Tissue Bank under subsection (c) and oversight of the Registry and the Tissue Bank.

(e) REPORT AND RECOMMENDATIONS.—Not later than September 30, 2015, The Director of the National Institutes of Health shall, after opportunity for public comment and review, publish and provide to Congress a report and recommendations on the results achieved and information gained through the Program, including—

(1) information on the status of mesothelioma as a national health issue, including—

(A) annual United States incidence and death rate information and whether such rates are increasing or decreasing;

(B) the average prognosis; and

(C) the effectiveness of treatments and means of prevention;

(2) promising advances in mesothelioma treatment and research which could be further developed if the Program is reauthorized; and

(3) a summary of advances in mesothelioma treatment made in the 10-year period prior to the report and whether those advances would justify continuation of the Program and whether it should be reauthorized for an additional 10 years.

(f) SEVERABILITY.—If any provision of this Act, or amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act (including this section), the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(g) REGULATIONS.—The Director of the National Institutes of Health shall promulgate regulations to provide for the implementation of this section.

TITLE III—JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review rules or regulations promulgated by the Administrator or the Asbestos Insurers Commission under this Act.

(b) PERIOD FOR FILING PETITION.—A petition for review under this section shall be filed not later than 60 days after the date notice of such promulgation appears in the Federal Register.

(c) EXPEDITED PROCEDURES.—The United States Court of Appeals for the District of Columbia shall provide for expedited procedures for reviews under this section.

SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.

(a) IN GENERAL.—Any claimant adversely affected or aggrieved by a final decision of the Administrator awarding or denying compensation under title I may petition for judicial review of such decision. Any petition for review under this section shall be filed within 90 days of the issuance of a final decision of the Administrator.

(b) EXCLUSIVE JURISDICTION.—A petition for review may only be filed in the United States Court of Appeals for the circuit in which the claimant resides at the time of the issuance of the final order.

(c) STANDARD OF REVIEW.—The court shall uphold the decision of the Administrator unless the court determines, upon review of the record as a whole, that the decision is not supported by substantial evidence, is contrary to law, or is not in accordance with procedure required by law.

(d) EXPEDITED PROCEDURES.—The United States Court of Appeals shall provide for expedited procedures for reviews under this section.

SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESSMENTS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review a final determination by the Administrator or the Asbestos Insurers Commission regarding the liability of any person to make a payment to the Fund, including a notice of applicable subtier assignment under section 204(i), a notice of financial hardship or inequity determination under section 204(d), *a notice of a distributor's adjustment under section 204(m),* and a notice of insurer participant obligation under section 212(b).

(b) PERIOD FOR FILING ACTION.—A petition for review under subsection (a) shall be filed not later than 60 days after a final determination by the Administrator or the Commission giving rise to the action. Any defendant participant who receives a notice of its applicable subtier under section 204(i) [or], a notice of financial hardship or inequity determination under section 204(d), *or a notice of a distributor's adjustment under section 204(m),* shall commence any action within 30 days after a decision on rehearing under section 204(i)(10), and any insurer participant who receives a notice of a payment obligation under section 212(b) shall commence any action within 30 days after receiving such notice. The court shall give such action expedited consideration.

SEC. 304. OTHER JUDICIAL CHALLENGES.

(a) EXCLUSIVE JURISDICTION.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action for declaratory or injunctive relief challenging any provision of this Act. An action under this section shall be filed not later than 60 days after the date of enactment of this Act or 60 days after the final action by the Administrator or the Commission giving rise to the action, whichever is later.

(b) DIRECT APPEAL.—A final decision in the action shall be reviewable on appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 30 days, and the filing of a jurisdictional statement within 60 days, of the entry of the final decision.

(c) EXPEDITED PROCEDURES.—It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the

docket and to expedite to the greatest possible extent the disposition of the action and appeal.

SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL REVIEW.

(a) NO STAYS.—

(1) PAYMENTS.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(2) LEGAL CHALLENGES.—No court may issue a stay or injunction pending final judicial action, including the exhaustion of all appeals, on a legal challenge to this Act or any portion of this Act.

(b) EXCLUSIVITY OF REVIEW.—An action of the Administrator or the Asbestos Insurers Commission for which review could have been obtained under section 301, 302, or 303 shall not be subject to judicial review in any other proceeding.

(c) CONSTITUTIONAL REVIEW.—

[(1) IN GENERAL.—Notwithstanding any other provision of law, any interlocutory or final judgment, decree, or order of a Federal court holding this Act, or any provision or application thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court.]

(1) IN GENERAL.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action challenging the constitutionality of any provision or application of this Act. The following rules shall apply:

(A) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened under section 2284 of title 28, United States Code.

(B) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, after the entry of the final decision.

(C) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

[(2) PERIOD FOR FILING APPEAL.—Any such appeal shall be filed not more than 30 days after entry of such judgment, decree, or order.]

[(3)](*2*) REPAYMENT TO ASBESTOS TRUST AND CLASS ACTION TRUST.—If the transfer of the assets of any asbestos trust of a debtor or any class action trust (or this Act as a whole) is held to be unconstitutional or otherwise unlawful, the Fund shall transfer the remaining balance of such assets (determined under section 405(f)(1)(A)(iii)) back to the appropriate asbestos trust or class action trust within 90 days after final judicial action on the legal challenge, including the exhaustion of all appeals.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FALSE INFORMATION.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

[“§ 1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund

[“(a) FRAUD RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission under title II of the Fairness in Asbestos Injury Resolution Act of 2005 shall be fined under this title or imprisoned not more than 20 years, or both.

[“(b) FALSE STATEMENT RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—Whoever, in any matter involving the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission, knowingly and willfully—

[“(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

[“(2) makes any materially false, fictitious, or fraudulent statements or representations; or

[“(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the award of a claim or the determination of a participant’s payment obligation under title I or II of the Fairness in Asbestos Injury Resolution Act of 2005 shall be fined under this title or imprisoned not more than 10 years, or both.”.

[(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

[“1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund.”.]

“§ 1351. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund

“(a) FRAUD RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission under title II of the Fairness in Asbestos Injury Resolution Act of 2005 shall be fined under this title or imprisoned not more than 20 years, or both.

“(b) FALSE STATEMENT RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—

“(1) IN GENERAL.—It shall be unlawful for any person, in any matter involving the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission, to knowingly and willfully—

“(A) falsify, conceal, or cover up by any trick, scheme, or device a material fact;

“(B) make any materially false, fictitious, or fraudulent statement or representation; or

“(C) make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the award of a claim or the determination of a participant’s payment obligation under title I or II of the Fairness in Asbestos Injury Resolution Act of 2005.

“(2) PENALTY.—A person who violates this subsection shall be fined under this title or imprisoned not more than 10 years, or both.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

“1351. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund.”.

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

(a) NO AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking “or” at the end;

(2) in paragraph (18), by striking the period at the end and inserting “; or”; and

(3) by inserting after paragraph (18) the following:

“(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2005, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).”.

(b) ASSUMPTION OF EXECUTORY CONTRACT.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

“(p) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.”.

(c) ALLOWED ADMINISTRATIVE EXPENSES.—Section 503 of title 11, United States Code, is amended by adding at the end the following:

“(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

“(2) For purposes of paragraph (1), the term ‘asbestos payment obligation’ means any payment obligation under title II of the Fairness in Asbestos Injury Resolution Act of 2005.”.

(d) NO DISCHARGE.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

“(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) of the debtor’s payment obligations assessed against the participant under title II of that Act.”.

(e) PAYMENT.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

“(i) PARTICIPANT DEBTORS.—

“(1) IN GENERAL.—Paragraphs (2) and (3) shall apply to a debtor who—

“(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2005); and

“(B) is subject to a case under this title that is pending—

“(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005; or

“(ii) at any time during the 1-year period preceding the date of enactment of that Act.

“(2) TIER I DEBTORS.—A debtor that has been assigned to Tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2005, shall make payments in accordance with sections 202 and 203 of that Act.

“(3) TREATMENT OF PAYMENT OBLIGATIONS.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2005 shall—

“(A) constitute costs and expenses of administration of a case under section 503 of this title;

“(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

“(C) not be stayed;

“(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

“(E) not be impaired or discharged in any current or future case under this title.”.

(f) TREATMENT OF TRUSTS.—Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

“(j) ASBESTOS TRUSTS.—

“(1) IN GENERAL.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the ‘Fund’) as

established under the Fairness in Asbestos Injury Resolution Act of 2005 if the trust qualifies as a 'trust' under section 201 of that Act.

''(2) TRANSFER OF TRUST ASSETS.—

''(A) IN GENERAL.—

''(i) Except as provided under subparagraphs (B), (C), and (E), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) shall be transferred to the Fund not later than [6 months] *90 days* after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(ii) Notwithstanding any other provision of Federal or State law, no liability of any kind may be imposed on a trustee of a trust for transferring assets to the Fund in accordance with clause (i).

''(B) AUTHORITY TO REFUSE ASSETS.—The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

''(C) ALLOCATION OF TRUST ASSETS.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. The trustees shall demonstrate to the satisfaction of the Administrator, or by clear and convincing evidence in a proceeding brought before the United States District Court for the District of Columbia in accordance with paragraph (4), that the amount reserved is properly allocable to claims other than asbestos claims.

''(D) SALE OF FUND ASSETS.—The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2005 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

''(E) LIQUIDATED CLAIMS.—Except as specifically provided in this subparagraph, all asbestos claims against a trust are superseded and preempted as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005, and a trust shall not make any payment relating to asbestos claims after that date. If, in the ordinary course and the normal and usual administration of the trust consistent with past practices, a trust had before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005, made all determinations necessary to entitle an individual claimant to a noncontingent cash payment from the trust, the trust shall (i) make any lump-sum cash payment due to that claimant, and (ii) make or provide for all remaining noncontingent payments on any award being paid or scheduled to be paid on an installment basis, in each case only to the same extent that the trust would have made such cash payments in the ordinary course and consistent with past practices before enactment of that Act. A trust shall not make any payment in respect of any alleged contingent right to recover any greater amount than the trust had already paid, or had completed all determinations necessary to pay, to a claimant in cash in accordance with its ordinary distribution procedures in effect as of June 1, 2003.

''(3) INJUNCTION.—

''(A) IN GENERAL.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect. No court, Federal or State, may enjoin the transfer of assets by a trust to the Fund in accordance with this subsection pending resolution of any litigation challenging such transfer or the validity of this subsection or of any provision of the Fairness in Asbestos Injury Resolution Act of 2005, and an interlocutory order denying such relief shall not be subject to immediate appeal under section 1291(a) of title 28.

''(B) AVAILABILITY OF FUND ASSETS.—Notwithstanding any other provision of law, once such a transfer has been made, the assets of the Fund shall be available to satisfy any final judgment entered in such an action and such transfer shall no longer be subject to any appeal or review—

''(i) declaring that the transfer effected a taking of a right or property for which an individual is constitutionally entitled to just compensation; or

''(ii) requiring the transfer back to a trust of any or all assets transferred by that trust to the Fund.

''(4) JURISDICTION.—Solely for purposes of implementing this subsection, personal jurisdiction over every covered trust, the trustees thereof, and any other necessary party, and exclusive subject matter jurisdiction over every question arising out of or related to this subsection, shall be vested in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 1127 of this title, that court may make any order necessary and appropriate to facilitate prompt compliance with this subsection, including assuming jurisdiction over and modifying, to the extent necessary, any applicable confirmation order or other order with continuing and prospective application to a covered trust. The court may also resolve any related challenge to the constitutionality of this subsection or of its application to any trust, trustee, or individual claimant. The Administrator of the Fund may bring an action seeking such an order or modification, under the standards of rule 60(b) of the Federal Rules of Civil Procedure or otherwise, and shall be entitled to intervene as of right in any action brought by any other party seeking interpretation, application, or invalidation of this subsection. Any order denying relief that would facilitate prompt compliance with the transfer provisions of this subsection shall be subject to immediate appeal under section 304 of the Fairness in Asbestos Injury Resolution Act of 2005. Notwithstanding any other provision of this paragraph, for purposes of implementing the sunset provisions of section 402(f) of such Act which apply to asbestos trusts and the class action trust, the bankruptcy court or United States district court having jurisdiction over any such trust as of the date of enactment of such Act shall retain such jurisdiction.''.

(g) NO AVOIDANCE OF TRANSFER.—Section 546 of title 11, United States Code, is amended by adding at the end the following:

''(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the trustee may not avoid a transfer made by the debtor under its payment obligations under section 202 or 203 of that Act.''.

(h) CONFIRMATION OF PLAN.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

''(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.''.

(i) EFFECT ON INSURANCE RECEIVERSHIP PROCEEDINGS.—

(1) LIEN.—In an insurance receivership proceeding involving a direct insurer, reinsurer or runoff participant, there shall be a lien in favor of the Fund for the amount of any assessment and any such lien shall be given priority over all other claims against the participant in receivership, except for the expenses of administration of the receivership and the perfected claims of the secured creditors. Any State law that provides for priorities inconsistent with this provision is preempted by this Act.

(2) PAYMENT OF ASSESSMENT.—Payment of any assessment required by this Act shall not be subject to any automatic or judicially entered stay in any insurance receivership proceeding. This Act shall preempt any State law requiring that payments by a direct insurer, reinsurer or runoff participant in an insurance receivership proceeding be approved by a court, receiver or other person. Payments of assessments by any direct insurer or reinsurer participant under this Act shall not be subject to the avoidance powers of a receiver or a court in or relating to an insurance receivership proceeding.

(j) STANDING IN BANKRUPTCY PROCEEDINGS.—The Administrator shall have standing in any bankruptcy case involving a debtor participant. No bankruptcy court may require the Administrator to return property seized to satisfy obligations to the Fund.

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON SILICA CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any personal injury claim attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and the exposed person (or another claiming on behalf of or through the exposed person) is not eligible for any monetary award under this Act; or

(II)(aa) the exposed person suffers or has suffered a functional impairment that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such functional impairment; and

(ii) satisfies the requirements of paragraph (2).

(B) PREEMPTION.—Claims attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—

(A) IN GENERAL.—In any claim to which paragraph (1) applies, the initial pleading (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 60 days after such date, but not later than 60 days before trial, shall plead

with particularity the elements of subparagraph (A)(i)(I) or (II) and shall be accompanied by the information described under subparagraph (B)(i) through (iv).

(B) PLEADINGS.—If the claim pleads the elements of paragraph (1)(A)(i)(II) and by the information described under clauses (i) through (iv) of this subparagraph if the claim pleads the elements of paragraph (1)(A)(i)(I)—

(i) admissible evidence, including at a minimum, a B-reader's report, the underlying x-ray film and such other evidence showing that the claim may be maintained and is not preempted under paragraph (1);

(ii) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(iii) if known by the plaintiff after reasonable inquiry by the plaintiff or his representative, the history of the exposed person's exposure, if any, to asbestos; and

(iv) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(c) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Except as provided under paragraph (3) *and section 106(f)*, any agreement, understanding, or undertaking by any person or affiliated group with respect to the treatment of any asbestos claim that requires future performance by any party, insurer of such party, settlement administrator, or escrow agent shall be superseded in its entirety by this Act.

(2) NO FORCE OR EFFECT.—Except as provided under paragraph (3), any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any such agreement, understanding, or undertaking.

(3) EXCEPTION.—

(A) IN GENERAL.—Except as provided in section 202(f), nothing in this Act shall abrogate a binding and legally enforceable written settlement agreement between any defendant participant or its insurer and a specific named plaintiff with respect to the settlement of an asbestos claim of the plaintiff if—

[(i) before the date of enactment of this Act, the settlement agreement was executed directly by the settling defendant or the settling insurer and the individual plaintiff, or on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by an authorized legal representative;**]**

(i) before the date of enactment of this Act, the settlement agreement was executed by—

(I) the settling defendant or the settling insurer; and

(II)(aa) the specific individual plaintiff, or the individual's immediate relatives; or

(bb) an authorized legal representative acting on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by that authorized legal representative;

(ii) the settlement agreement contains an express obligation by the settling defendant or settling insurer to make a future direct monetary payment or payments in a fixed amount or amounts to the individual plaintiff; and

(iii) within 30 days after the date of enactment of this Act, or such shorter time period specified in the settlement agreement, all conditions to payment under the settlement agreement have been fulfilled, so that the only remaining performance due under the settlement agreement is the payment or payments by the settling defendant or the settling insurer.

(B) BANKRUPTCY-RELATED AGREEMENTS.—The exception set forth in this paragraph shall not apply to any bankruptcy-related agreement.

(C) COLLATERAL SOURCE.—Any settlement payment under this section is a collateral source if the plaintiff seeks recovery from the Fund.

(D) ABROGATION.—Nothing in subparagraph (A) shall abrogate a settlement agreement otherwise satisfying the requirements of that subparagraph if such settlement agreement expressly anticipates the enactment of this Act and provides for the effects of this Act.

(E) HEALTH CARE INSURANCE OR EXPENSES SETTLEMENTS.—Nothing in this Act shall abrogate or terminate an otherwise fully enforceable settlement agreement which was executed before the date of enactment of this Act directly by the settling defendant or the settling insurer and a specific named plaintiff to pay the health care insurance or health care expenses of the plaintiff.

(d) EXCLUSIVE REMEDY.—

(1) IN GENERAL.—Except as provided under paragraph (2) *and section 106(f)*, the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(2) CIVIL ACTIONS AT TRIAL.—

(A) IN GENERAL.—This Act shall not apply to any asbestos claim that—

(i) is a civil action filed in a Federal or State court (not including a filing in a bankruptcy court);

(ii) is not part of a consolidation of actions or a class action; and

(iii) on the date of enactment of this Act—

(I) in the case of a civil action which includes a jury trial, is before the jury after its impanelling and commencement of presentation of evidence, but before its deliberations;

(II) in the case of a civil action which includes a trial in which a judge is the trier of fact, is at the presentation of evidence at trial; or

(III) a verdict, final order, or final judgment has been entered by a trial court.

(B) NONAPPLICABILITY.—This Act shall not apply to a civil action described under subparagraph (A) throughout the final disposition of the action.

(e) BAR ON ASBESTOS CLAIMS.—

(1) IN GENERAL.—No asbestos claim (including any claim described in paragraph (2)) may be pursued, and no pending asbestos claim may be maintained, in any Federal or State court, except as provided under subsection (d)(2) *and section 106(f)*.

(2) CERTAIN SPECIFIED CLAIMS.—

(A) IN GENERAL.—Subject to section 404 (d) and (e)(3) of this Act, no claim may be brought or pursued in any Federal or State court or insurance receivership proceeding—

(i) relating to any default, confessed or stipulated judgment on an asbestos claim if the judgment debtor expressly agreed, in writing or otherwise, not to contest the entry of judgment against it and the plaintiff expressly agreed, in writing or otherwise, to seek satisfaction of the judgment only against insurers or in bankruptcy;

(ii) relating to the defense, investigation, handling, litigation, settlement, or payment of any asbestos claim by any participant, including claims for bad faith or unfair or deceptive claims handling or breach of any duties of good faith; or

(iii) arising out of or relating to the asbestos-related injury of any individual and—

(I) asserting any conspiracy, concert of action, aiding or abetting, act, conduct, statement, misstatement, undertaking, publication, omission, or failure to detect, speak, disclose, publish, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos; or

(II) asserting any conspiracy, act, conduct, statement, omission, or failure to detect, disclose, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos, asserted as or in a direct action against an insurer or reinsurer based upon any theory, statutory, contract, tort, or otherwise; or

(iv) by any third party, and premised on any theory, allegation, or cause of action, for reimbursement of healthcare costs allegedly associated with the use of or exposure to asbestos, whether such claim is asserted directly, indirectly or derivatively.

(B) EXCEPTIONS.—Subparagraph (A) (ii) and (iii) shall not apply to claims against participants by persons—

(i) with whom the participant is in privity of contract;

(ii) who have received an assignment of insurance rights not otherwise voided by this Act; or

(iii) who are beneficiaries covered by the express terms of a contract with that participant.

(3) PREEMPTION.—Any action asserting an asbestos claim (including a claim described in paragraph (2)) in any Federal or State court is preempted by this Act, except as provided under subsection (d)(2) *and section 106(f)*.

(4) DISMISSAL.—Except as provided under subsection (d)(2), no judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(5) REMOVAL.—

(A) IN GENERAL.—If an action in any State court under paragraph (3) is preempted, barred, or otherwise precluded under this Act, and not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

(B) TIME LIMITS.—For actions originally filed after the date of enactment of this Act, the notice of removal shall be filed within the time limits specified in section 1441(b) of title 28, United States Code.

(C) PROCEDURES.—The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act.

(D) REVIEW OF REMAND ORDERS.—

(i) IN GENERAL.—Section 1447 of title 28, United States Code, shall apply to any removal of a case under this section, except that notwithstanding subsection (d) of that section, a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand an action

to the State court from which it was removed if application is made to the court of appeals not less than 7 days after entry of the order.

(ii) TIME PERIOD FOR JUDGMENT.—If the court of appeals accepts an appeal under clause (i), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under clause (iii).

(iii) EXTENSION OF TIME PERIOD.—The court of appeals may grant an extension of the 60-day period described in clause (ii) if—

(I) all parties to the proceeding agree to such extension, for any period of time; or

(II) such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

(iv) DENIAL OF APPEAL.—If a final judgment on the appeal under clause (i) is not issued before the end of the period described in clause (ii), including any extension under clause (iii), the appeal shall be denied.

(E) JURISDICTION.—The jurisdiction of the district court shall be limited to—

(i) determining whether removal was proper; and

(ii) determining, based on the evidentiary record, whether the claim presented is preempted, barred, or otherwise precluded under this Act.

(6) CREDITS.—

(A) IN GENERAL.—If, notwithstanding the express intent of Congress stated in this section, any court finally determines for any reason that an asbestos claim is not barred under this subsection and is not subject to the exclusive remedy or preemption provisions of this section, then any participant required to satisfy a final judgment executed with respect to any such claim may elect to receive a credit against any assessment owed to the Fund equal to the amount of the payment made with respect to such executed judgment.

(B) REQUIREMENTS.—The Administrator shall require participants seeking credit under this paragraph to demonstrate that the participant—

(i) timely pursued all available remedies, including remedies available under this paragraph to obtain dismissal of the claim; and

(ii) notified the Administrator at least 20 days before the expiration of any period within which to appeal the denial of a motion to dismiss based on this section.

(C) INFORMATION.—The Administrator may require a participant seeking credit under this paragraph to furnish such further information as is necessary and appropriate to establish eligibility for, and the amount of, the credit.

(D) INTERVENTION.—The Administrator may intervene in any action in which a credit may be due under this paragraph.

SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CONTRACTS.

(a) EROSION OF INSURANCE COVERAGE LIMITS.—

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

(A) DEEMED EROSION AMOUNT.—The term ''deemed erosion amount'' means the amount of erosion deemed to occur at enactment under paragraph (2).

(B) EARLY SUNSET.—The term ''early sunset'' means an event causing termination of the program under section 405(f) which relieves the insurer participants of paying some portion of the aggregate payment level of $46,025,000,000 required under section 212(a)(2)(A).

(C) EARNED EROSION AMOUNT.—The term ''earned erosion amount'' means, in the event of any early sunset under section 405(f), the percentage, as set forth in the following schedule, depending on the year in which the defendant participants' funding obligations end, of those amounts which, at the time of the early sunset, a defendant participant has paid to the fund and remains obligated to pay into the fund.

Year After Enactment In Which Defendant Participant's Funding Obligation Ends:	Applicable Percentage:
2	67.06
3	86.72
4	96.55
5	102.45
6	90.12
7	81.32
8	74.71
9	69.58
10	65.47
11	62.11
12	59.31
13	56.94
14	54.90
15	53.14
16	51.60
17	50.24
18	49.03
19	47.95
20	46.98
21	46.10
22	45.30
23	44.57
24	43.90
25	43.28
26	42.71
27	42.18
28	40.82
29	39.42

(D) REMAINING AGGREGATE PRODUCTS LIMITS.—The term ''remaining aggregate products limits'' means aggregate limits that apply to insurance coverage granted under the ''products hazard'', ''completed operations hazard'', or ''Products—Completed Operations Liability'' in any comprehensive general liability policy issued between calendar years 1940 and 1986 to cover injury which occurs in any State, as reduced by—

(i) any existing impairment of such aggregate limits as of the date of enactment of this Act; and

(ii) the resolution of claims for reimbursement or coverage of liability or paid or incurred loss for which notice was provided to the insurer before the date of enactment of this Act.

(E) SCHEDULED PAYMENT AMOUNTS.—The term ''scheduled payment amounts'' means the future payment obligation to the Fund under this Act from a defendant participant in the amount established under sections 203 and 204.

(F) UNEARNED EROSION AMOUNT.—The term ''unearned erosion amount'' means, in the event of any early sunset under section 405(f), the difference between the deemed erosion amount and the earned erosion amount.

(2) QUANTUM AND TIMING OF EROSION.—

(A) EROSION UPON ENACTMENT.—The collective payment obligations to the Fund of the insurer and reinsurer participants as assessed by the Administrator shall be deemed as of the date of enactment of this Act to erode remaining aggregate products limits available to a defendant participant only in an amount of 38.1 percent of each defendant participant's scheduled payment amount.

(B) NO ASSERTION OF CLAIM.—No insurer or reinsurer may assert any claim against a defendant participant or captive insurer for insurance, reinsurance, payment of a deductible, or retrospective premium adjustment arising out of that insurer's or reinsurer's payments to the Fund or the erosion deemed to occur under this section.

(C) POLICIES WITHOUT CERTAIN LIMITS OR WITH EXCLUSION.—Except as provided under subparagraph (E), nothing in this section shall require or permit the erosion of any insurance policy or limit that does not contain an aggregate products limit, or that contains an asbestos exclusion.

(D) TREATMENT OF CONSOLIDATION ELECTION.—If an affiliated group elects consolidation as provided in section 204(f), the total erosion of limits for the affiliated group under paragraph (2)(A) shall not exceed ⟦59.64⟧ *38.1* percent of the scheduled payment amount of the single payment obligation for the entire affiliated group. The total erosion of limits for any individual defendant participant in the affiliated group shall not exceed its individual share of ⟦59.64⟧ *38.1* percent of the affiliated group's scheduled payment amount, as measured by the individual defendant participant's percentage share of the affiliated group's prior asbestos expenditures.

(E) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, nothing in this Act shall be deemed to erode remaining aggregate products limits of a defendant participant that can demonstrate by a reponderance of the evidence that 75 percent of its prior asbestos expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury arising exclusively from the exposure to asbestos at premises owned, rented, or controlled by the defendant participant (a ''premises defendant''). In calculating such percentage, where expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant's products and to asbestos at premises owned, rented, or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. If a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by policy period, in ascending order by attachment point.

(B) OTHER EROSION METHODS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the method of erosion of any remaining aggregate products limits which are subject to—

(I) a coverage-in-place or settlement agreement between a defendant participant and 1 or more insurance participants as of the date of enactment; or

(II) a final and nonappealable judgment as of the date of enactment or resulting from a claim for coverage or reimbursement pending as of such date, shall be as specified in such agreement or judgment with regard to erosion applicable to such insurance participants' policies.

(ii) REMAINING LIMITS.—To the extent that a final nonappealable judgment or settlement agreement to which an insurer participant and a defendant participant are parties in effect as of the date of enactment of this Act extinguished a defendant participant's right to seek coverage for asbestos claims under an insurer participant's policies, any remaining limits in such policies shall not be considered to be remaining aggregate products limits under subsection (a)(1)(A).

(4) RESTORATION OF AGGREGATE PRODUCTS LIMITS UPON EARLY SUNSET.—

(A) RESTORATION.—In the event of an early sunset, any unearned erosion amount will be

deemed restored as aggregate products limits available to a defendant participant as of the date of enactment.

(B) METHOD OF RESTORATION.—The unearned erosion amount will be deemed restored to each defendant participant's policies in such a manner that the last limits that were deemed eroded at enactment under this subsection are deemed to be the first limits restored upon early sunset.

(C) TOLLING OF COVERAGE CLAIMS.—In the event of an early sunset, the applicable statute of limitations and contractual provisions for the filing of claims under any insurance policy with restored aggregate products limits shall be deemed tolled after the date of enactment through the date 6 months after the date of early sunset.

(5) PAYMENTS BY DEFENDANT PARTICIPANT.—Payments made by a defendant participant shall be deemed to erode, exhaust, or otherwise satisfy applicable self-insured retentions, deductibles, retrospectively rated premiums, and limits issued by nonparticipating insolvent or captive insurance companies. Reduction of remaining aggregate limits under this subsection shall not limit the right of a defendant participant to collect from any insurer not a participant.

(6) EFFECT ON OTHER INSURANCE CLAIMS.—Other than as specified in this subsection, this Act does not alter, change, modify, or affect insurance for claims other than asbestos claims.

(b) DISPUTE RESOLUTION PROCEDURE.—

(1) ARBITRATION.—The parties to a dispute regarding the erosion of insurance coverage limits under this section may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract.

(2) TITLE 9, UNITED STATES CODE.—Arbitration of such disputes, awards by arbitrators, and confirmation of awards shall be governed by title 9, United States Code, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the erosion principles provided for under this section shall be binding on the arbitrator, unless the parties agree to the contrary.

(3) FINAL AND BINDING AWARD.—An award by an arbitrator shall be final and binding between the parties to the arbitration, but shall have no force or effect on any other person. The parties to an arbitration may agree that in the event a policy which is the subject matter of an award is subsequently determined to be eroded in a manner different from the manner determined by the arbitration in a judgment rendered by a court of competent jurisdiction from which no appeal can or has been taken, such arbitration award may be modified by any court of competent jurisdiction upon application by any party to the arbitration. Any such modification shall govern the rights and obligations between such parties after the date of such modification.

(c) EFFECT ON NONPARTICIPANTS.—

(1) IN GENERAL.—No insurance company or reinsurance company that is not a participant, other than a captive insurer, shall be entitled to claim that payments to the Fund erode, exhaust, or otherwise limit the nonparticipant's insurance or reinsurance obligations.

(2) OTHER CLAIMS.—Nothing in this Act shall preclude a participant from pursuing any claim for insurance or reinsurance from any person that is not a participant other than a captive insurer.

(d) FINITE RISK POLICIES NOT AFFECTED.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, except subject to section 212(a)(1)(D), this Act shall not alter, affect or impair any rights or obligations of—

(A) any party to an insurance contract that expressly provides coverage for governmental charges or assessments imposed to replace insurance or reinsurance liabilities in effect on the date of enactment of this Act; or

(B) subject to paragraph (2), any person with respect to any insurance [or reinsurance] purchased by a participant after December 31, 1990, that expressly (but not necessarily exclusively) provides coverage for asbestos liabilities, including those policies commonly referred to as ''finite risk'' policies.

(2) LIMITATION.—No person may assert that any amounts paid to the Fund in accordance with this Act are covered by any policy described under paragraph (1)(B) purchased by a defendant participant, unless such policy specifically provides coverage for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims.

(e) EFFECT ON CERTAIN INSURANCE AND REINSURANCE CLAIMS.—

(1) NO COVERAGE FOR FUND ASSESSMENTS.—[No] *Subject to section 212(a)(1)(D), no* participant or captive insurer may pursue an insurance or reinsurance claim against another participant or captive insurer for payments to the Fund required under this Act, except under a [contract] *written agreement* specifically providing insurance [or reinsurance], *reinsurance, or other reimbursement* for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims or, where applicable, under finite risk policies under subsection (d).

(2) CERTAIN INSURANCE ASSIGNMENTS VOIDED.—Any assignment of any rights to insurance coverage for asbestos claims to any person who has asserted an asbestos claim before the date of enactment of this Act, or to any trust, person, or other entity not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims which were asserted before such date of enactment, or by any Tier I defendant participant, before any sunset of this Act, shall be null and void. This subsection shall not void or affect in any way any assignments of rights to insurance coverage other than to asbestos claimants or to trusts, persons, or other entities not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims, or by Tier I defendant participants.

(3) INSURANCE CLAIMS PRESERVED.—Notwithstanding any other provision of this Act, this Act shall not alter, affect, or impair any rights or obligations of any person with respect to any insurance or reinsurance for amounts that any person pays, has paid, or becomes legally obligated to pay in respect of asbestos or other claims, *including claims filed, pursued, or revived under section 405(g),* except to the extent that—

[(A) such person pays or becomes legally obligated to pay claims that are superseded by section 403;]

(A) such claims are preempted, barred, or superseded by section 403;

(B) any such rights or obligations of such person with respect to insurance or reinsurance are prohibited by paragraph (1) or (2) of subsection (e); or

(C) the limits of insurance otherwise available to such participant in respect of asbestos claims are deemed to be eroded under subsection (a).

SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR AND SUNSET OF THE ACT.

(a) IN GENERAL.—The Administrator shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the operation of the Asbestos Injury Claims Resolution Fund within 6 months after the close of each fiscal year.

(b) CONTENTS OF REPORT.—The annual report submitted under this subsection shall include an analysis of—

(1) the claims experience of the program during the most recent fiscal year, including—

(A) the number of claims made to the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims;

(B) the number of claims denied by the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims, and a general description of the reasons for their denial;

(C) a summary of the eligibility determinations made by the Office under section 114;

(D) a summary of the awards made from the Fund, including the amount of the awards; and

(E) for each eligible condition, a statement of the percentage of asbestos claimants who filed claims during the prior calendar year and were determined to be eligible to receive compensation under this Act, who have received the compensation to which such claimants are entitled according to section 131;

(2) the administrative performance of the program, including—

(A) the performance of the program in meeting the time limits prescribed by law and an analysis of the reasons for any systemic delays;

(B) any backlogs of claims that may exist and an explanation of the reasons for such backlogs;

(C) the costs to the Fund of administering the program; and

(D) any other significant factors bearing on the efficiency of the program;

(3) the financial condition of the Fund, including—

(A) statements of the Fund's revenues, expenses, assets, and liabilities;

(B) the identity of all participants, the funding allocations of each participant, and the total amounts of all payments to the Fund;

(C) a list of all financial hardship or inequity adjustments applied for during the fiscal year, and the adjustments that were made during the fiscal year;

(D) a statement of the investments of the Fund; and

(E) a statement of the borrowings of the Fund;

(4) the financial prospects of the Fund, including—

(A) an estimate of the number and types of claims, the amount of awards, and the participant payment obligations for the next fiscal year;

(B) an analysis of the financial condition of the Fund, including an estimation of the Fund's ability to pay claims for the subsequent 5 years in full as and when required, an evaluation of the Fund's ability to retire its existing debt and assume additional debt, and an evaluation of the Fund's ability to satisfy other obligations under the program; and

(C) a report on any changes in projections made in earlier annual reports or sunset analyses regarding the Fund's ability to meet its financial obligations;

(5) any recommendations from the Advisory Committee on Asbestos Disease Compensation and the Medical Advisory Committee of the Fund to improve the diagnostic, exposure, and medical criteria so as to pay [only those claimants whose injuries are caused by exposure to asbestos] *those claimants who suffer from injuries for which exposure to asbestos was a substantial contributing factor*;

(6) a summary of the results of audits conducted under section 115; and

(7) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

[(c) CLAIMS ANALYSIS.—If the Administrator concludes, on the basis of the annual report submitted under this section, that the Fund is compensating claims for injuries that are not caused by exposure to asbestos and compensating such claims may, currently or in the future, undermine the Fund's ability to compensate persons with injuries that are caused by exposure to asbestos, the Administrator shall include in the report an analysis of the reasons for the situation, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report shall include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund from compensating claims not caused by exposure to asbestos.]

(c) CLAIMS ANALYSIS AND VERIFICATION OF UNANTICIPATED CLAIMS.—

(1) IN GENERAL.—If the Administrator concludes, on the basis of the annual report submitted under this section, that—

(A) the average number of claims that qualify for compensation under a claim level or designation exceeds 125 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims qualifying for compensation under the appropriate claim level or designation; or

(B) the average number of claims that qualify for compensation under a claim level or designation is less than 75 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims deemed ineligible for compensation under the appropriate claim level or designation.

(2) DETERMINATIONS.—The Administrator shall examine the best available medical evidence and any recommendation made under subsection (b)(5) in order to determine which 1 or more of the following is true:

(A) Without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(B) A significant number of claimants who qualified for compensation under the claim level or designation do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(C) A significant number of claimants who were denied compensation under the claim level of designation did suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(D) The Congressional Budget Office projections underestimated or overestimated the actual number of persons who suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(3) RECOMMENDATIONS CONCERNING CLAIMS CRITERIA.—If the Administrator determines that a significant number of the claimants who qualified for compensation under the claim level under review do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor, or that a significant number of the claimants who were denied compensation under the claim level under review suffered from an injury or disease for which exposure to asbestos was a substantial contributing factor, the Administrator shall recommend to Congress, under subsection (e), changes to the compensation criteria in order to ensure that the Fund provides compensation for injury or disease for which exposure to asbestos was a substantial contributing factor, but does not provide compensation to claimants who do not suffer from an injury or disease for which asbestos exposure was a substantial contributing factor.

(d) RECOMMENDATIONS OF ADMINISTRATOR AND ADVISORY COMMITTEE.—

(1) REFERRAL.—If the Administrator recommends changes to this Act under subsection (c), the recommendations and accompanying analysis shall be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 (in this subsection referred to as the ''Advisory Committee'').

(2) ADVISORY COMMITTEE RECOMMENDATIONS.—The Advisory Committee shall hold expedited public hearings on the alternatives and recommendations of the Administrator and make its own recommendations for reform of the program under titles I and II.

(3) TRANSMITTAL TO CONGRESS.—Not later than 90 days after receiving the recommendations of the Administrator, the Advisory Committee shall transmit the recommendations of the Administrator and the recommendations of the Advisory Committee to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

[(d)]*(e)* SHORTFALL ANALYSIS.—

(1) IN GENERAL.—

(A) ANALYSIS.—If the Administrator concludes, on the basis of the information contained in the annual report submitted under this section, that the Fund may not be able to pay claims as such claims become due at any time within the next 5 years, the Administrator shall include in the report an analysis of the reasons for the situation, an estimation of when the Fund will no longer be able to pay claims as such claims become due, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report may include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund.

(B) RANGE OF ALTERNATIVES.—The range of alternatives under subparagraph (A) may include—

(i) triggering the termination of this Act under subsection (f) at any time after the date of enactment of this Act; and

(ii) reform of the program set forth in titles I and II of this Act (including changes in the diagnostic, exposure, or medical criteria, changes in the enforcement or application of those criteria, changes in the timing of payments, changes in contributions by defendant participants, insurer participants (or both such participants), or changes in award values).

(C) INSURER SHORTFALL ASSESSMENTS.—Beginning in year 6 of the life of the Fund, if the Administrator determines that a shortfall in payment of the annual amounts required to be paid by insurer participants under section 212(a)(3)(C) is the substantial factor that would cause the Administrator to recommend the termination of this Act under subsection (f), then the Administrator may impose shortfall assessments on insurer participants in addition to the payments imposed under section 212, except that the Administrator shall not impose such assessments if the additional amounts would not be sufficient to permit the Administrator to avoid recommending termination of this Act. During any given year, the total of such shortfall assessments shall not exceed the amount by which, during the prior year, total payments by insurer participants fell short of the aggregate amounts required to be paid under section 212(a)(3)(C). Shortfall assessments shall be allocated among insurer participants using the methodology adopted by the Asbestos Insurers Commission under section 212(a)(1)(B).

(2) CONSIDERATIONS.—In formulating recommendations, the Administrator shall take into account the reasons for any shortfall, actual or projected, which may include—

(A) financial factors, including return on investments, borrowing capacity, interest rates, ability to collect contributions, and other relevant factors;

(B) the operation of the Fund generally, including administration of the claims processing, the ability of the Administrator to collect contributions from participants, potential problems of fraud, the adequacy of the criteria to rule out idiopathic mesothelioma, and inadequate flexibility to extend the timing of payments;

(C) the appropriateness of the diagnostic, exposure, and medical criteria, including the adequacy of the criteria to rule out idiopathic mesothelioma;

(D) the actual incidence of asbestos-related diseases, including mesothelioma, based on epidemiological studies and other relevant data;

(E) compensation of diseases with alternative causes; and

(F) other factors that the Administrator considers relevant.

(3) RECOMMENDATION OF TERMINATION.—Any recommendation of termination should include a plan for winding up the affairs of the Fund (and the program generally) within a defined period, including paying in full all claims resolved at the time the report is prepared. Any plan under this paragraph shall provide for priority in payment to the claimants with the most serious illnesses.

(4) RESOLVED CLAIMS.—For purposes of this section, a claim shall be deemed resolved when the Administrator has determined the amount of the award due the claimant, and either the claimant has waived judicial review or the time for judicial review has expired.

[(e) RECOMMENDATIONS OF ADMINISTRATOR AND COMMISSION.—

[(1) IN GENERAL.—If the Administrator recommends changes to this Act under subsection (c), the recommendations and accompanying analysis shall be referred to a special commission consisting of the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of the Treasury, and the Secretary of Commerce, or their designees. The Commission shall hold expedited public hearings on the Administrator's alternatives and recommendations and then make its own recommendations for reform of the program set forth in titles I and II of this Act. Within 180 days after receiving the Administrator's recommendations, the Commission shall transmit its own recommendations to the Congress in the same manner as set forth in subsection (a).

[(2) REFERRAL.—If the Administrator recommends changes to, or termination of, this Act under subsection (d), the recommendations and accompanying analysis shall be referred to the Commission. The Commission

shall hold expedited public hearings on the Administrator's alternatives and recommendations and then make its own recommendations for reform of the program set forth in titles I and II of this Act. Within 180 days after receiving the Administrator's recommendations, the Commission shall transmit its own recommendations to Congress in the same manner as set forth in subsection (a).]

(f) SUNSET OF ACT.—

(1) IN GENERAL.—

(A) TERMINATION.—Subject to paragraph (4), titles I (except subtitle A) and II and sections 403 and 404(e)(2) shall terminate as provided under paragraph (2), if the Administrator—

(i) has begun the processing of claims; and

(ii) as part of the review conducted to prepare an annual report under this section, determines that if any additional claims are resolved, the Fund will not have sufficient resources when needed to pay 100 percent of all resolved claims while also meeting all other obligations of the Fund under this Act, including the payment of—

(I) debt repayment obligations; and

(II) remaining obligations to the asbestos trust of a debtor and the class action trust.

(B) REMAINING OBLIGATIONS.—For purposes of subparagraph (A)(ii), the remaining obligations to the asbestos trust of the debtor and the class action trust shall be determined by the Administrator by assuming that, instead of a lump-sum payment, such trust had transferred its assets to the Fund on an annual basis, taking into consideration relevant factors, including the most recent projections made by the trust's actuary before the date of enactment of this Act of the amount and timing of future claim payments and administrative and operating expenses.

(2) EFFECTIVE DATE OF TERMINATION.—A termination under paragraph (1) shall take effect 180 days after the date of a determination of the Administrator under paragraph (1) and shall apply to all asbestos claims that have not been resolved by the Fund as of the date of the determination.

(3) RESOLVED CLAIMS.—If a termination takes effect under this subsection, all resolved claims shall be paid in full by the Fund.

(4) EXTINGUISHED CLAIMS.—A claim that is extinguished under the statute of limitations provisions in section 113(b) is not revived at the time of sunset under this subsection.

(5) CONTINUED FUNDING.—If a termination takes effect under this subsection, participants will still be required to make payments as provided under subtitles A and B of title II. If the full amount of payments required by title II is not necessary for the Fund to pay claims that have been resolved as of the date of termination, pay the Fund's debt and obligations to the asbestos trusts and class action trust, and support the Fund's continued operation as needed to pay such claims, debt, and obligations, the Administrator may reduce such payments. Any such reductions shall be allocated among participants in approximately the same proportion as the liability under subtitles A and B of title II.

(6) SUNSET CLAIMS.—

(A) DEFINITIONS.—In this paragraph—

(i) the term ''sunset claims'' means claims filed with the Fund, but not yet resolved, when this Act has terminated; and

(ii) the term ''sunset claimants'' means persons asserting sunset claims.

(B) IN GENERAL.—If a termination takes effect under this subsection, the applicable statute of limitations for the filing of sunset claims under subsection (g) shall be tolled for any past or pending sunset claimants while such claimants were pursuing claims filed under this Act. For those claimants who decide to pursue a sunset claim in accordance with subsection (g), the applicable statute of limitations shall apply, except that claimants who filed a claim against the Fund under this Act before the date of termination shall have 2 years after the date of termination to file a sunset claim in accordance with subsection (g).

(7) ASBESTOS TRUSTS AND CLASS ACTION TRUST.—On and after the date of termination under this subsection, the trust distribution program of any asbestos trust and the class action trust shall be replaced with the medical criteria requirements of section 121.

(8) PAYMENT TO ASBESTOS TRUSTS AND CLASS ACTION TRUST.—The amounts determined under paragraph (1)(B) for payment to the asbestos trusts and the class action trust shall be transferred to the respective asbestos trusts of the debtor and the class action trust within 90 days.

(g) NATURE OF CLAIM AFTER SUNSET.—

(1) IN GENERAL.—

(A) RELIEF.—On and after the date of termination under subsection (f), any individual with an asbestos claim who has not previously had a claim resolved by the Fund, may in a civil action obtain relief in damages subject to the terms and conditions under this subsection and paragraph (6) of subsection (f).

(B) RESOLVED CLAIMS.—An individual who has had a claim resolved by the Fund may not pursue a court action, except that an individual who received an award for a nonmalignant disease (Levels I through V) from the Fund may assert a claim for a subsequent or progressive disease under this subsection, unless the disease was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the previous claim against the Fund was disposed.

(C) MESOTHELIOMA CLAIM.—An individual who received an award for a nonmalignant or malignant disease (except mesothelioma) (Levels I through VIII) from the Fund may assert a claim for mesothelioma under this subsection, unless the mesothelioma was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the nonmalignant or other malignant claim was disposed.

(2) EXCLUSIVE REMEDY.—As of the effective date of a termination of this Act under subsection (f), an action under paragraph (1) shall be the exclusive remedy for any asbestos claim that might otherwise exist under Federal, State, or other law, regardless of whether such claim arose before or after the date of enactment of this Act or of the termination of this Act, except that claims against the Fund that have been resolved before the date of the termination determination under subsection (f) may be paid by the Fund.

(3) VENUE.—

(A) IN GENERAL.—Actions under paragraph (1) may be brought in—

(i) any Federal district court;

(ii) any State court in the State where the claimant resides; or

(iii) any State court in a State where the asbestos exposure occurred.

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

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

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

(4) CLASS ACTION TRUSTS.—Notwithstanding any other provision of this section—

(A) after the assets of any class action trust have been transferred to the Fund in accordance with section 203(b)(5), no asbestos claim may be maintained with respect to asbestos liabilities arising from the operations of a person with respect to whose liabilities for asbestos claims a class action trust has been established, whether such claim names the person or its successors or affiliates as defendants; and

(B) if a termination takes effect under subsection (f), the exclusive remedy for all asbestos claims (including sunset claims and claims first arising or first presented after termination of the Fund) arising from such operations will be a claim against the class action trust to which the Administrator has transferred funds under subsection (f)(8) to pay asbestos claims, if necessary in proportionally reduced amounts.

(5) EXPERT WITNESSES.—If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue in an action permitted under paragraph (1), a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if—

(A) the testimony is based upon sufficient facts or data;

(B) the testimony is the product of reliable principles and methods; and

(C) the witness has applied the principles and methods reliably to the facts of the case.

SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABILITY OF THE UNITED STATES GOVERNMENT.

(a) CAUSES OF ACTIONS.—Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as creating a cause of action against the United States Government, any entity established under this Act, or any officer or employee of the United States Government or such entity.

(b) FUNDING LIABILITY.—Nothing in this Act shall be construed to—

(1) create any obligation of funding from the United States Government, [other than the funding for personnel and support as provided under this Act; or] *including any borrowing authorized under section 221(b)(2); or*

(2) obligate the United States Government to pay any award or part of an award, if amounts in the Fund are inadequate.

SEC. 407. RULES OF CONSTRUCTION.

(a) LIBBY, MONTANA CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of Libby, Montana. The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(b) HEALTHCARE FROM PROVIDER OF CHOICE.—Nothing in this Act shall be construed to preclude any eligible claimant from receiving healthcare from the provider of their choice.

SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENTS.

(a) ASBESTOS IN COMMERCE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), relating to the manufacture, importation, processing, disposal, and distribution in commerce of asbestos-containing products, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible civil or criminal penalties, including those under section 17 of the Toxic Substances Control Act (15 U.S.C. 2616), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(b) ASBESTOS AS AIR POLLUTANT.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.), relating to asbestos as a hazardous air pollutant, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible criminal and civil penalties, including those under section 113 of the Clean Air Act (42 U.S.C. 7413), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(c) OCCUPATIONAL EXPOSURE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator shall refer the matter in writing within 30 days after receiving that information and refer the matter to the Secretary of Labor or the appropriate State agency with authority to enforce occupational safety and health standards, for investigation for possible civil or criminal penalties under section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666).

(d) ENHANCED CRIMINAL PENALTIES FOR WILLFUL VIOLATIONS OF OCCUPATIONAL STANDARDS FOR ASBESTOS.—Section 17(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656(e)) is amended—

(1) by striking ''Any'' and inserting ''(1) Except as provided in paragraph (2), any''; and

(2) by adding at the end the following:

''(2) Any employer who willfully violates any standard issued under section 6 with respect to the control of occupational exposure to asbestos, shall upon conviction be punished by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 5 years, or both, except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 10 years, or both.''.

(e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND BY EPA AND OSHA ASBESTOS VIOLATORS.—

(1) IN GENERAL.—The Administrator shall assess employers or other individuals determined to have violated asbestos statutes, standards, or regulations administered by the Department of Labor, the Environmental Protection Agency, and their State counterparts, for contributions to the Asbestos Injury Claims Resolution Fund (in this section referred to as the ''Fund'').

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall—

(A) in consultation with the Assistant Secretary of Labor for Occupational Safety and Health, identify all employers that, during the previous year, were subject to final orders finding that they violated standards issued by the Occupational Safety and Health Administration for control of occupational exposure to asbestos (29 C.F.R. 1910.1001, 1915.1001, and 1926.1101) or the equivalent asbestos standards issued by any State under section 18 of the Occupational Safety and Health Act (29 U.S.C. 668); and

(B) in consultation with the Administrator of the Environmental Protection Agency, identify all employers or other individuals who, during the previous year, were subject to final orders finding that they violated asbestos regulations administered by the Environmental Protection Agency (including the National Emissions Standard for Asbestos established under the Clean Air Act (42 U.S.C. 7401 et seq.), the asbestos worker protection standards established under part 763 of title 40, Code of Federal Regulations, and the regulations banning asbestos promulgated under section 501 of this Act), or equivalent State asbestos regulations.

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual for a contribution to the Fund for that year in an amount equal to—

(A) 2 times the amount of total penalties assessed for the first violation of occupational health and environmental statutes, standards, or regulations;

(B) 4 times the amount of total penalties for a second violation of such statutes, standards, or regulations; and

(C) 6 times the amount of total penalties for any violations thereafter.

(4) LIABILITY.—Any assessment under this subsection shall be considered a liability under this Act.

(5) PAYMENTS.—Each such employer or other individual assessed for a contribution to the Fund under this subsection shall make the required contribution to the Fund within 90 days of the date of receipt of notice from the Administrator requiring payment.

(6) ENFORCEMENT.—The Administrator is authorized to bring a civil action under section 223(c) against any employer or other individual who fails to make timely payment of contributions assessed under this section.

(f) REVIEW OF FEDERAL SENTENCING GUIDELINES FOR ENVIRONMENTAL CRIMES RELATED TO ASBESTOS.—Under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the United States Sentencing Guidelines and related policy statements to ensure that—

(1) appropriate changes are made within the guidelines to reflect any statutory amendments that have occurred since the time that the current guideline was promulgated;

(2) the base offense level, adjustments, and specific offense characteristics contained in section 2Q1.2 of the United States Sentencing Guidelines (relating to mishandling of hazardous or toxic substances or pesticides; recordkeeping, tampering, and falsification; and unlawfully transporting hazardous materials in commerce) are increased as appropriate to ensure that future asbestos-related offenses reflect the seriousness of the offense, the harm to the community, the need for ongoing reform, and the highly regulated nature of asbestos;

(3) the base offense level, adjustments, and specific offense characteristics are sufficient to deter and punish future activity and are adequate in cases in which the relevant offense conduct—

(A) involves asbestos as a hazardous or toxic substance; and

(B) occurs after the date of enactment of this Act;

(4) the adjustments and specific offense characteristics contained in section 2B1.1 of the United States Sentencing Guidelines related to fraud, deceit, and false statements, adequately take into account that asbestos was involved in the offense, and the possibility of death or serious bodily harm as a result;

(5) the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines are sufficient to deter and punish organizational criminal misconduct that involves the use, handling, purchase, sale, disposal, or storage of asbestos; and

(6) the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines are sufficient to deter and punish organizational criminal misconduct that involves fraud, deceit, or false statements against the Office of Asbestos Disease Compensation.

SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.

(a) DENIAL, TERMINATION, OR ALTERATION OF HEALTH COVERAGE.—No health insurer offering a health plan may deny or terminate coverage, or in any way alter the terms of coverage, of any claimant or the beneficiary of a claimant, on account of the participation of the claimant or beneficiary in a medical monitoring program under this Act, or as a result of any information discovered as a result of such medical monitoring.

(b) DEFINITIONS.—In this section:

(1) HEALTH INSURER.—The term ''health insurer'' means—

(A) an insurance company, healthcare service contractor, fraternal benefit organization, insurance agent, third-party administrator, insurance support organization, or other person subject to regulation under the laws related to health insurance of any State;

(B) a managed care organization; or

(C) an employee welfare benefit plan regulated under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(2) HEALTH PLAN.—The term ''health plan'' means—

(A) a group health plan (as such term is defined in section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167)), and a multiple employer welfare arrangement (as defined in section 3(4) of such Act) that provides health insurance coverage; or

(B) any contractual arrangement for the provision of a payment for healthcare, including any health insurance arrangement or any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organizing subscriber contract.

(c) CONFORMING AMENDMENTS.—

(1) ERISA.—Section 702(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)), is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.''.

(2) PUBLIC SERVICE HEALTH ACT.—Section 2702(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)) is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.''.

(3) INTERNAL REVENUE CODE OF 1986.—Section 9802(a)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.''.

TITLE V—ASBESTOS BAN

SEC. 501. PROHIBITION ON ASBESTOS CONTAINING PRODUCTS.

(a) IN GENERAL.—Title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.) is amended—

(1) by inserting before section 201 (15 U.S.C. 2641) the following:

''Subtitle A—General Provisions'';

and

(2) by adding at the end the following:

''Subtitle B—Ban of Asbestos Containing Products

''SEC. 221. BAN OF ASBESTOS CONTAINING PRODUCTS.

''(a) DEFINITIONS.—In this chapter:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

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

''(A) chrysotile;

''(B) amosite;

''(C) crocidolite;

''(D) tremolite asbestos;

''(E) winchite asbestos;

''(F) richterite asbestos;

''(G) anthophyllite asbestos;

''(H) actinolite asbestos;

''(I) [amphibole asbestos] *asbestiform amphibole minerals*; and

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

''(3) ASBESTOS CONTAINING PRODUCT.—The term 'asbestos containing product' means any product (including any part) to which asbestos is deliberately or knowingly added or used because the specific properties of asbestos are necessary for product use or function. Under no circumstances shall the term 'asbestos containing product' be construed to include products that contain de minimus levels of naturally occurring asbestos as defined by the Administrator not later than 1 year after the date of enactment of this chapter.

''(4) DISTRIBUTE IN COMMERCE.—The term 'distribute in commerce'—

''(A) has the meaning given the term in section 3 of the Toxic Substances Control Act (15 U.S.C. 2602); and

''(B) shall not include—

''(i) an action taken with respect to an asbestos containing product in connection with the end use of the asbestos containing product by a person that is an end user, or an action taken by a person who purchases or receives a product, directly or indirectly, from an end user; or

''(ii) distribution of an asbestos containing product by a person solely for the purpose of disposal of the asbestos containing product in compliance with applicable Federal, State, and local requirements.

''(b) IN GENERAL.—Subject to subsection (c), the Administrator shall promulgate—

''(1) not later than 1 year after the date of enactment of this chapter, proposed regulations that—

''(A) prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products; and

''(B) provide for implementation of subsections (c) and (d); and

''(2) not later than 2 years after the date of enactment of this chapter, final regulations that, effective 60 days after the date of promulgation, prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products.

''(c) EXEMPTIONS.—

''(1) IN GENERAL.—Any person may petition the Administrator for, and the Administrator may grant, an exemption from the requirements of subsection (b), if the Administrator determines that—

''(A) the exemption would not result in an unreasonable risk of injury to public health or the environment; and

''(B) the person has made good faith efforts to develop, but has been unable to develop, a substance, or identify a mineral that does not present an unreasonable risk of injury to public health or the environment and may be substituted for an asbestos containing product.

''(2) TERMS AND CONDITIONS.[—An] *Except for an exception authorized under paragraph (3)(A)(i), an* exemption granted under this subsection shall be in effect for such period (not to exceed 5 years) and subject to such terms and conditions as the Administrator may prescribe.

''(3) GOVERNMENTAL USE.—

[''(A) IN GENERAL.—The Administrator of the Environmental Protection Agency shall provide an exemption from the requirements of subsection (b), without review or limit on duration, if such exemption for an asbestos containing product is—

[''(i) sought by the Secretary of Defense and the Secretary certifies, and provides a copy of that certification to Congress, that—

[''(I) use of the asbestos containing product is necessary to the critical functions of the Department;

[''(II) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and

[''(III) use of the asbestos containing product will not result in an unreasonable risk to health or the environment; or

[''(ii) sought by the Administrator of the National Aeronautics and Space Administration and the Administrator of the National Aeronautics and Space Administration certifies, and provides a copy of that certification to Congress, that—]

''(A) IN GENERAL.—

''(i) DEPARTMENT OF DEFENSE.—Nothing in this section or in the regulations promulgated by the Administrator under subsection (b) shall prohibit or limit the manufacture, processing, or distribution in commerce of asbestos containing products by or for the Department of Defense or the use of asbestos containing products by or for the Department of Defense if the Secretary of Defense certifies (or recertifies within 10 years of a prior certification), and provides a copy of the certification to Congress, that—

''(I) use of asbestos containing product is necessary to the critical functions of the Department, which includes the use of the asbestos containing product in any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature;

''(II) no reasonably available and equivalent alternatives to the asbestos containing product exist for the intended purpose; and

''(III) use of the asbestos containing product will not result in a known unreasonable risk to health or the environment.

''(ii) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.—The Administrator of the Environmental Protection Agency shall provide an exemption from the requirements of subsection (b), without review or limit on duration, if such exemption for an asbestos containing product is sought by the Administrator of the National Aeronautics and Space Administration and the Administrator of the National Aeronautics and Space Administration certifies, and provides a copy of that certification to Congress, that—

''(I) the asbestos containing product is necessary to the critical functions of the National Aeronautics and Space Administration;

''(II) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and

''(III) the use of the asbestos containing product will not result in an unreasonable risk to health or the environment.

''(B) ADMINISTRATIVE PROCEDURE ACT.—Any certification required under subparagraph (A) shall not be subject to chapter 5 of title 5, United States Code (commonly referred to as the 'Administrative Procedure Act').

''(4) SPECIFIC EXEMPTIONS.—The following are exempted:

''(A) Asbestos diaphragms for use in the manufacture of chlor-alkali and the products and derivative therefrom.

''(B) Roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt, subject to a determination by the Administrator of the Environmental Protection Agency under paragraph (5).

''(5) ENVIRONMENTAL PROTECTION AGENCY REVIEW.—

''(A) REVIEW IN 18 MONTHS.—Not later than 18 months after the date of enactment of this chapter, the Administrator of the Environmental Protection Agency shall complete a review of the exemption for roofing cements, coatings, and mastics utilizing asbestos that are totally encapsulated with asphalt to determine whether—

''(i) the exemption would result in an unreasonable risk of injury to public health or the environment; and

''(ii) there are reasonable, commercial alternatives to the roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt.

''(B) REVOCATION OF EXEMPTION.—Upon completion of the review, the Administrator of the Environmental Protection Agency shall have the authority to revoke the exemption for the products exempted under paragraph (4)(B), if warranted.

''(d) DISPOSAL.—

''(1) IN GENERAL.—Except as provided in paragraph (2), not later than 3 years after the date of enactment of this chapter, each person that possesses an asbestos containing product that is subject to the prohibition established under this section shall dispose of the asbestos containing product, by a means that is in compliance with applicable Federal, State, and local requirements.

''(2) EXEMPTION.—Nothing in paragraph (1)—

''(A) applies to an asbestos containing product that—

''(i) is no longer in the stream of commerce; or

''(ii) is in the possession of an end user or a person who purchases or receives an asbestos containing product directly or indirectly from an end user; or

''(B) requires that an asbestos containing product described in subparagraph (A) be removed or replaced.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended—

(1) by inserting before the item relating to section 201 the following:

''Subtitle A—General Provisions'';

and

(2) by adding at the end of the items relating to title II the following:

''Subtitle B—Ban of Asbestos Containing Products

''Sec. 221. Ban of asbestos containing products.''.

SEC. 502. NATURALLY OCCURRING ASBESTOS.

(a) STUDY.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall—

(A) conduct a study to assess the risks of exposure to naturally occurring asbestos, including the appropriateness of the existing risk assessment values for asbestos and methods of assessing exposure; and

(B) submit a report that contains a detailed statement of the findings and conclusions of such study to—

(i) the majority and minority leaders of the Senate;

(ii) the Speaker and the minority leader of the House of Representatives; and

(iii) the relevant committees of jurisdiction of the Senate and House of Representatives, including—

(I) the Environment and Public Works Committee of the Senate;

(II) the Appropriations Committee of the Senate;

(III) the Judiciary Committee of the Senate;

(IV) the Energy and Commerce Committee of the House of Representatives;

(V) the Judiciary Committee of the House of Representatives; and

(VI) the Appropriations Committee of the House of Representatives.

(2) DEVELOPMENT REQUIREMENTS.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency, in consultation with appropriate Federal and State agencies and other interested parties after appropriate notice, shall establish dust management guidelines, and model State regulations that States can choose to adopt, for commercial and residential development, and road construction in areas where naturally occurring asbestos is present and considered a risk. Such dust management guidelines may at a minimum incorporate provisions consistent with the relevant California Code of Regulation (17 C.C.R. 93105–06).

(B) DUST MANAGEMENT GUIDELINES.—Guidelines under this paragraph shall include—

(i) site management practices to minimize the disturbance of naturally occurring asbestos and contain asbestos mobilized from the source at the development site;

(ii) air and soil monitoring programs to assess asbestos exposure levels at the development site and to determine whether asbestos is migrating from the site; and

(iii) appropriate disposal options for asbestos-containing materials to be removed from the site during development.

(b) TESTING PROTOCOLS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency, in consultation with appropriate State agencies, shall establish comprehensive protocols for testing for the presence of naturally occurring asbestos.

(2) PROTOCOLS.—The protocols under this subsection shall address both ambient air monitoring and activity-based personal sampling and include—

(A) suggested sampling devices and guidelines to address the issues of methods comparability, sampler operation, performance specifications, and quality control and quality assurance;

(B) a national laboratory and air sampling accreditation program for all methods of analyses of air and soil for naturally occurring asbestos;

(C) recommended laboratory analytical procedures, including fiber types, fiber lengths, and fiber aspect ratios; and

(D) protocols for collecting and analyzing aggregate and soil samples for asbestos content, including proper and consistent sample preparation practices suited to the activity likely to occur on the soils of the study area.

(c) EXISTING BUILDINGS AND AREAS.—Not later than 1 year after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall issue public education materials, recommended best management practices and recommended remedial measures for areas containing naturally occurring asbestos including existing—

(1) schools and parks; and

(2) commercial and residential development.

(d) MAPPING.—The Secretary of the Interior shall—

(1) acquire infrared mapping data for naturally occurring asbestos, prioritizing California counties experiencing rapid population growth;

(2) process that data into map images; and

(3) collaborate with the California Geological Survey and any other appropriate State agencies in producing final maps of asbestos zones.

(e) RESEARCH GRANTS.—The Director of the National Institutes of Health shall administer 1 or more research grants to qualified entities for studies that focus on better understanding the health risks of exposure to naturally occurring asbestos. Grants under this subsection shall be awarded through a competitive peer-reviewed, merit-based process.

(f) TASK FORCE PARTICIPATION.—Representatives of Region IX of the United States Environmental Protection Agency, and the Agency for Toxic Substances and Disease Registry of the United States Department of Health and Human Services shall participate in any task force convened by the State of California to evaluate policies and adopt guidelines for the mitigation of risks associated with naturally occurring asbestos.

(g) MATCHING GRANTS.— The Administrator of the Environmental Protection Agency is authorized to award 50 percent matching Federal grants to States and municipalities. Not later than 4 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall establish criteria to award such grants—

(1) for monitoring and remediation of naturally occurring asbestos—

(A) at schools, parks, and other public areas; and

(B) in serpentine aggregate roads generating significant public exposure; and

(2) for development, implementation, and enforcement of State and local dust management regulations concerning naturally occurring asbestos, provided that after the Administrator has issued model State regulations under subsection (a)(2), such State and local regulations shall be at least as protective as the model regulations to be eligible for the matching grants.

(h) AVAILABILITY OF FUNDS.—An amount of $40,000,000 from the Fund shall be made available to carry out the requirements of this section, including up to $9,000,000 for the Secretary of the Interior to carry out subsection (d), up to $4,000,000 for the Director of the National Institutes of Health to carry out subsection (e), and the remainder for the Administrator of the Environmental Protection Agency, at least $15,000,000 of which shall be used for the matching grants under subsection (g).

(i) CONSTRUCTION.—

(1) GUIDELINES AND PROTOCOLS.—The guidelines and protocols issued by the Administrator of the Environmental Protection Agency under the specific authorities in subsections (a), (b), and (c) shall be construed as nonbinding best practices unless adopted as a mandatory requirement by a State or local government. Notwithstanding the preceding sentence, accreditation for testing will not be granted except in accordance with the guidelines issued under subsection (b)(2)(B).

(2) FEDERAL CAUSES OF ACTION.—This section shall not be construed as creating any new Federal cause of action for civil, criminal, or punitive damages.

(3) FEDERAL CLAIMS.—This section shall not be construed as creating any new Federal claim for injunctive or declaratory relief against a State, local, or private party.

(4) STATES AND LOCALITIES.— Nothing in this section shall limit the authority of States or localities concerning naturally occurring asbestos.

Mr. KENNEDY. Mr. President, I understand there is no time limit on speeches. Am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. Many Senators on both sides of the aisle find the concept of a trust fund to compensate the victims of asbestos-related diseases appealing. I have consistently said that I would support a properly designed and adequately funded trust fund bill that would fairly compensate all the victims of asbestos-induced disease in a timely way. The problem is that S. 852 does not meet that standard. It is not properly designed and it is not adequately funded. Many seriously ill victims of asbestos disease are completely excluded from compensation under the fund. And the legislation does not even provide adequate revenue to ensure that all the victims who are eligible for compensation under the terms of the trust fund will actually receive what the legislation promises them. These are fundamental flaws that cannot be corrected by a few last minute amendments. They go to the heart of the bill.

The problem is that powerful corporate interests responsible for the asbestos epidemic have fought throughout this process to escape full accountability for the harm they have inflicted. As a result, the focus has shifted from what these companies should pay victims to what they are willing to pay them. That is preventing the Senate from enacting trust fund legislation that will truly help the workers who have been seriously injured by this industrial plague.

This legislation was constructed backwards. The first decision made was that the size of the trust fund could not exceed $140 billion over 30 years. Why? Because that was all the corporations whose reckless conduct created the asbestos problem were willing to pay. The Asbestos Study Group, the chief lobbyists for this legislation, began this process by promising ''an evergreen fund'' that would provide as much money as necessary over time to fairly compensate the victims of asbestos disease. But they soon reneged on that commitment. Instead, these companies are now insisting on an absolute cap on their liability—no matter how many victims are suffering from asbestos-induced disease or how serious their illnesses. Asbestos diseases take years, sometimes decades, to develop after the exposure to asbestos fibers. Thus, no one can say for sure how many victims there will be. The companies claim that they need financial certainty to plan for the future. What about the millions of victims of asbestos exposure who live every day under

the cloud of asbestos disease? What about the ability of these workers and their families to plan for their future?

Each year, more than 10,000 of them die from lung cancer and other diseases caused by asbestos. Each year, hundreds of thousands of them suffer from lung conditions which make breathing so difficult that they cannot function at all. Even more become unemployable due to their medical condition. And, because of the long latency period of these diseases, all of them live with fear of a premature death due to asbestos-induced disease. These are the real victims. Aren't they entitled to the certainty of knowing that, should the worst happen, they and their families will be fairly compensated? All S. 852 offers them is an inadequately funded trust fund that most experts believe will be insolvent within a few years.

The real crisis which confronts us is not an ''asbestos litigation crisis,'' it is an asbestos-induced disease crisis. All too often, the tragedy these workers and their families are enduring becomes lost in a complex debate about the economic impact of asbestos litigation. We cannot allow that to happen. The litigation did not create these costs. Exposure to asbestos created them. They are the costs of medical care, the lost wages of incapacitated workers, and the cost of providing for the families of workers who died years before their time. Those costs are real. No legislative proposal can make them disappear. All legislation can do is shift those costs from one party to another. Unfortunately, S. 852 would shift more of the financial burden onto the backs of injured workers. That is unacceptable.

Senators SPECTER and LEAHY have devoted an enormous amount of time and effort to this asbestos trust fund legislation. They did not set the arbitrary $140 billion ceiling. The Republican leadership made clear that the trust fund could not exceed that amount regardless of the legitimate needs of asbestos victims. The sponsors were left with the unenviable task of deciding which worthy claims to exclude. As a result, the bill before us contains fundamental flaws, which make it both unfair and unworkable. It does not provide a reliable guarantee of just compensation to the enormous number of workers who are suffering from asbestos-induced disease.

The argument that there are serious inadequacies in the way asbestos cases are adjudicated today does not mean that any legislation is better than the current system. Our first obligation is to do no harm. We should not be supporting legislation that excludes many seriously ill victims from receiving compensation and that fails to provide a guarantee of adequate funding to make sure that these injured workers covered by the trust fund will actually receive what the bill promises them. This bill will do harm to these asbestos victims.

The list of serious flaws in S. 852 is, unfortunately, a long one. I will focus my remarks on several of the most egregious.

Experts tell us that the asbestos trust created by this legislation is seriously underfunded. The funding plan in this bill relies on very substantial borrowing in the early years as the only way to pay the flood of claims. The result will be huge debt service costs over the life of the trust that could reduce the $140 billion intended to pay claims by as much as 40 percent. The amount remaining would be far too little to pay the claims of all of those who are entitled to compensation under the terms of the bill.

In addition, there is a strong constitutional argument that the existing bankruptcy trusts cannot be forced to turn over all their assets, which will place $7.6 billion of the projected funding in jeopardy. Many companies are also likely to challenge their obligation to finance the asbestos trust. It is not at all clear how much money will actually be available to pay eligible victims what the legislation promises they will receive.

There is likely to be a serious shortfall in the early years, when nearly 300,000 pending cases will be transferred to the trust for payment. Studies show the trust will not have the resources to pay those claims in a timely manner. Payments to critically ill people may be delayed for years.

One way to reduce the enormous financial burden on the fund in the early years would be to leave many of those cases in the tort system, especially cases which were close to resolution. That would be fair to the parties in those cases and it would greatly improve the financial viability of the fund. Unfortunately, that proposal has been repeatedly rejected by the sponsors of the bill. As a result, there will be a serious mismatch between the number of claims the trust fund will face when its doors open and the payments coming into the fund. That will force major borrowing in the first 5 years. The debt service resulting from that borrowing will financially cripple the trust.

In its August report, CBO recognizes the seriousness of this debt-service problem, explaining:

> Because expenses would exceed revenues in many of the early years of the fund's operations, the Administrator would need to borrow funds to make up the shortfall. The interest cost of this borrowing would add significantly to the long-term costs faced by the fund and contributes to the possibility that the fund might become insolvent.

In a response to inquiries from Judiciary Committee members last week, CBO issued an even more dire warning about the likelihood of insolvency:

> There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, as well as debt-service and administrative costs. There is also some likelihood that the fund's revenues would be sufficient to meet those needs. The final outcome cannot be predicted with great certainty. Without a substantial increase in the resources available to the fund, there is no way to guarantee that the fund will not either revert to the court system or require additional funding.

That statement should trouble every Senator on both sides of the aisle. There is ''a significant likelihood that the fund's revenues would fall short.'' While we may disagree on other issues regarding compensation for asbestos victims, each of us knows that it would be disastrous—for victims and businesses alike—to create a trust fund that cannot meet its financial commitment to victims and is destined for insolvency. None of us want to see that result. We cannot in good conscience ignore the warnings from the Congressional Budget Office and from other experts.

In addition to the concerns CBO has identified, there are other major problems with S. 852 related to the projections of pending and future claims that could push the trust fund even further out of balance.

For example, there has been a significant increase in the number of mesothelioma cases in recent years. The only known cause of mesothelioma is asbestos exposure. This new information suggests that the CBO cost estimate may understate the cost of the mesothelioma claims that the trust fund will incur by more than $15 billion. This is by no means the only instance where there is strong evidence to suggest that the number of eligible claimants will substantially exceed CBO estimates.

If S. 852 is enacted, the U.S. Government will be making a commitment to compensate hundreds of thousands of seriously ill asbestos victims, but will not have ensured that adequate dollars are available to honor its commitment. That will precipitate a genuine asbestos crisis, and this Congress will bear the responsibility for it. Since the trust fund will be borrowing extensively from the U.S. Treasury in its first few years of operation; if it does become insolvent, there will be a direct impact on American taxpayers.

The legislation before us would close the courthouse doors to asbestos victims on the day it passes, long before the trust fund will be able to pay their claims. Their cases will be stayed immediately. Seriously ill workers will be forced into a legal limbo for up to 2 years. Their need for compensation to cover medical expenses and basic family necessities will remain, but they will have nowhere to turn for relief.

Under the legislation, even exigent health claims currently pending in the courts will be automatically stayed for 9 months as of the date of enactment. An exigent health claim is one in which the victim has been diagnosed ''as being terminally ill from an asbestos-related illness and having a life expectancy of less than one year.''

By definition, these cases all involve people who have less than a year to live due to mesothelioma or some other disease caused by asbestos exposure. Their cases would all be stayed

for 9 months. Nine months is an eternity for someone with less than a year to live. Many of them will die without receiving either their day in court or compensation from the trust fund.

The stay language is written so broadly that it would even stop all forward movement of a case in the court system. A trial about to begin would be halted. An appellate ruling about to be issued would be barred. Even the deposition of a dying witness could not be taken to preserve his testimony. The stay would deprive victims of their last chance at justice. I cannot believe that the authors of this bill intended such a harsh result, but that is what the legislation does.

The bill does contain language allowing an ''offer of judgment'' to be made during the period of the stay in the hope of producing a settlement. However, this provision is unlikely to resolve many cases because it requires the agreement of the defendants. There is no incentive for defendants to agree to a settlement when the case has been stayed. Those who have tried cases know that it is only the imminence of judicial action which produces a settlement in most cases. Delay is the defendant's best ally; and under this bill, the case is at least delayed for 9 months and may never be allowed to resume if the fund becomes operational. If, however, these exigent cases were not stayed, and judicial proceedings could continue, there would be far more likelihood of cases settling under the offer of judgment process.

I strongly believe that, at a minimum, all exigent cases should be exempted from the automatic stay in the legislation. Victims with less than a year to live certainly should be allowed to continue their cases in court uninterrupted until the trust fund became operational. Their ability to recover compensation in the court should not be halted until the trust fund is open for business and they are able to receive compensation from that fund. It is grossly unfair to leave these dying victims in a legal limbo. For them, the old adage is especially true—justice delayed is justice denied.

Under the legislation, defendants would receive a credit against what they must contribute to the trust fund for whatever payments they make to these dying victims; so they would not be ''paying twice,'' as some have claimed.

Allowing the exigent cases to go forward in the courts without interruption is a matter of simple fairness. Staying the cases of victims who have less than a year to live is bureaucratic insensitivity at its worst. Most of these victims will not live to see the doors of the trust fund open.

We should not deprive them of their last chance—their only chance—to receive some measure of justice before asbestos-induced disease silences them. They should be allowed to receive compensation in their final months to ease their suffering. They should be allowed to die knowing that their families are financially provided for. S. 852 in its current form takes that last chance away from them.

I intend to offer an amendment to allow these severely ill victims to have their day in court.

The way the legislation is written, victims will lose out at the back end of the process as well, should the trust fund run out of money after several years of operation.

If the trust fund does become insolvent, a very real possibility, workers will not have an automatic right to immediately return to the court system. The process outlined in the current bill could take years. Workers could end up trapped in the trust with reduced benefits and long delays in receiving their payments. There needs to be a clear, objective trigger—inability of the trust to pay a certain percentage of claims within a set period of time—that will automatically allow victims to pursue their claims in court if the trust runs out of money. The Judiciary Committee's 2003 legislation contained such a provision, but this bill does not. We cannot allow seriously injured workers with valid claims who are not paid in a timely manner by the trust to be denied their day in court. That would be a shameful injustice.

The asbestos trust is being presented as an alternative source of compensation for victims suffering from asbestos-induced disease. If that alternative runs out of money and can no longer compensate those victims in a full and timely manner, their right to seek compensation through the judicial system should be immediately restored with no strings attached. No principle is more basic. Yet this bill violates that principle.

I am particularly upset by the way lung cancer victims are treated in this bill. Under the medical criteria adopted by the Judiciary Committee overwhelmingly 2 years ago, all lung cancer victims who had at least 15 years of weighted exposure to asbestos were eligible to receive compensation from the fund. However, that was changed in S. 852. Under this bill, lung cancer victims who have had very substantial exposure to asbestos over long periods of time are denied any compensation unless they can show asbestos scarring on their lungs. The committee heard expert medical testimony that prolonged asbestos exposure dramatically increases the probability that a person will get lung cancer even if they do not have scarring on their lungs. Deleting this category will deny compensation to more than 40,000 victims suffering with asbestos-related lung cancers. Under the legislation as now drafted, these victims are losing their right to go to court, but receiving nothing from the fund. How can any of us support such an unconscionable provision?

Since we began considering asbestos legislation, no aspect has concerned me more than the treatment of lung cancer victims. My top priority has been to make sure that these severely ill workers receive just and fair compensation.

And I have not been alone. A number of other Members have spoken out about the importance of adequately providing for lung cancer victims who have been exposed to substantial amounts of asbestos over long periods of time.

Now we find that these victims, many of whom will have their lives cut short because of asbestos-induced disease, will not receive one penny in compensation from the trust fund. They are losing their right to go to court, but being denied any right to compensation under the fund. They are, in essence, being told to suffer in a legally imposed silence with no recourse whatsoever.

One of the arguments we hear most frequently in favor of creating an asbestos trust fund is that in the current system, too much money goes to people who are not really sick and too little goes to those who are seriously ill. Well, lung cancer victims who have years of exposure to asbestos are the ones who are seriously ill. They are the ones this legislation is supposed to be helping. Yet they are being completely excluded.

The committee heard extensive testimony from distinguished medical experts—Dr. Laura Welsh and Dr. Philip Landrigan—that prolonged exposure to asbestos can cause lung cancer even if the victim does not also have markers of nonmalignant asbestos disease. They cited numerous medical authorities supporting their position. They even described treating lung cancer victims whose disease was clearly caused by asbestos but who had neither pleural thickening or asbestosis.

In a situation where people are undeniably severely ill and undeniably had 15 or more years of weighted exposure to asbestos, it is wrong to completely exclude them from compensation under the trust fund. Some of the proponents of S. 852 have attempted to justify excluding them by claiming that smoking probably caused their lung cancers. But, the evidence refutes this contention.

First, even those lung cancer victims with 15 or more weighted years of exposure to asbestos who had never smoked were removed from eligibility for compensation under the trust fund. So this is about more than just the relationship between asbestos and smoking.

Second, regarding the smoking issue, Dr. Landrigan testified that smokers who have substantial exposure to asbestos have 55 times the background risk of developing lung cancer, while smokers who were not exposed to asbestos have 10 times the background risk of developing lung cancer. Clearly, the asbestos exposure makes a huge difference.

There is a powerful synergistic effect between asbestos and tobacco in the

causation of lung cancer. Both are substantial contributing factors to the disease. The smoker with substantial asbestos exposure should receive less compensation from the trust fund than the nonsmoker with lung cancer. That principle appears throughout the bill. But smoking is not a reason to exclude the smoker from all compensation.

Without prolonged exposure to asbestos, the smoker would have been far less likely to contract lung cancer. It is a gross injustice to completely exclude these severely ill workers.

Any person who was exposed to asbestos for 15 or more weighted years and now has lung cancer should be eligible for compensation from the trust fund. It would not be automatic. Their cases would be reviewed individually by a panel of physicians to determine whether asbestos was a ''substantial contributing factor'' to their lung cancer. These 40,000 victims of asbestos should not be arbitrarily excluded from receiving compensation. They were included in the original legislation, it was agreed to by medical experts for both business and labor, and that provision should be restored to the bill. I will be proposing an amendment to rectify this serious injustice.

This bill also tampers with the agreed-upon medical criteria carefully negotiated between representatives of business and labor by raising the standard of proof for each disease category. The language in S. 852 requires the workers to prove that asbestos was ''a substantial contributing factor'' to their disease, instead of just ''a contributing factor.'' This is a major increase in the burden workers must overcome to receive compensation. It is significantly higher than most states currently require in a court of law. Rather than having to show that asbestos exposure contributed to their illness, they will now have to address the relative impact of asbestos and other potential factors. This change is a serious step in the wrong direction, raising the bar even higher on injured workers.

Another major shortcoming of this legislation is its failure to compensate the residents of areas that have experienced large-scale asbestos contamination. S. 852 simply pretends that this problem does not exist. It fails to compensate the victims of all asbestos-induced diseases, other than mesothelioma, whose exposure was not directly tied to their work. There is very substantial scientific evidence showing that the men, women and children who lived in the vicinity of asbestos-contaminated sites, such mining operations and processing plants, can and do contract asbestos-induced disease.

The reason that this legislation needs a special provision to compensate the residents of Libby, MT, is because it does not compensate victims of community contamination generally. The residents of Libby are certainly entitled to compensation, but so are the residents who lived near the many processing plants from Massachusetts to California that received the lethal ore from the Libby mine. The deadly dust from Libby, MT, was spread across America. W.R. Grace shipped almost 10 billion pounds of Libby ore to its processing facilities between the 1960s and the mid 1990s. One of the places it was shipped was to the town of Easthampton, MA, where the operations of an expanding plant spread the asbestos to the surrounding environment, into the air and onto the soil. I intend to discuss this problem in great detail as the debate moves forward.

I raise it now as a dramatic example of one of the major injustices caused by the arbitrary exclusion of a large number of asbestos victims from compensation under the trust fund. Nor is the problem of community contamination limited to the sites receiving ore from Libby. Community asbestos contamination can result from many different sources. For example, medical experts believe it may result from exposure to asbestos after the collapse of the World Trade Center. Because of the long latency period, we often do not learn about community asbestos contamination until long after it occurs. Certainly these victims of asbestos are entitled to fair treatment as well. They should not be arbitrarily excluded from compensation as if their suffering is somehow less worthy of recognition than the suffering of other asbestos victims. Yet that is what S. 852 does.

This is a bill that shifts more of the financial burden of asbestos-induced disease to injured workers by unfairly and arbitrarily limiting the liability of defendants. It does not establish a fair and reliable system that will compensate all those who are seriously ill due to asbestos. It lacks a dependable funding stream which can ensure that all who are entitled to compensation actually receive full and timely payment. These are very basic shortcomings.

We cannot allow what justice requires to be limited by what the wrongdoers are willing to pay. I intend to vote no and I urge my colleagues to do the same.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Utah.

Mr. HATCH. Mr. President, I rise today to speak in favor of S. 852, the bipartisan Fairness in Asbestos Injury Resolution Act of 2005. I commend the majority leader and Chairman SPECTER and Senator LEAHY for seizing the bull by the horns and proceeding with this vitally important litigation. And it is bipartisan legislation.

Make no mistake about this—this bill is not perfect. There are some things in the act that I wish were different, but that is the nature of the legislative process. It is about compromise and negotiation.

In a moment, I will speak to specific aspects of this bill. But before I do, I would like to take a moment to respond to some of the allegations that my colleagues made on the floor yesterday.

Some of them spoke of corruption. They spoke of undue influence wielded by lobbyists. And they spoke of fairness.

The truth is, this legislation is badly needed. Personal injury lawyers—some personal injury lawyers—are profiting at the expense of asbestos victims and manufacturers alike.

This bill is about fairness, justice, and certainty. It has become a bill that has tried to do away with fraud because this situation is fraught with fraud—fraud on American businesses, fraud on American consumers, and, more importantly, fraud on asbestos victims.

Let me tell you what this bill does. This bill provides real compensation to real victims with real injuries. This bill stops a rampaging personal injury trial bar. This bill fixes a broken legal system that benefits personal injury lawyers at the expense of asbestos victims. And this bill provides certainty to everyone involved.

Some of my colleagues on the other side have called S. 852 special interest legislation. If helping sick people and preventing fraud constitutes special interest action, then maybe they could get away with that charge. But I am very proud—and I think anybody who supports this bill would be proud—to support legislation that assists those special interests.

I ask my colleagues: Do you know who opposes this bill? It is the personal injury lawyers involved. They are a small cadre of the total number of American Trial Lawyers Association members. These trial lawyers have fought this legislation the same way the old gunslingers fought the law in the Wild West. Some of my colleagues have spoken of bragging lobbyists. The only people I have ever heard bragging about the scams that are going on are some of these personal injury lawyers.

Do you know when I heard them bragging? Last Congress, when we failed to invoke cloture on this bill's predecessor. It was not lobbyists or manufacturers or asbestos victims who were having some celebratory steak and champagne dinners in 2004; it was the personal injury lawyers. Why would they celebrate? They were celebrating because they successfully preserved their 40-percent payout on massive class action lawsuits and the exorbitant transaction costs that raise the amounts taken from victims to almost 60 percent, with only about 40 percent given to the victims. They were celebrating because their meal ticket was not taken away from them. Not this time.

Before I continue, I wish to point out not all personal injury lawyers are bad, certainly not all trial lawyers. I was a trial lawyer in my younger days. I know most of them are good people with good intentions. However, as they say, it only takes one bad apple to spoil the whole bushel.

We face an asbestos litigation crisis of unparalleled magnitude. Real asbestos victims with horrific injuries are receiving pennies on the dollar, while people who are not sick, or at least their lawyers, are receiving millions of dollars. American companies, businesses both large and small, many of which never produced or used asbestos fibers, are being forced into bankruptcy by fraudulent lawsuits. These bankruptcies hurt all Americans. Pensions are destroyed, jobs are lost, and all because our current legal system is vulnerable to unscrupulous trial lawyers. We have had the Supreme Court ask the Congress three times to weigh in on this and stop this mess from continuing. That is what we are trying to do with this bill.

According to the RAND Institute for Civil Justice, the asbestos crisis has been called the worst occupational health disaster in U.S. history. The personal injury bar has compounded that disaster by filing countless meritless claims that deprive the truly injured of their just and deserved compensation. The RAND Institute has found that approximately 730,000 people have filed asbestos claims through 2002. Despite the fact that asbestos claims should decrease each year due to OSHA and, to some extent, EPA actions in the 1970s and 1980s which severely curtailed national asbestos exposure, we have seen a significant increase in the number of claims, particularly nonmalignant claims, during the last 15 years. It is a gravy train for some of these lawyers. That does not dismiss the fact that there are people who are hurt by this, many of whom are not going to get a dime because a large number of their companies are bankrupt.

The large number of claims—expected to burgeon to the million-plus mark in the not-so-distant future—has resulted in 77 bankruptcies, the loss of some 60,000 jobs, or workers' privileges, and the depletion of countless pension programs. Moreover, due to the nature and number of these claims, compensation for the truly ill is often arbitrary and inequitable. According to the RAND Institute study, only 42 cents of every dollar spent on asbestos litigation actually goes to the asbestos victims; 31 cents goes to defense costs, and 27 cents goes to plaintiffs' attorneys. The situation becomes all the more deplorable when one factors in the ghastly specter of fraud. One study has shown that 41 percent of audited claims of alleged asbestosis or pleural disease were found to have either no disease or a less severe disease than alleged by the personal injury experts. That is simply unacceptable. We are trying to solve that problem.

At present there are more than 300,000 asbestos-related claims pending before this Nation's courts. Company after company has plunged into bankruptcy with disastrous results. Some victims have gone without compensation and many have nowhere to turn. Thousands have lost their jobs. The only winners in most cases are the personal injury lawyers. Asbestos trial lawyers have pulled in over $20 billion in attorney's fees. One actuarial firm estimates that personal injury lawyers are expected to filch another $40 billion before they run out of victims. I don't have any problem with lawyers getting contingent fees for legitimate cases. I don't have any problem with that. But the fact is, many of these cases are not legitimate. It is time to make a choice. That choice is between private jets for trial lawyers and meaningful compensation for asbestos victims.

Before I move on to the operational aspects of this legislation, I wish to take a moment to talk about the victims of asbestos exposure. Unfortunately, veterans comprise a large percentage of this group. I wish to make a plea on their behalf. This may be the last chance to help the men and women who served this country with such distinction and who, as a result of that service, were exposed to asbestos fibers. Time is rapidly running out for this group and many, if not most, of the companies they could turn to are now bankrupt, mainly because of these lawsuits. Even if they are not bankrupt, lawsuits take so much time and the verdicts are so uncertain that many will be cheated out of their just compensation. Even if some of these fine men and women manage to obtain a verdict against a company with sufficient assets to make good on the obligation, about 58 percent of the award would be consumed not by the victim but by trial lawyers. That is plain wrong.

Let me tell you how this bill works. S. 852 will compensate legitimate asbestos victims in a timely fashion on a no-fault basis. They are not going to have to go to court to prove their case. Claimants must demonstrate they meet certain medical criteria—and those criteria were agreed on in a bipartisan agreement—but once that threshold showing has been made, thereby assuring that only the truly sick are compensated, the claimants will receive timely compensation based upon the nature of the injury.

Some of my colleagues asserted that all claimants under this bill obtain a one-size-fits-all settlement if they meet the medical criteria requirements. As Chairman SPECTER has pointed out, that is plain wrong. There are nine tiers and corresponding awards under this bill, and it allows for further compensation if the condition worsens, meaning if a claimant had a level 2 injury that later developed into a level 8 injury or more serious injury, that individual can obtain compensation up to the level 8 or more serious tier. That makes sense to me.

It is worth pointing out that in addition to providing a no-fault and timely compensation system, the FAIR Act provides certainty to asbestos victims by taking away the whims of juries and the avarice of some of these personal injury lawyers. Under this bill, if you are sick, you will be compensated. Furthermore, this bill promotes economic stability and preserves jobs by taking the uncertain burden of direct and residual asbestos liability away from manufacturers, insurers, and others, and levying a measurable, known, and beneficial sum that will help those truly in need. In other words, they will have to pay, but it will be done on a reasonable, decent basis, so that those who are suffering will get paid in the end, where many of them will not under the current system.

For the victims, it provides meaningful compensation in a relatively short order. It is no-fault compensation for them. For the manufacturers and other defendant entities, it removes the parasitic personal injury bar from the picture and assures that asbestos dollars reach asbestos victims.

Finally, this bill contains an asbestos ban that will help lower asbestos exposure beyond what OSHA has achieved.

I was surprised to hear some opponents of this bill say S. 852 is not ready, that any action on this measure would be premature. Frankly, I am somewhat shocked by this. I will not go into the full history of the bill. In fact, I will limit my discussion of its development to the 107th Congress and beyond. But I must note that efforts in this area predate my efforts and the efforts of then-Chairman LEAHY in the 107th Congress.

Now with tremendous effort, Chairman SPECTER and Ranking Member LEAHY have worked this through in a way that has greatly improved what we were trying to do back then. The Judiciary Committee has held at least a half dozen hearings on asbestos issues, and we have held several exhaustive markups over the years. In addition, I note that Chief Judge Emeritus of the Third Circuit, Edward R. Becker, and now-Chairman SPECTER held at least 36 meetings with stakeholders to reach the compromise before us. This was a monumental effort by Senator SPECTER and Former Chief Judge Edward R. Becker. I just saw Chief Judge Becker over in the Dirksen Building. I know the sacrifices he has made to try and help us on this matter. And to have this bill called special interest legislation, when we have had people such as Judge Becker work out these details by meeting with all concerned, including the trial lawyers, including businesses and individuals and groups and so forth, I don't know when anybody has made such an effort as both Chairman SPECTER and Judge Becker.

We are currently on the third asbestos bill since the beginning of the 108th Congress. We have moved from S. 1125, which was the subject of a 4-day markup over 2 months, to S. 2290, to S. 852. Finally, after a 6-day markup, which also spanned 2 full months, the Judiciary Committee reported the current bill with a bipartisan 13-to-5 vote. That doesn't sound like special interest legislation to me. And it isn't.

With that in mind, it is hard to understand how opponents of this bill can claim with a straight face that this bill is not ready for consideration by the full Senate. That is ridiculous. Can it be amended? Surely. That is why we debate. Can we change aspects of it? Surely. That is why we debate. That is why we have this debate on the floor, if we are ever allowed to debate it.

This brings me to some of the outstanding criticisms of this legislation. First, we have heard it hurts small businesses. Since it is unclear to me what the deleterious effects on small business may be, I find it difficult to even spend time trying to refute those types of baseless charges. I would ask my colleagues who hold this belief to expound upon the allegation so we can better understand their concerns. However, before they do so, I ask my colleagues to look at the small business exception contained within S. 852, specifically section 204(b) of this act. Small businesses do not have to contribute to the fund while at the same time they receive its benefits. I have a hard time understanding why this is bad for small businesses. After all, they do get something for nothing.

The next major objection focuses on the removal of pending cases from court. Such action is unfair, they say. Well, I am puzzled by this assertion as well. First, cases that have proceeded to the evidentiary stage of the trial are not touched by this act. Secondly, the underlying premise of this bill focuses on two things: one, the uncertainty of jury trials and the ability of defendants to pay; two, the parasitical impact some of these voracious trial lawyers have on the process. This bill will provide certainty to the process, ensure those who have been injured will receive compensation, and make sure compensation so awarded goes to the victims and not to the trial bar in such dimensions as we have had so far. In fact, the trial bar will be entitled to fees under this bill; they just won't be as high because the proof is a no-fault proof. It is like rolling off a log. I ask my colleagues, how is that unfair?

The next assertion focuses on the amount of the trust fund. It is not enough to say it is not enough. That is what they say. To that I say, the CBO seems to think the amount falls within the estimated range of claims and, further, that this amount was agreed upon by Majority Leader FRIST and then-Minority Leader Daschle after extensive negotiation. Overall, it would seem some Members on the other side of the aisle want to prevent us from proceeding to this bill. While I am not surprised by obstructive tactics—we have seen them before; I saw a good deal of them during the last Congress and I know enough to be able to say with confidence that what looks like a duck and quacks like a duck is, in fact, a duck—it is obstruction. Why can't we debate this bill up and down? Why don't we get into it? If we have legitimate objections, I am sure the distinguished chairman and ranking member will consider them. That is why we debate these things. I am nonetheless disturbed by the tactics of some on the other side, given the tremendous importance of this legislation to our country.

As I say, the Supreme Court no less than three times asked us to do this—or at least to find some solution to this massive litigation crisis that is clogging our courts, hurting the country, and costing everybody an arm and a leg, without doing the justice to victims that this bill will do.

It is troubling when we consider that without the FAIR Act, more and more Americans are certain to lose their jobs, and more and more victims of asbestos exposure will go without compensation. This all goes to show that personal injury lawyers are a powerful force, and some on the other side of the aisle are willing to hear the voice of the personal injury bar over the voices of hard-working Americans who want to keep their jobs and pensions. Don't tell me about special interest legislation. We all know what special interest is driving the opponents of this bill.

The fact is that this bill continues to create a fair and efficient alternative compensation system to resolve the claims for injury caused by asbestos exposure. The fund is capitalized through private contributions from defendants and insurers, not the Government, and compensates victims under medical criteria that we reached on a bipartisan basis. I thought once we got the medical criteria, this bill should go forward. We had a lot of people on both sides saying they want to support it. Now we are here, and this is the chance to do it. If you don't like it, file amendments. I am sure the distinguished chairman and ranking member will give consideration to the amendments. The bill brings uniformity and rationality to a broken system so that resources are more effectively directed toward those who are truly sick.

I know the last asbestos bill contained no fewer than 53 compromise measures demanded by the Democrats last year. Moreover, I know this bill contains many more. Chairman SPECTER and Ranking Minority Member LEAHY are still working with the labor unions and others to improve the bill. This bill did not sneak up on anybody. It is not the instrument of a wayward group of influential lobbyists. The bipartisan FAIR Act is the product of years of negotiation and hard work—bipartisan people who are interested in solving problems, not creating them.

Not only does this bill guarantee fair compensation to victims, it guarantees faster and more certain compensation at that. We anticipate that claimants will not have to endure years of discovery battles and endless litigation before they get paid. Currently, whether some victims get paid depends on the solvency of businesses. But under the FAIR Act, these victims will no longer have to go without payment. It is time to end the current system of jackpot justice, where only some win and many lose.

Let me mention one group—the mesothelioma victims. Most of them have no chance at being fairly compensated because they work for companies that are now bankrupt. This bill takes care of them and helps them with their problem. Given that this bill is a clear net monetary gain for legitimate victims and provides payments faster and with more certainty, I am at a loss as to why anybody would object to this bill or object to a full and fair debate and a vote up or down. Quite frankly, the only entities that stands to lose under this bill are a handful of personal injury lawyers who have guzzled more than $20 billion of the costs incurred on this issue as of the end of last year. If the improved FAIR Act is passed, they will not be able to leverage unimpaired claims to squeeze a projected $40 billion more for themselves from remotely connected companies by abusing a broken system.

I support compensating attorneys for the value of their work, no question. Honest lawyers deserve to be paid. But when the lawyers get rich while diverting valuable resources away from sick victims and to people who are not victims, people who don't deserve compensation, which is going on here, something is wrong with the system. But you don't need me to tell you this; the Supreme Court, think tanks, and other nonpartisan commentators have been saying it for years.

We have a serious problem on our hands which demands this body's full attention. I applaud our majority leader, the chairman of the Judiciary Committee, Senator SPECTER, and his ranking member, Senator LEAHY, for bringing this bill to the floor. The time to act is now. I would like to see us go forward in a legitimate, honest way to try to solve these problems. If people on either side have objections to the bill or have a reason to try to change it, they can bring amendments forward, and let's battle it out. The chairman has been very open to accepting good ideas. He has consistently done that throughout this process. I don't think anybody can find fault with our chairman for the way he has operated on this bill and how hard he has worked.

We have studied this asbestos problem at length, for decades. We have held numerous hearings, considered legislative proposals, and even underwent several marathon markups in the Judiciary Committee over the years. To the extent there are issues that remain unresolved, we can openly debate them on the floor of the Senate.

The time has come to stop talking about doing something and take decisive action. Every day that passes is a day we withhold meaningful recovery to truly sick victims. Every day that passes is a day in which hard-working Americans at companies that had little

or nothing to do with asbestos face decreased pensions and an uncertain employment future. Every day that passes is a day that we deny consideration of a comprehensive solution to one of the most plaguing civil justice issues of our time.

This is step one. If we can get a bill out of the Senate, this would move forward so fast. The House would have to come up with its legislation, and we would then go to conference. I have no doubt, having watched the chairman and ranking member, that they would be working in good faith to try to accommodate and please all legitimate points of view on these very profound and difficult issues. I compliment them one more time. These folks deserve that we debate this bill fully, that we have a vote up or down on the bill in the end, and that we go through this process and hopefully continue to improve the legislation so that we can do justice in our society.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, first, let me acknowledge the obvious. A lot of work has gone into this bill. Senator SPECTER, Senator LEAHY, and members of the Judiciary Committee, including Senator HATCH, have spent hours, days, weeks, and months preparing this bill. It is a bill that should have taken a long time because it is a bill that says something very basic and fundamental and, in many ways, revolutionary: It says we can no longer trust the court system in America. It says the court system is inadequate in America to compensate victims. That is a charge not made lightly, I am sure, by the sponsor of this legislation. It is one we should not take lightly on the floor of the Senate because we have established over the course of this Nation's history some things which are generally accepted by most Americans.

It is true that Congress and legislatures write the law. The President and executive branch enforce it. And when it comes to making decisions of how that law applies to our lives, we trust the courts. The decision has been made by those who are pushing this bill that we can no longer trust the courts. The decision has been made that we have to replace our court system with something else. If we are going to step away from a time-honored institution and tradition in America to create an alternative, it is a daunting task.

Those of us who have been critical of this legislation are going to hold the sponsors to some very fundamental questions. The first: Can you provide the same level of fairness and compensation in your new system that the courts of America provide today? The answer can be found in responses from victims groups around the country. The victims of asbestos have been writing to Members of Congress saying: Don't pass this legislation. The compensation you will give to the victims and their families is inadequate and unpredictable. Those families have come to see me. They have heartbreaking stories—stories of young men and young women whose lives were snuffed out because of exposure to asbestos. In not a single case have I ever met somebody who said: I guess I knew I had it coming to me; I decided to expose myself to asbestos. I never ran into a person like that or heard a story like that.

The victims of asbestos are as surprised by the diagnosis as they can be. It is no surprise to us when we consider this insidious disease. These flaky fibers which are breathed into the lungs can sit there like a timebomb for decades. Do you recall the movie actor named Steve McQueen? He died from mesothelioma. He was exposed to asbestos at some point in his life, which later exploded into a fatal lung disease. Earlier this week on the floor, I talked about my former colleague, Bruce Vento, of Minnesota, a Congressman from St. Paul. He was a picture of health and was in the gym every morning, and then he didn't feel well. He went to the doctor, and after a chest x-ray, they said: You were somehow in your life exposed to asbestos. Now you have mesothelioma and just months to live.

Those stories are repeated over and over again about men who worked in asbestos mines who got off scot-free and never developed a problem, but their wives at home, who shook out their work clothes before putting them into the washer, breathed in the fibers and contracted asbestosis and mesothelioma and died. It is insidious.

I could spend more than an hour telling you that, since 1934, the companies which have been creating asbestos products have known how dangerous this product is. I could, and maybe I will at some point, go through the extensive evidence of deception and cover-up by these companies so that their employees did not understand the serious dangers they were exposed to in the workplace, and the dangers that many of them took home in their work clothes. These victims and their families come to visit me—lovely young women from the Chicago suburbs with beautiful children, and they show pictures of families whose husbands were lost in their early forties to mesothelioma.

This bill says that compensation for victims of asbestos is capped at $1.1 million. If you happen to be a mesothelioma victim, that's only $1.1 million for medical bills, lost wages, and to raise children. That is a figure which might have sounded pretty large to start with, but it begins to be very modest when you look at individual victims and their families. That is why the victims have come to us and said: Don't replace the court system in America with this approach. It is not fair to the victims.

Others have come to us as well and said that the way you put the money into the trust fund, which is supposed to pay the victims, is a mystery. We have repeatedly asked the chairman of the Judiciary Committee who is the sponsor of the legislation, to provide us with the documentation. Please show us how $140 billion will adequately compensate the victims of asbestos exposure over the 50-year life span of this bill. We are still waiting for the information. So we are going to replace the court system with a trust fund. We are going to say that $140 billion will be enough for 50 years, without any evidence of how that number was arrived at or whether that number will really meet the needs of the victims. I will speak in a few moments about those experts who have analyzed this bill and found that the numbers underlying the assumptions are totally wrong.

Another group that comes to us to discuss this bill are those being asked to pay into the trust fund that will be created by this bill. The argument has been made on the floor, thank goodness, that the taxpayers won't have to pay into this. These will be businesses and insurance companies which will put money in the trust fund so they don't have to pay out asbestos claims any longer in court. Well, it turns out that some businesses will do quite well. Some of them are going to receive a windfall in terms of what they have put into this fund as opposed to what they might pay in court.

U.S. Gypsum is a company that has a large legal exposure for asbestos. Because of corporate reports they made public in the last couple of weeks, we now know that, in order for the company to pay out all the existing claims filed against USG by victims of asbestos, they estimate it will cost them in the range of $4 billion. This chart is an excerpt of an article from BusinessWeek dated January 27, 2006, which says, USG is willing to cough up $4 billion to settle victims' claims. That is $4 billion of asbestos exposure for this one corporation. So if they didn't pay that amount in court settlements, and instead came into this bill, what would they pay into this trust fund? That figure is $900 million, according to USG's own corporate report.

This is a windfall. They have to be smiling and praying this bill is going to pass because if it does, the company is off the hook for over $3 billion of legal liability that they even admit to in court. And who will make up the difference? Who is going to make up the $3.1 billion this company should be paying the victims? Other companies. Companies that may never have had many lawsuits filed against them because of asbestos, and companies that have never paid out a penny in terms of asbestos claims, even if they were sued. These smaller companies will be expected to pay millions and millions of dollars into this trust fund when larger companies are walking away with a windfall.

So we asked again to the sponsor of this legislation: If you cannot tell us how you arrived at the figure of $140

billion, can you at least give us the names of the companies and how much they are expected to contribute into this trust fund? And we are still waiting.

The chairman spoke yesterday about how he was going to subpoena these records. I hope they will be produced during the course of this debate. I hope we will have a list of all the businesses with——

Mr. SPECTER. Mr. President, will the Senator from Illinois yield for a question?

Mr. DURBIN. I will be happy to yield.

Mr. SPECTER. Is the Senator from Illinois aware of the fact that the Judiciary Committee, on which he serves, issued a subpoena and has the names of the companies that are going to be contributing to the trust fund.

Mr. DURBIN. I know the chairman made that statement yesterday, and I am hoping he will share that information.

Mr. SPECTER. Mr. President, I am advised by staff, since I posed the question, in a note to the effect that Senator DURBIN's staff did come to look at the list. Is the Senator from Illinois aware of that?

Mr. DURBIN. May I respond to the chairman by stating that I understand this information on the list has been characterized as confidential information before the committee and cannot be shared publicly.

Mr. SPECTER. The pending question—and I will be glad to answer his—is, Does the Senator from Illinois know that his staff came to look at the list?

Mr. DURBIN. I am aware of the fact they reviewed it, but I am also aware of the fact this has not been made public as part of this conversation and part of this record.

Mr. SPECTER. Mr. President, with all due respect, the issue isn't whether it has been made public, the issue is whether it is in existence, and the issue beyond being in existence is whether it is available to Members who have to vote on the bill. So when the Senator from Illinois asserts that you don't know who is making contributions, it is simply not so.

The issue of confidentiality is true. It has been raised by the companies because they are concerned that if it is disclosed how much they have contributed or are proposing to contribute that they may be targets for more litigation.

I don't wish to interrupt the Senator from Illinois further. I simply wish to make the point that he is wrong when he says we don't know who is going to contribute the money, and his own staffer has taken a look at the list.

Mr. DURBIN. Let me respond, if I may. Why is this cloaked in secrecy? Why is this a secret conversation? How can we have confidence that the $140 billion figure has any validity? How can we have confidence that the businesses that will be called on are going to be able to contribute to this fund if this is cloaked in secrecy and confidentiality? Most of these lawsuits are open, public record. It is hard for me to imagine that a business is going to be sued because someone has identified them as a potential contributor to this trust fund.

Nevertheless, if we are expected to replace the court system in America with this new trust fund system, how can we do it with any confidence if all the information is not on the table? Why the secrecy? What are we concealing? What we are concealing, frankly, is the most controversial elements of this bill: a question of whether $140 billion will actually pay the victims—and I doubt that it will—a question of whether companies are going to be asked to pay into this trust fund who shouldn't be asked to pay into the trust fund and, subsequently, may be forced into bankruptcy, closing their doors because of it. These are questions of great moment. To say a staff person can have access to secret files in an office hardly gives any comfort in the midst of a public debate about an issue of this magnitude.

Mr. SPECTER. Mr. President, will the Senator from Illinois yield further?

Mr. DURBIN. I will yield for a question.

Mr. SPECTER. Is the Senator from Illinois aware, putting it in the form of a question, that he has made a shift in positions, first asserting that we don't know who is going to contribute the money, then finding out that we do know who is going to contribute the money, that, in fact, his staffer has looked at that list, and he is now raising a different issue as to what is the need for secrecy?

That is not the point about which I raised the question. When he talks about litigation, there are many confidential matters in litigation which remain confidential on a showing of cause. So my question to the Senator from Illinois is, does he realize that he has shifted his position from objecting to the status where nobody knows who is contributing, changing to why the reason for the secrecy?

Mr. DURBIN. I say to the Senator from Pennsylvania——

Mr. SPECTER. As a couple of experienced trial lawyers and debaters, or at least he is an experienced trial lawyer and debater.

Mr. DURBIN. As the Senator from Pennsylvania is as well. In response, unless and until we put this information out to be reviewed in a comprehensive and honest way, I don't believe we can stand before the American people and say this is a good replacement for the courts of America.

Let me tell the Senator what happened. A member of my staff was invited to the Senator's office to view the secret list. He was warned ahead of time not to take any notes, not to make any copies, and not to disclose the nature and substance of the secret list because they were treated as committee confidential. My staffer went to view the list and reported to me the information wasn't very helpful in answering the most basic questions about the companies, their liability, and, of course, the impact on each company and whether they can survive the contributions to the trust fund.

Under the committee confidential rule the chairman has imposed on all staff members reviewing this list, I am not sure I can say much more about this secret list on the floor, but I will say this is a highly unusual process to have secret lists, secret information, and confidentiality, when we are literally talking about people's lives and health. I don't think the Senator can come forward and meet his burden of proof, to go back to the language of trial lawyers, that we should replace the court system in America based on secret lists kept in his office. That strikes me as a far cry from the kind of public debate which we should invite for this bill.

Mr. SPECTER. Mr. President, will the Senator yield further for a question?

Mr. DURBIN. I have been more than happy to yield, and I will continue to yield.

Mr. SPECTER. How can the Senator call it a secret list when it is available for his inspection?

Mr. DURBIN. I say to the Senator, when he makes it available for the inspection of all Members and the American people, it is no longer a secret list. Mr. President, is the Senator prepared to do that? That is my question, without yielding the floor to the Senator.

Mr. SPECTER. I will review the matter with the view to see if we can make it public. I am open to any modification which is reasonable. I am not bound by any protocol, and I will go back to the providers of the list to see if it can be made available. But when the Senator from Illinois asserts that it is secret, he is simply wrong. It is not secret. He can look at it. I think he raises a good point when he says that nobody can make a copy of it.

Offhand, on horseback, on one foot, I think staffers should be able to make a copy of it. Take the copy and show it to the Senator. I think that is reasonable, with the agreement of the staffer and the Senator that if we decide to retain the confidentiality, they will respect that. I trust Senator DURBIN and I trust his staff to honor confidentiality if we stick with it.

As I say, I will review that as well. But Senator DURBIN has to make a decision. I am sure Senator DURBIN has an open mind on this question. Now that I reflect on it, I am not so sure he does have an open mind on this question, and he doesn't have to have an open mind on this question. I think he raises a good point when he says we ought to know who contributes the money. I raised hell to get the information and finally had to raise a subpoena to get the information. We have it so that it is available for those who have to make a decision.

When he carries the point further that he would like to see it made public, if I can accommodate that, I will.

Mr. DURBIN. I was happy to yield again to the Senator, whom I respect very much. I tell him, for the record, on May 25 of last year, we sent a letter to him about Goldman Sachs, asking that we have some information about the $140 billion figure, how it was arrived at, and how it will be paid for. So this is not the first time this issue has come up.

It is curious to me that we are writing a bill that is going to change the laws of all the States of America, and if we are going to close those courtrooms across America. Yet the Senator from Pennsylvania had to issue a subpoena to obtain a list of the names of the companies that are going to contribute to the trust fund. This is a very strange process.

Usually, legislation emanates from within Congress and affects the outside world. It appears that the secret list at issue emanated from the outside and whoever created it wasn't anxious to share it. So if there is skepticism by those of us critical of the bill, I think there is good reason.

We never received a reply to our May letter of last year. It is an indication to me that this whole process has been very unusual and very different from any process I have seen.

Somewhere, someone has come up with a number as to how much we need to compensate these victims, and someone has come up with a source on how that number will be arrived at, and the chairman had to go to the lengths of subpoenaing the information that was the basis for this bill that will affect hundreds of thousands of Americans and their lives.

Mr. SPECTER. Mr. President, will the Senator will yield further?

Mr. DURBIN. I will be happy to yield.

Mr. SPECTER. When he says I haven't responded to his letter, I have responded to his letter by getting him the information. The Senator from Illinois is diligent, resourceful, and raises lots of questions. I would challenge him to say I haven't responded to all of them.

Mr. DURBIN. I say to the chairman, he is the most responsive Member I can think of, and I thank him for his service and friendship. I have shared with him my concerns on this issue, and he has gone so far as to issue a subpoena.

The point I wanted to make to the chairman is raising this issue was not sua sponte. I started asking this question long ago as to why we couldn't get the most fundamental——

Mr. SPECTER. Parliamentary inquiry: Does sua sponte apply to this discussion? I withdraw the parliamentary inquiry.

When the Senator from Illinois says the chairman had to issue a subpoena, I consider it a compliment. I have had to deal with stakeholders on all sides who have been recalcitrant. We haven't—I, we, Senator LEAHY and I—haven't left any stone unturned. If people who want this bill and are obligated to provide money won't give the information I want, if they are for the bill and they are for the position I am sponsoring, I am going to get tough about it. I am going to get a subpoena so that Senator DURBIN knows what is going on, and I think the American people, through their elected representatives, will know what is going on.

Does the Senator want me to yield? If I can get wider distribution, I will.

Mr. DURBIN. Let me reclaim my time but also say to the chairman, parenthetically, what we engaged in—yielding back and forth—draws perilously close to debate on the Senate floor, which we try to avoid at any cost. I will do my best to always yield to meaningful questions and comments as those made by the chairman of the Senate Judiciary Committee. But I want to return to my comments.

This is a curious situation, where the chairman of the committee who wrote the bill had to issue a subpoena to get the information about what the bill meant. Now that is a curious situation. It leads one to believe that someone else, other than this committee, is writing the bill. Who could that possibly be? Who has enough interest in this matter to want to move forward with passing this bill outside of Capitol Hill? I gave one example earlier of one corporation which stands to gain $3.1 billion if this bill passes. Those are companies very interested in this bill.

There has been a lot of talk on the floor about the lobbying effort on behalf of this legislation. It has been huge.

(Ms. MURKOWSKI assumed the Chair.)

Mr. SPECTER. Madam President, will the Senator from Illinois yield for a question?

Mr. DURBIN. After I finish my sentence, I will yield. I concede this bill is a clash of special-interest titans on both sides. I think proponents of the bill have invested a lot more in its passage than those who oppose it. Maybe we will never know the true figures, but the interesting thing is that the first bill of this Senate session is not a bill to address the Medicare prescription drug crisis, it is not a bill to provide affordable, accessible health care to Americans, it is not a bill to deal with the energy crisis and the heating bills that are killing us in the Midwest and the Northeast, it is not a bill to deal with pension security for workers who are losing a lifetime of pension investment to a merger or a bankruptcy or corporate sleight of hand. It is a bill that is brought by lobby groups and special interests that have invested tens of millions of dollars trying to force this issue and bring this matter before us on the Senate floor.

Mr. SPECTER. Madam President, parliamentary inquiry: Has the Senator from Illinois finished that sentence?

Mr. DURBIN. I just finished. That was a period.

Mr. SPECTER. There are a lot of semicolons in that sentence, then.

Mr. DURBIN. I am not yielding the floor unless the Senator wishes to ask a question. Then I will be happy to yield.

Mr. SPECTER. There is a lot of competition for the floor. There are three of us on the floor. A lot of competition for it.

When the Senator from Illinois talks about special interest groups, there are others involved in this legislation and they are the victims. They are thousands, tens of thousands of victims who are suffering deadly diseases. Those are the people about whom this Senator is concerned.

Yesterday I put into the RECORD an article from the front page of the Hill about $3 million being spent by lobbyists to defeat this bill. Today the New York Times has a detailed story about how much money is being spent to defeat this bill.

It is true there are some who want this bill—the manufacturers and some insurance companies. But the people who really want this bill are the victims.

I take just a little umbrage at one sentence, one statement made by the Senator from Illinois when he says that because I have to subpoena material, it raises a question about who is writing the bill, that somebody else is writing the bill.

Let me assure you, Madam President, and anybody who may be watching on C–SPAN—if we had anybody, we lost them a long time ago—no special interest has written this bill. It is a non sequitur. I have to respond in some way to sua sponte. It is a non sequitur to say that because it was necessary to subpoena information that somebody else wrote the bill.

Mr. DURBIN. Without yielding the floor, would the Senator please tell us what Government agency he subpoenaed for the information to produce the secret list?

Mr. SPECTER. I will be glad to respond. I didn't subpoena any governmental agency. We subpoenaed the companies who were obligated to provide the money.

Mr. DURBIN. Without yielding the floor, would the Senator please state for the RECORD the names of the nongovernment agencies, private companies he had to subpoena to understand the underlying basis for this trust fund and how $140 billion was arrived at?

Mr. SPECTER. I didn't have to subpoena anybody to understand the underlying basis for this bill. This is my bill. I understood it when I thought it through and when I wrote it. Will I provide the names of those who are to be contributors? I do not have them at my disposal, and I certainly don't have them in my mind. But the staffer from the Senator from Illinois has already seen them and I would be glad to personally take the Senator from Illinois to look at the list.

Mr. DURBIN. Madam President, if this were a courtroom I would say the witness is not responsive. I asked the Senator a very direct question: Who did you send the subpoena to if it wasn't a government agency? And the answer, he knows, is: A private company. The obvious question is: Why are private companies writing a bill we have on the floor of the Senate today? They are writing that bill because they have a deep, personal interest in this bill. They are going to do quite well, thank you. Some companies are going to end up, as a result of this legislation, walking away from their legal liabilities in court for asbestos injury and asbestos death. These are the companies that want to see us close down the court system for these victims and create something else because they are the winners.

I hope the Senator from Pennsylvania—I don't want to create any umbrage, or raise any questions about his integrity. I am not. But I hope he will at a later point in the day come to the floor and disclose the names of the private companies that created the secret list that suggests there may be thousands of corporations across America that will have to contribute to this trust fund.

I wish to go to the most basic questions about the $140 billion. Where did we come up with $140 billion? How can we suggest that over the next 50 years or more that will be enough? It is important that it is enough. Yesterday my friend, the Senator from Pennsylvania, addressed this issue. He came to the floor and this is what Senator SPECTER said about this $140 billion figure:

> The figure of $140 billion was worked out by Senator FRIST and Senator Daschle about a year and half ago. It is a figure which rose from that which was originally put in the trust fund to that figure where CBO has given us the assurance that the range of cost will be somewhere between $120 billion and $135 billion. Under one contingency, it could go to $150 billion, but that is unlikely.

Senator SPECTER went on to say something else, and I think is a very important statement. It is a long sentence, but bear with me:

> We have within the structure of the bill a provision that the administrator can make a reevaluation going through certain preconditions so that if it looks like we're going to exceed the $140 billion, we can make modifications in the medical standards and criteria to stay within the $140 billion.

End of quote from the Senate floor. A statement by the chairman of the Judiciary committee yesterday stating there will be modifications in medical standards and criteria. Make no mistake what that means. It means less money for victims. It means if this fund runs out of money, the victims will receive even less. So the winners will be winning more, the losers losing more. And the victims will be the ultimate all-time losers in this situation.

I think it was an honest answer. I believe Chairman SPECTER was very candid in what he said. He could have said that if we exceed $140 billion in claims, that we would return all the cases to the tort system and the court system. But he knows if he said that, it would be hard to explain how we get into this trust fund for a few years, close the courthouse door, cut off all the pending lawsuits, and then declare the trust fund doesn't work. He didn't say that.

He could have said the Federal taxpayers will have to step in at that point and take care of the victims. But he knew that would cause a problem, not just on his side of the aisle but across the Senate. A Federal bailout is not viewed very positively when our Federal budget is facing the deepest deficits in the history of the United States.

So he said, and I admire his candor, we will just reduce the amounts we pay the victims. That is how we will make $140 billion work. That is a very candid and straightforward, but harrowing answer.

To say to people, if you were in the midst of a lawsuit, if you have worked around asbestos and have asbestosis and you are limited in your activities and maybe in the span of your life, and you filed a lawsuit against the company that exposed you to this asbestos, and you worked—and I know this because I used to do this for a living—worked for years to get that case into court with great sacrifices and frustrations and motions and continuances, and you are finally there—when this bill passes, if you don't have your case before a jury, you are finished. Close the door. Take your file home. You get to start all over.

Then what happens? You go into this trust fund, which on balance will probably pay you less, and you hope and pray there will be enough money there to pay you. If there is not, Senator SPECTER has said we will cut back your pay and your compensation for being injured by asbestos until we can hit this magic $140 billion number. That is the reality of this bill.

I think it is fair to ask, Is the $140 billion figure accurate? I have been through this on the Senate Judiciary Committee for several years. Senator ORRIN HATCH offered a version of this bill. He began by saying all we need is $90 billion over 50 years. Then we got into a committee debate and markups, and the figure moved up to $154 billion during the course of committee process. At that time the CBO, the Congressional Budget Office, estimated it would cost between $124 and $136 billion for anticipated claims.

Since this virtual endorsement of the trust fund bill from 3 years ago, the Congressional Budget Office has progressively but unquestionably expressed greater and greater reservations about that number, about the viability of the trust fund and whether the figure we are talking about today is an honest figure to compensate victims.

Let me share this report from the Congressional Budget Office. I will read it:

> There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, as well as debt-service and administrative costs. There is also some likelihood that the fund's revenues would be sufficient to meet those needs. The final outcome cannot be predicted with great certainty. Without a substantial increase in the resources available to the fund, there is no way to guarantee the fund will not either revert to the court system or require additional funding.

That is an honest answer. When we ask this official organization of Congress that is supposed to assess whether $140 billion is enough, their honest answer is, we can't say either way, but we certainly can't give you a guarantee that $140 billion is all that will be needed.

The Congressional Budget Office went on to say, in analyzing the bill before us:

> CBO expects the value of valid claims likely to be submitted to the fund over the next 50 years could be between $120 and $150 billion, not including possible financing (debt services) costs.

Remember those words. Because it turns out the money from companies will not come into the trust fund fast enough to pay the massive influx of claims right at the start, the trust fund is going to have to borrow that money. And in borrowing money, the trust fund has to pay interest and finance costs. And all of the lamentations on the floor here about attorney's fees notwithstanding, at the end of the day, we will find that substantial amounts of money in the trust fund will be paid in interest costs, from the borrowing to try to keep this fund afloat as legitimate asbestos victims ask for their fair compensation.

That is a reality. It is a reality that suggests the $140 billion figure cannot be substantiated. If this were an idea of Senator Daschle and Senator FRIST a year and a half ago, as much as I respect both of them, and I respect them very much, I don't know that either one of them is actuaries, nor do I know that they have the expertise to come up with a magic figure to predict the cost of this trust fund over a 50-year lifespan.

Let's take some of these concerns directly.

> The CBO states that the expected $120–$150 billion in qualified asbestos injury claims on the trust fund ''does not include possible financing costs and administrative expenses. The interest cost of this borrowing [they say] would add significantly to the long-term costs faced by the fund. . . .''

What are the financing costs? We are talking about debt service, money the Federal Government has to expend in order to either lend on its own to the new trust fund or go to private capital markets. The debt service costs could reach $50 billion or more.

We would find, then, that more than a third of the money going into the trust fund would be used to pay out in interest costs, not in victim compensation. Why? Because the secret and maybe soon public list of contributions by companies and insurance companies

indicates not enough will be coming into the fund to match all of the injured victims across America who are going to be turning to this new fund, which, at the same time, closes down the court system for hundreds of thousands of American citizens.

Here is more of the CBO's analysis:

> Because expenses would exceed revenues in many of the early years of the fund's operations, the administrator would need to borrow funds to make up the shortfall. The interest cost of this borrowing would add significantly to the long-term costs faced by the fund and contributes to the possibility that the fund might become insolvent.

Is it worth the gamble? Is it worth the gamble for us to pass a fund to close down the court system, to tell people who have worked for months and years to bring their case to a judge or a jury that they are now out of the system, then close the courtroom doors? Is it worth the gamble to them and their families that our calculations are right? Should we replace the court system on the possibility that we have guessed right about $140 billion, that in fact it would not become insolvent? Or should we shrug our shoulders and say, well, if we guessed wrong, what is the worst thing that could happen? According to the author of this bill, the victims will receive less money.

So when the chairman of the Judiciary Committee suggests that the chorus of voices of victims is what brings us to the floor today, I would say to him I am sure there are some who are in that chorus, but it might not be much more than a small quartet. The larger choir of victims across America has told us about their opposition to this bill. I could read that list of victims, unions, and other groups into the record. They are telling us this is the wrong thing to do. It is unjust to close the courthouse door to thousands of people across America and to say to them: Trust us, we have an idea for a trust fund. It has never been tried before, we are not quite sure of the figure, the contributors to the trust fund are on the secret list which may become public, but trust us. It is well worth your life and your health.

There is a group called Bates White which testified before the Senate Judiciary Committee, a group that has represented businesses and various organizations.

In September 2005, this economic consulting firm issued a report about this bill. I don't know why they conducted this report, but I have read it and attended a Judiciary Committee hearing where Dr. Charles Bates of that firm testified. According to the author, the report examined the viability of the fund. They focused on two primary categories of claimants who posed the greatest threat to the fund's financial viability.

First, they conclude that the bill would create entitlements for many individuals with lung and other cancers who were not compensated in the historical tort environment. The Bates White report states this entitlement likely will result in at least a tenfold increase in the number of other cancer victims relative to the cases being brought in our courts today.

Here is why. Based on epidemiological studies between 2000 and 2055, some 3.5 million people in the eligible population covered by this bill will develop lung or other cancers, not including mesothelioma. Asbestos is only one of the myriad of significant risk factors that may be causally related to lung and ''other'' cancers. But S. 852 would compensate all cancer claimants who have minimal pleural or lung changes based on subjective x-ray readings.

According to this study, the filing rates for the trust fund are also expected to increase substantially over the historical rates in the tort system due to the relative ease of the filing which is to be created by this trust fund bill. Thus, according to Bates White, the bill would compensate for a dramatically larger number of patients.

Second, the Bates White report concludes that the bill is going to revive what they call ''dormant claims,'' which are asbestos injury lawsuits that have been settled with most but not all defendants. The bill allows some claimants who filed their lawsuits prior to 2000 to be eligible for payment in the trust fund if those claims have not been fully resolved. Thousands of such cases currently remain on court dockets.

This incremental entitlement for the differential between the amounts collected in such suits in settlement or judgments, and the amount awardable from the fund, they estimate, could total up to $26 billion. And if these victims seek to recover the difference, that would add significantly to the cost of the trust fund.

Let me say at the outset that I think the court system as well as the trust fund should be generous to victims. As I said earlier, I don't know of a single victim of asbestos exposure who knowingly and willingly exposed themselves. Many of them were duped by deception of corporate officers who insisted there was no danger involved.

I am not questioning the decision in the bill to extend such payments, but I do join Bates White in questioning whether the programs set forth in the bill can be paid for. What Bates White has said is, if you look at the bill as it is written, and the people who will be compensated, it is going to cost dramatically more than earlier estimates.

Based on these two factors and using very conservative economic assumptions, the Bates White study concludes the bill would create entitlement claims valued between $301 billion and $561 billion.

The bill's trust fund is capped at $140 billion. This study says the amount of payouts could be more than double, or as much as three times, or even more than that in actual payouts. That is how far we could have missed the mark when it comes to this economic analysis underlying this bill.

What this study found raises serious questions about the solvency of this fund: Saying to the thousands of victims, Close up your court case, stop working with your attorney, stop going to the courthouse, we are going to take care of you, and then we don't. We come up with a $140 billion trust fund that is inadequate to the needs of these victims.

I also want to point out that Bates White updated their study yesterday. The economists at this firm announced this week that they found a $90 billion error in the Congressional Budget Office's analysis of this same bill.

This is a serious issue. It should be serious enough to take this bill off the calendar. If the CBO's estimate is wrong by $90 billion, we have to stop where we are. We shouldn't go forward. Bates White's new analysis demonstrates this oversight.

According to the numbers the Congressional Budget Office presents in its own report, CBO asserts that 1.5 million individuals will receive compensation for nonmalignant conditions, meaning they have bilateral pleural disease and 5 or more years of exposure. Under this bill, these victims are entitled to medical monitoring.

Yet, national cancer incidence rates establish that more than 200,000 of these claimants among the 1.5 million will eventually develop lung or other cancers.

This means, if we take the CBO numbers as the baseline, there could be an additional 200,000 claimants who will qualify for lung and other cancer claims, which are paid out much higher levels of compensation in this bill. Yet the Congressional Budget Office's current estimate takes into consideration only 28,000 people in this category.

So, the new information from Bates White presents a real concern that the Congressional Budget Office may have missed at least 170,000 potential victims who weren't considered in the CBO's earlier analysis.

The Congressional Budget Office relied on an arbitrary standard assumption that only 15 percent of the population will ever file for the higher claim. These additional claimants represent more than $90 billion in additional costs to the fund.

CBO's estimate currently assumes that 85 percent of qualifying claimants who took the trouble to sign up for medical monitoring under this bill would not file the paperwork to collect their entitlement if they ever developed a more serious illness down the road. This is not a credible scenario.

After all, isn't the purpose of medical monitoring to provide early detection of these and other diseases, which means that more people rather than fewer would have the opportunity to learn about such illnesses?

As late as yesterday, there are new, fundamental questions being raised about whether this trust fund at $140

billion gives us an honest figure to work with. If it is not an honest figure, it means as the years progress, we are going to have to reduce payments to victims.

To suggest this is a victims bill is to overlook the obvious: the starting point of the bill is so flawed. Let me show you some charts about how this will be funded because I think they are a good indication of the problem that the fund faces in convincing a majority of the Senate to support this bill.

This is a chart which addresses the timing of this bill, comparing when the liabilities will arise for claims coming into the fund, versus when the revenues from the companies will come into the trust fund. As you can see, the red line shows liabilities which are very high in the earlier years, but you will notice the low green line is never adequate to meet the needs of liability. From the outset, the fund is falling behind. Simply stated, it is not collecting enough money to compensate victims.

One of the arguments being made is we have to replace the court system because it takes so long; there are delays. What is going to happen when this fund doesn't have enough money and hundreds of thousands of Americans who are sick and dying come for compensation?

At best, we will borrow money, adding more cost to the fund dramatically, or we will tell them to wait in line until we have received enough trust fund revenue to pay them. Or, I suppose, as the chairman said yesterday, we will just say we can pay them now, but we will have to pay them less than what we promised in this bill. That appears to be the range of options based on the way we are dealing with this issue.

Take a look at this chart which shows that liabilities will greatly exceed the assets of the trust fund from the very start, and the excess—the red line—continues to build over the years. This is a 50-year period of time. You can see even with the revenue coming in that it never matches the liabilities they anticipate. This chart doesn't even include the new information from the Bates White study, which could mean there is even a greater amount of shortfall in this trust fund.

Let's talk about interest costs for a moment. The fund borrows in its early years because, obviously, all the corporations on the secret list can't come up with all the money they are supposed to produce initially. Some of them will take a period of time. In fact, some of them have told us to forget it, that this bill will end up bankrupting them. So those companies will disappear.

But in the meantime, there are still needy victims and people who would otherwise go to courts for compensation. The fund starts to borrow in its first years to meet the shortfall but realizes barely half the value of future revenue, and the other half has to be used to pay interest.

Senator HATCH was here a few moments ago speaking about attorney's fees and how that is taking money away from victims. Some would argue that without an attorney, many victims would never have their day in court or a chance to succeed in court. What we have here is the fact that we will be paying into this trust fund and almost half of the revenues will be spent on interest and administration. Out of the $140 billion in the trust fund—which may not be enough—almost half of it is going to go to pay creditors, financial institutions, banks, maybe foreign governments. I don't know who will lend money to this trust fund. We will pay out interest to them, and we will have less to pay to the victims.

This was really supposed to be an upfront, no-fault system to help victims with $140 billion compensation over 50 years. It turns out that the real steady winners are creditors of the fund. According to one analysis, as little as 52 percent of the trust fund could be used to pay the claimants and 48 percent for interest, which is almost half of the amount of money during the life of this fund.

Some suggest that we are doing a great favor by creating this trust fund. Well, it is a great favor for sure to credit institutions but to the victims, it is not. As more money is paid out in interest, less is available for the victims.

What the Senator who authored this bill said yesterday is, We will just cut the compensation. That is the way we will make up the difference. For every dollar of interest paid, we pay one dollar less to someone who is dying of mesothelioma. That is how this is being conducted.

The sponsors have put a lot of time in this bill, and it was a Herculean task to try to address something 50 years in the future. I concede to all of that. But shouldn't the people who are pushing for a change have the burden of proving that change is an improvement over status quo? Shouldn't that be the starting point of a debate?

If you want to change the current system, shouldn't you have the burden of establishing that your change is a good one, and that $140 billion is the right figure, rather than to say that Senator Daschle and Senator FRIST thought it was a good figure? Shouldn't you have the burden of showing that the input of money into the trust fund from the secret list of corporations and insurance companies is going to be adequate to meet the payouts of the victims? Shouldn't you have the responsibility of showing that $140 billion is going to go to the victims rather than to creditors and financial institutions and interest and administrative costs?

Isn't that the starting point? I think it is. Once they have met that burden of proof, then we can say: All right, we will compare the court system to your trust fund and decide which is the better way to go. But they have not met that burden of proof. They have asked us to accept on faith that this trust fund is going to treat victims fairly on a timely basis. I think many people are concerned about that.

There will be enormous amounts of claims that are expected to flood into this trust fund on day one, and by that time all the cases in court will be shut down if they are not at the jury stage. Let me repeat that important fact. If the litigants are not presenting any evidence in court, all of those cases will be shut down, according to this bill.

You know those victims are going to turn around and say: My husband is dying. My husband has limited activity and can't work. Where do I go now?

They will be told: Come to the trust fund. Come to this $140 billion trust fund.

We can expect a flood of applications in the early stages if this trust fund is created. Will the Department of Labor be able to create this new office and new bureaucracy to manage this flood of claims?

For those of you who have any doubts about the efficiency of government and its ability to respond to millions of people in need, I would suggest the following words: the Medicare prescription drug bill. You know what I mean.

This system which was created 2 years ago by the Senate and the House and signed by the President was supposed to compensate some 40 million Medicare recipients for their prescription drugs. Ask any Senator in this Chamber what they have heard back home. This is a disaster. They had 2 years to be ready. And, unfortunately, this system is fatally flawed. One critic said it is an unsalvageable fiasco and lives are at stake. Senior citizens now wonder if they can get their prescription drugs filled, and for some of those it is critical for them to just keep going on a day-to-day basis.

Now they are being told in this bill to trust us again.

We are going to create a Federal trust fund where hundreds of thousands of claims may come in initially and ask that they be compensated on a timely basis, and they will be told by the Federal Government, trust us, we will give you the money right away.

That is cold comfort for someone who has been sitting for a year or two with medical records and lawyers getting ready to present their case in court. But if they aren't among the fortunate few who have brought their case to a jury or to a judge, presented their evidence, and ended up with a verdict or settlement, then, unfortunately, everything they have done is for naught. They are tossed out of the system.

These victims deserve better than empty promises in this bill. They and the Senate deserve solid information about how this bill will work and remain solvent throughout the entire lifetime. Without such information, the Senate should reject this bill.

The PRESIDING OFFICER. The time for the recess has arrived.

Mr. DURBIN. Madam President, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will stand in recess until 2:15 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. THUNE).

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I ask unanimous consent to speak for up to 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO PROFESSOR THOMAS CROMBIE SCHELLING

Mr. REED. Mr. President, I rise today to recognize Professor Thomas Crombie Schelling, distinguished university professor emeritus in the Department of Economics and the School of Public Policy at the University of Maryland at College Park, recipient of the 2005 Nobel Memorial Prize in Economics for his work in game theory analysis. Professor Schelling shares this prestigious award with Robert J. Aumann of Hebrew University in Jerusalem to whom I also offer my most heartfelt congratulations.

I had the privilege and the pleasure of being one of Professor Schelling's students at the Kennedy School of Government at Harvard University in the early 1970s. Having just graduated from West Point, I was pursuing a masters degree in public policy at the Kennedy School. The public policy program, then, was a new initiative to train recent college graduates for careers in public service. The Kennedy School had assembled a stellar collection of scholars in the fields of political science, economics, quantitative methods, and statistics. Tom Schelling was already recognized as one of the preeminent economists of his generation and was a leader in the economics instruction of the public policy program.

Professor Schelling's classes were fascinating discussions about topics ranging from social costs and externalities to the incentive structures necessary to diminish conflict. Rather than being couched in jargon and equations, he was able to talk in familiar terms and used familiar examples, such as cows grazing on common areas or an informal economy based on the trading of cigarettes in a POW camp. I must confess, I was not altogether prepared for his folksy but penetrating intellect. But on reflection over many years, I have come to see it as one of the most useful and powerful courses that I have ever been fortunate to take. I realize that his point was to make us think, not just to give us some techniques. His insightful framework of analysis has been extremely useful to me in all my endeavors.

Professor Schelling's professional standing was matched by the personal regard that his colleagues and students displayed for him. I was fortunate to associate with a gentleman whose integrity and decency and kindness left a lasting impression.

Professor Schelling received the Nobel Prize ''for having enhanced our understanding of conflict and cooperation through game-theory analysis.'' His first book: ''The Strategy of Conflict,'' published in 1960, ''set forth his vision of game theory as a unifying framework for the social sciences. Professor Schelling showed that a party can strengthen its position by overtly worsening its own options, that the capability to retaliate can be more useful than the ability to resist an attack, and that uncertain retaliation is more credible and more efficient than certain retaliation.''

Professor Schelling's groundbreaking work laid the foundation for ''new developments in game theory and accelerated its use and application throughout the social sciences. Notably, his analysis of strategic commitments has explained a wide range of phenomena, from the competitive strategies of firms to the delegation of political decision power.''

As a result of Professor Schelling's work, the theoretical realm of game theory can now be applied to the real world. This real-world application is known as interactive decisionmaking theory and is used to explain why some individuals, organizations, and countries succeed in promoting cooperation while others suffer from conflict. His insights have proven extremely relevant in conflict resolution and efforts to avoid war.

Born on April 14, 1921, in Oakland, CA, Professor Schelling's distinguished career spans five decades. After earning a degree in economics at the University of California at Berkeley in 1944, Professor Schelling worked at the U.S. Bureau of the Budget and served in Copenhagen and Paris under the Marshall Plan. He received a Ph.D. in economics from Harvard University in 1951 and worked for the Truman administration. He later became a professor of economics at Yale University, held a position at the RAND Corporation, and, in 1958, joined the faculty of Harvard University as a professor of economics. In 1969, Professor Schelling also began to teach at Harvard's Kennedy School of Government, where he held the chair as the Lucius N. Littauer Professor of Political Economy. He left Harvard in 1990 to teach at the University of Maryland.

Professor Schelling has been elected to the National Academy of Sciences, the Institute of Medicine, the American Academy of Arts and Sciences, and was president of the American Economic Association, at which he is a distinguished fellow. He was the recipient of the Frank E. Seidman Distinguished Award in Political Economy and the National Academy of Sciences Award for Behavioral Research Relevant to the Prevention of Nuclear War. Professor Schelling has written 10 books and published extensively on military strategy and arms control, energy and environmental policy, climate change, nuclear proliferation, terrorism, organized crime, foreign aid, international trade, conflict and bargaining theory, racial segregation and integration, the military draft, health policy, tobacco and drug policy, and ethical issues in public policy and in business. His range of inquiry and his searching mind have covered a vast panorama of the issues of most concern to America over the last 50 years.

Professor Schelling is a member of a generation that has borne witness to many extraordinary events; however, in his own words ''the most spectacular event of the past half century is one that did not occur. We have enjoyed fifty-eight years without any use of nuclear weapons.'' His work, and the work of Professor Aumann, has been guided by the desire to enhance the understanding of conflict and cooperation and deepen the world's understanding of human behavior, relationships, and motivation in an effort to prevent the catastrophe of nuclear war.

Professor Schelling, thank you for all of your contributions to the preservation of peace and, again, congratulations on your outstanding achievement.

I yield the floor.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005—Continued

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I want to spend the next 20 minutes or so talking about the asbestos reform legislation that is pending before the Senate.

During the 3 years I have been in the Senate, I have had the great honor and privilege of serving under two great chairmen of the Senate Judiciary Committee, Chairman ORRIN HATCH and Chairman ARLEN SPECTER. This bill that has come to the floor is the product of a Herculean effort, starting with Senator HATCH as chairman of the committee, and now in the able hands of Senator SPECTER. Along with our ranking member, Senator LEAHY, they are cosponsors of this bill.

I am one of 18 members of the Judiciary Committee who voted to get the product out of the committee and to the floor of the Senate because I believe it is imperative we find a solution to the scandal-ridden asbestos litigation crisis facing this Nation. But I was one of seven Senators who expressed some strong reservations about the bill in its current form, and I think I owe it to my colleagues to explain what we were thinking, what at least I was thinking, and what some of those reservations are.

First, to address the problem confronting this country when it comes to the asbestos litigation crisis, the RAND Institute has documented that out of every dollar that goes into this asbestos litigation compensation system, only 42 cents actually goes to the claimant. A person who may have mesothelioma—a terrible and fatal cancer that is caused by inhalation of asbestos fibers—gets only 42 cents on the dollar. The rest of it is consumed in what might sort of innocuously be called transaction costs; that is, the costs of a lawyer to pursue that claim in court, as well as the lawyer hired by the defendant or defendants, as the case may be, together with court costs and other associated expenses of litigation.

Well, obviously, with an override of 58 cents on every dollar paid, the transaction costs are steep indeed and cry out for some redress.

The other problem in the current system is that over the years there have been so many claims brought on behalf of individuals who may have been exposed to asbestos but who have no current impairment—in fact, may never get sick as a result of that exposure—that dozens, indeed, I think the number is somewhere in excess of 80 different companies in this country, have been bankrupted. What happens when companies get bankrupted is people lose their jobs, and retirees lose their pension benefits or may perhaps receive only pennies on the dollar for what they believe they were entitled to and which they may have expected to depend upon during their later years in life.

Because of the huge volume of claims of people who are not sick and who are not impaired but who may have been exposed, that means people who have bona fide claims that are clearly traceable to asbestos-related disease may end up undercompensated as well or even left without an adequate remedy.

In fairness, the people who have made claims and who are not presently impaired are kind of in a catch-22 scenario because under our laws, and under the laws of most States, you usually have—for example, in my State of Texas, you have 2 years—if you have been damaged, but you do not yet know the extent of your damage but you have a claim, you are required under our laws, under the statute of limitations, to bring that claim within 2 years or else you will be forever barred.

So in all fairness to those people who have brought claims, while they have been exposed but may not yet have manifestations of the disease, they are in a box with no way out unless we reform the law. And, obviously, people who are very sick and may die of asbestos-related disease, from mesothelioma or some other type of cancer related to asbestos, being left with virtually pennies on the dollar, perhaps recovered from a bankruptcy trust, is not justice either.

So this has been an issue that cries out for reform. Some have said—and I think they are correct—this is not tort reform; this is scandal reform. It is an outrage and an injustice that cries out for a solution. Indeed, the U.S. Supreme Court, on three different occasions, has said this is an issue that is beyond the power of the judiciary to solve and asked Congress to come up with a solution to this problem.

We have worked to try to come up with a solution, but until this week no proposal has come so far as to get to the Senate floor to help address this problem. So I want to give credit where credit is due to Senator SPECTER, the chairman, and the ranking member, Senator LEAHY, and all the members of the Judiciary Committee who tried to keep this process moving so we could have a bill ultimately that we could send to the President, that we could be proud of, and that would address this terrible injustice.

My observation has been that everyone involved in this process has been, in good faith, trying to find a solution to fix this situation. But it is important to note that while Congress has debated this issue and tried to come up with a solution, a number of States, including my home State of Texas—notably, Ohio and a handful of other States—have stepped in and passed what are commonly called medical criteria bills, which, simply stated, allow people who are sick to bring their claims, and people who have been exposed but are not currently sick—have no impairment—to toll the statute of limitations so that if and when they become sick they can bring their claims to court. That seemed to have worked pretty well.

That is not what this bill does. This bill makes a different choice. I want to explain in the few minutes that follow the concerns I have about this particular bill.

Here again, Senator SPECTER has led the way, along with Senator HATCH and Senator LEAHY and others, to bring us to where we are today. This is not easy.

The bill before the Senate today is vastly better and more improved as a result of the work done in the committee and the negotiations and the services of people such as Judge Edward Becker, senior judge on the Third Circuit Court of Appeals, who has acted as a mediator among the stakeholders to come up with a solution.

My fear is that we would replace the current broken litigation system for asbestos injury claims with a complicated, expensive, and ultimately unsustainable entitlement program. Let me explain what those concerns are in particular.

Asbestos liability reform, whether it is a trust fund or medical criteria legislation such as some States have, whatever the type, requires sound medical criteria to filter out fraudulent claims. My conviction is that the criteria employed in S. 852, the current legislation before us, are faulty and would unnecessarily include payments to individuals whose illnesses are not connected to asbestos exposure. There are two examples I can think of. One has to do with cancer claims. This trust fund would purportedly compensate those with cancer claims yet without evidence of asbestos-related disease. Obviously, we know this is not designed to be a cancer trust fund; it is designed to be an asbestos trust fund. We have to have sound medical criteria which would distinguish between cancer and asbestos because if we open up the criteria too broadly, chances are the claims are going to overwhelm the fund and it will be unsustainable and unsuccessful.

My second concern, beyond the medical criteria that are not tight enough to filter out fraudulent or unrelated claims, is that the $140 billion, which is the current amount of the trust fund, will not be adequate to meet the claims. This admittedly is an area in which there is no scientific precision because we are looking out years from now and trying to estimate how many people are going to have claims, what the mix of those claims is going to be. For example, if you have more mesothelioma cases than you think, then it will drain the fund precipitously and make it unsustainable.

Chairman SPECTER and the Judiciary Committee have heard from a number of experts, including the Congressional Budget Office, as well as independent estimates, that conclude—I am sorry to say—that the $140 billion fund will likely be too small to cover the cost and, ultimately, will render the fund insolvent. The CBO estimates that the trust fund would be presented with claims totaling between $100 and $150 billion, but it also projects that total costs would be higher because the fund must also cover administrative expenses and any financing costs.

I heard the Democratic whip, Senator DURBIN, talk about the financing costs associated with the cash-flow requirements of this fund. I share some, but not all, of his concerns in that regard. The CBO makes clear that ''there is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs.''

It gets worse, not better. An economic consulting firm by the name of Bates White has estimated that the trust fund will generate far more claims than the tort system and the existing trust and will result in claims perhaps ranging from $300 billion to $695 billion. In other words, the trust fund proposed by this legislation would be $140 billion, but Bates White, in a different analysis, has said they think the claims could reach $695 billion, ultimately forcing the fund into insolvency and sunsetting the fund within 1 to 3 years of its inception.

Even if you agree with the CBO estimate, it is clear that $140 billion will at least, under their estimate, not satisfy

the claims made on the fund in administrative costs and the like because the CBO cost estimate does not include potential dormant claims, possible take-home exposure claims by family members, exceptional medical claims, claims from people living near Libby-like sites—and I will explain what I mean by that in a moment—as well as the impact of allowing CT scans to serve as documentation of pleural abnormalities. In other words, the diagnostic test used to determine impairment from asbestos-related disease is important to screen out people who are impaired from people who are not impaired. All of these additional factors that CBO's cost estimate does not take into account could add billions of dollars of cost to the trust fund.

Even more troubling, the CBO's own analysis provides that 1.2 million claimants will be deemed to have qualified for medical monitoring. In other words, they have been exposed. They are not impaired. Yet under the trust fund, they would be monitored to see if they do become impaired and thus qualify for a claim under the fund.

Unfortunately, the CBO misses the fact that if we apply standard epidemiological statistics, as many as 200,000 of the 1.2 million claimants who qualify for medical monitoring will one day develop cancer of some form, and thus the total cost of the fund could be as much as $90 billion more than the CBO has estimated.

Just a footnote here, another problem. I don't mean to have a laundry list of criticisms of the bill because, as I said, miraculously we have reached this point, but there remains some of the hardest issues we need to find solutions to if we are going to solve this scandal that otherwise goes by the name of the asbestos litigation crisis.

This trust fund—here again, I don't know whether all of our colleagues have had a chance to look at the bill in the kind of detail I am discussing, so that is the reason I wanted to identify these concerns, to see if we can find some solution—also provides $600 million, not to pay claims, not for administrative costs, but for additional screening to find new claimants. In other words, it is basically a marketing program to go out and try to find individuals who might also make a claim to the fund rather than those who have self-identified or have been referred to the fund.

I don't have to tell my colleagues; all they have to do is read the newspaper or current court cases that are pending. For example, in the Southern District of Texas, in front of Judge Janis Jack of Corpus Christi, fraudulent medical screenings have produced an enormous number of bogus cases that have created a huge burden on the current civil justice system. It is beyond me why we would want to go out and shop, in essence, or market to try to find more claimants to the fund over and above the ones CBO or Bates White or other educated guesses estimate will be made against the fund. That is a problem, too.

My point is that with regard to the number of claims and the demands made upon the fund, one of the concerns I have is that if the trust fund sunsets in 1 to 3 years the way Bates White says it might do, or 5 years or 10 years, it forces reversion; that is, claims go back to the same broken tort system that brings us here today. So what might happen is that companies would have to pay into the fund, but the fund would be overwhelmed and thus leave people without a remedy under the fund. Then it would revert to the same broken tort system, with all of the scandal associated with it, with all of the injustice associated with the status quo.

It is also worth noting—and this ought to caution us—that previous attempts to establish national trust funds largely have failed because total costs have exceeded those originally predicted. I am thinking particularly about the General Accounting Office report on black lung and similar funds.

We know there have been many bankruptcies associated with the current asbestos litigation system. Indeed, there is currently about $7.5 billion of bankruptcy trust funds that would be swept into this bill by the Federal Government to help make the $140 billion total proceeds available under the fund. These are existing bankruptcy trust funds which are currently paying claimants, people who were exposed to asbestos fibers and who are sick. But what this fund does—this is part of the problem—in an effort to get up to the $140 billion, it basically is a Federal confiscation of existing bankruptcy trust funds to the order of $7.5 billion. Noted constitutional lawyers, whose names are very familiar to the Members of the Senate, have come to me, as I know they have others on the committee, and said: How can it be that the Federal Government can take $7.5 billion in existing funds that are currently paying claims to sick asbestos victims and scoop it into this $140 billion fund? So at minimum, we would have to concede there will be litigation, and likely successful litigation, challenging the constitutionality of this taking by the Federal Government.

I mentioned earlier that Libby-like issue. Let me explain the challenge we have. In Libby, MT, a number of residents were apparently exposed to asbestos fibers generated from a W. R. Grace plant located in that city. What the Senators from Montana have done in this bill—and I congratulate them for their advocacy on behalf of their constituents—is establish an automatic qualification and a floor of $400,000 for any individual who qualifies living within 20 miles of that town. Why is that exceptional? Most of the claimants under this fund have to be those exposed in the course and scope of their employment. The Libby exception is not an occupational exposure but one because you happen to be a resident of that town and establishes an automatic qualification of a $400,000 floor to anyone who lives within 20 miles.

Whatever the merits of that special treatment for Libby, the problem we have is that there are as many as 28 other sites in the country, including my State of Texas, that may well deserve to be eligible for the same or similar special treatment. In other words, if we say people who are exposed not occupationally but environmentally because of the release of asbestos fibers due to an asbestos company operating in their State, if we are going to say Libby, MT, residents are entitled to that, I don't know how we cannot, in fairness, say that other similarly situated persons are not entitled to the same benefit.

The challenge, though, the problem that presents is it threatens to render the fund insolvent because of the volume of claims that will be made under this provision if expanded to include other individuals in these 28 other sites. I don't know how this fund can remain solvent unless the Libby, MT, provision is removed.

The challenge the chairman has had is, every time he has someone ask for a change in the bill, he risks losing someone else who is on the bill and vice versa. So I know he has tried his best to try to balance this wobbly entity known as the asbestos trust fund. That creates an anomaly and potentially an unfairness, one which would render the trust fund asunder.

The next issue that I have concerns about is this. There is no question that some very large companies in this country that have been exposed to almost endless asbestos litigation are desperate to bring that to a conclusion, to be able to cap off their liability and be able to put that behind them and get back to work providing jobs and contributing to the engine of the American economy. So there are some companies that are desperate to bring this to a conclusion. They are so desperate, they are willing to accept this trust fund on the faith, hope, and wish that it will be made better through this process—the amendment process and in conference.

But there are others who have come forward and demonstrated to me and other Senators that if they are forced to contribute to the trust fund under the current allocation system, it exceeds the profit of their ongoing business. In other words, if forced by the Federal Government to contribute to the trust fund at the current amount created in this allocation scheme, we will, in effect, render a number of companies—no one knows how many—bankrupt, and they will go out of business; and the people they employ, the hard-working Americans they employ, will be out of work. Potentially, the pensions of the retirees will be put in jeopardy.

Now, that is not the intention of the trust fund designers. Believe me, the

work is ongoing to try to find an equitable allocation scheme. But I point out that in trying to effect a cure, we need to make sure the cure isn't worse than the underlying disease for many of the companies and individuals affected.

Let me end my remarks on a couple of other final matters that I think call out for resolution or improvement in this bill. I have told Senator SPECTER that I want to be part of the solution to this problem; I don't want to be an impediment to trying to reach some equitable and fair resolution because this scandal should not continue a minute longer than it has before we come up with some good solution to this terrible problem.

One of the things I am concerned about in this bill, as well, is that the Department of Labor would have to administer this $140 billion fund, however it works. Obviously, there are going to have to be a lot of new people hired to perform those duties, and I believe it will, in fairness, create a new Government bureaucracy, designed to administer this program in the Department of Labor.

I am wary about creating new Government bureaucracies and programs in Washington, DC. I am reminded of the quote of former President Ronald Reagan. He said: The closest thing to eternal life here on Earth is a temporary Government program. This is supposed to be a temporary Government program, but I fear that we will create a new and mammoth bureaucracy within the Department of Labor that will never go away, even after the trust fund has come and gone.

So I look forward, during the course of the debate, to have the opportunity to offer amendments in the form of alternatives, which I think may provide a better solution to the problem that we all agree exists; and failing that, to offer amendments that will, I hope, narrowly address some of the problems presented in the list of issues I have spoken about. We need to make sure our good intentions don't exacerbate the problem. In a way, I sort of look at this as a legislative or congressional Hippocratic oath. Doctors take a Hippocratic oath which says: First, do no harm. You want to make sure the cure doesn't kill the patient. Indeed, I think we need to take a congressional Hippocratic oath that also says: First, do no harm. That ought to be our initial focus, to try to find a solution to this very difficult, complicated problem.

I look forward to working with all of my colleagues in good faith, in an effort to try to find that solution, even in the form of an alternative, if necessary, or, failing that, to come up with some targeted amendments which will address some of the concerns, which will make sure that sick people get paid and people who are not sick don't get paid—to make sure we don't explode the fund by underestimating the demands made upon it—and that we have some fairness when it comes to the allocation of who pays into the fund and that we proceed to a full and final solution to the problem, not a temporary patch that, ultimately, leads then back into the ditch in which we currently find ourselves, known as the asbestos liability crisis.

I see my colleague from Alabama, with whom I proudly serve on the Judiciary Committee, who is steeped in the details and has been part of a Herculean effort to come up with a solution. At this time, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I urge everybody who has questions about this legislation and who did not hear Senator CORNYN's remarks, to get a copy and review it. I think he made some terrific points and has gone to the heart of the issue and explained a lot of what we are doing.

Mr. President, the asbestos system, as it is operating today, is fraught with misconduct and inefficiencies and unfairness. That is an absolute fact. I had been involved, as a private lawyer, many years ago—I guess in the late 1970s—with some of these cases. I wish to say that I was representing plaintiffs who were injured badly as a result of severe asbestos exposure—people inside ships and submarines, cutting asbestos with electric saws where the air was so filled with asbestos dust that they could hardly breathe. They had to leave the submarine to get fresh air, and then go back in to work. They were severely damaged and disabled as a result of that. People like the plaintiffs I represented deserve compensation, there is no doubt about it.

Since sometime in the 1970s, it has become clear that asbestos is a dangerous product and there have been complete changes in how it is handled. Asbestos today is almost treated similar to nuclear waste. We have had laws to prohibit it altogether. If you see somebody removing asbestos from a building, they have masks on, and they do all these things with the greatest of care so they are not exposed. But some exposure for most people does not result in serious illness, or any illness at all. But certain exposure can. So it is a dangerous substance, and it creates a lot of stress and concern that a person might get sick. For those who are currently sick, they deserve compensation. So I say it is rational that some people have filed lawsuits to seek recovery.

But the way these lawsuits are now proceeding through the system makes very little sense. We have 300,000 cases pending today. Plaintiff lawyers get a chunk of those fees or recoveries on a contingent basis. We have criticized them for taking their third or 40 percent, or whatever they get out of a recovery—money that on the docket sheet might look like the plaintiff got $100,000, but the truth is, right off the top comes $30,000 to $40,000 that goes to the attorneys, not to mention the cost of buying depositions and the cost of medical witnesses who testify at trial. That all comes out before the plaintiff gets any money. That is the fact, the way it works. I was never been proud of how this system worked in the asbestos cases I saw when I was involved with it. It has gotten worse today.

Groups of lawyers have made hundreds and hundreds of millions of dollars out of these cases, and they file thousands of suits. They may have 10,000 cases pending. Plaintiffs are grouped, and then are not given individual attention. The lead lawyers probably don't even know the plaintiffs' names, and probably have paralegals interview them. So the system is even worse than when it initially started.

What else has occurred with the system? We are having people who are not sick, as Senator CORNYN noted, recovering money and putting companies into bankruptcy; they may never get sick and probably will not get sick. Those cases are crowding out the cases of people who are sick. As I noted last night, there are widows of mesothelioma victims, a deadly cancer that is clearly tied to asbestos. We have those widows—some are for the bill and some are against the legislation—lobbying us. I say to those widows that the sad thing is that your husband—or it could be a wife—did not get paid before they died. Why can we not create a system in which widows are not out here trying to claim the money, but instead we have a system where money goes straight to the victims, in their days of illness, before they pass away. Isn't that a better system?

Under the national fund, if a person has mesothelioma and can show an exposure to asbestos, they can walk into the Administrator's office—the office that will receive the claims, with a doctor and a medical report that demonstrates that this person has a disease—and if it is not contested—and I don't think many mesothelioma cases would be—they get a check right there for 50 percent of the $1.1 million. And then the other 50 percent has to be paid, as I recall, within 6 months. So they get a million dollars while they are alive to take care of their last days and their families, instead of having these lawsuits out here pending literally for years while people are dying without receiving compensation. That is happening today.

These cases are not going to trial with big verdicts returned. They are clogging up the system. They are suing hundreds of defendants per plaintiff. Some defendants agreed to pay 250, others 150. The lawyer is taking out their fee, and little checks are going off to people who are sick. They never know how much they are going to end up with before it is over. They started out with 300 defendant companies, I believe, that shipped asbestos, that knew asbestos was dangerous and did not put warnings out, allowed people to breathe it and injure themselves, destroy their health. Those 300 companies

were the only ones originally sued. There was a long battle over that.

Then there was the decision that said, Well, if you were one of the companies that shipped asbestos into Engel's Shipyard, and you cannot prove when you shipped it, but if you shipped it in at any time, you are jointly and severally liable with everybody else. So plaintiffs would not have to prove that they breathed this asbestos—whether it was Owens Corning or Johns Manville or anybody else; as long as the company shipped it in there, they were liable, too. So that opened things up and more cases were filed. And then good lawyers figured out a way to add more defendants and find more deep pockets with insurance. And from 300 defendants, we now have 8,400 companies that have been sued.

One of them I remember several years ago came to me and told me this story. He said: We bought a company, a subsidiary, that for 2 years had sold asbestos. They had not sold asbestos for many years before we bought them. We bought them, and now we are as liable as any company in the country. It is like they put an IV system running through the subsidiary right into the heart of another company that never was involved in shipping asbestos without warning the recipients. Yet they are responsible for funding all this.

So this is the way this issue has mushroomed. This is the way it has really happened. That is why we have thousands of companies willing to pay into this fund to get relief.

I mention the cost of the plaintiff lawyers, but think about these companies. They have lawyers, too. They have to pay them, and these are some high-paid lawyers. If you are, indeed, being sued for $100 million a person, and you have a number of claimants out there, you have to hire good lawyers to defend you.

The RAND Corporation study has concluded that 58 percent of the money actually paid out by companies that are defendants did not get to the victims but was eaten up in these kinds of costs, like fees for plaintiff and defense attorneys. It is really tremendous.

It started out with some tough litigation. Dickie Scruggs of Mississippi, a brilliant lawyer, believes these cases were justified. He thought up the cause of action. He battled these cases for years. He overcame all the legal defenses and then found the evidence that was critical to these cases. Then they found evidence that the company that shipped asbestos had known all along this was dangerous and did not tell anybody. They had a smoking-gun memorandum. That is how it started and went forward.

Dickie Scruggs, just a few days ago, appeared with Chairman ARLEN SPECTER and said: We are beyond that now. These cases ought to be settled based on the health of the person. It is not necessary to have them all in courtrooms all over America. It should not cost so much. It is a whole different ball game now.

Now the companies are willing to pay money. They are not defending on the basis of whether they should pay. They only want to pay a fair amount, and they want some certainty in how much they pay. Dickie Scruggs thought that was reasonable. He said people who are not sick are being paid and the costs are too great.

It is interesting that the real architect of these cases who represented the first plaintiffs and who battled those cases forward through all the objections and battles that occurred now says this bill is good for the plaintiffs.

Some say some businesses might pay too much. I don't know that they know how much they are going to pay and how much they should pay. We are not here as Senators to decide whether companies ought to pay more to plaintiffs, or which defendants should pay more, and how much a plaintiff really should get, except to say we need to create a system that fairly allocates the money to the people who deserve to be compensated, and that the money is fairly distributed.

There is a limited amount of money for asbestos cases. Quite a number of companies have gone into bankruptcy, and many more will follow. If they go into bankruptcy, they do not have to pay anymore. You can't get blood from a turnip. You are not going to be able to recover from bankrupt companies. Creating a system that allows the companies a chance to survive, to make money and to create wealth that they can then pay to people who are sick makes sense. That is what this bill tries to do.

Those are achievable goals. The simple matter is, when you have almost 60 percent of the money paid out by these defendant companies going to costs, why in the world can't Congress come up with a plan to take that 60 percent, not let it be eaten up in costs, and send it straight to the victims? We can do that. That is what Senator SPECTER, Senator HATCH, and others have worked for years to accomplish.

Lester Brickman, a professor of law at Yeshiva University in New York, who published an extensive article in the Pepperdine Law Review, had this to say about the asbestos litigation:

> The rules of ethics don't apply to asbestos litigation. Everything you see with asbestos is slimy. It's all under the radar screen and it's infected with self-interest and illegal behavior.

That is a pretty strong statement. I have to tell you, Mr. President, there is too much truth in it. It shouldn't be that way. We can clean it up. It is time for reform, and that is what we are about today: cleaning up what has become a haven for abuse. We need to establish a system where real victims, those truly and currently sick from asbestos exposure, can receive immediate compensation.

I know there are some who have concerns about S. 852. You can count me among those who believe this is not perfect legislation, that there are still some things that have to be done to fix it. However, it does represent a good start, and I think with certain amendments on the Senate floor and in conference it can be made better. If we work together, we can pass a bill that will help solve this current asbestos crisis.

The asbestos litigation affects our economy adversely in a significant way. It has had an undeniable impact on jobs and economic growth. Instead of spending money on increasing production, expanding jobs, research and development, companies have had to spend millions of dollars paying claimants and fending off lawsuits.

The runaway asbestos litigation system has forced many companies into bankruptcy. Seventy-seven companies are in bankruptcy or on the verge of bankruptcy because they have been the target of asbestos-related lawsuits, causing them to lay off 60,000 American workers who have in turn lost $200 million in wages. That is not a small matter.

Companies are not saying we don't have to pay anymore. In fact, they are prepared to pay $140 billion. They are saying: Give us certainty so we can go to our shareholders and plan our future over the next 30 years, and then we can provide more money to actually go to the people who are sick and less to overhead costs, lawsuits, and lawyers. We will be happy; we will take that. That is the opportunity we have today.

We must be sure that the trust fund we created preserves limited resources for the truly sick and does not pay claimants who have no real injury or whose sicknesses were not caused by asbestos. We are talking hundreds of thousands of people who have had some exposure to asbestos. Only those truly sick should be compensated.

For example, thousands of people have developed colorectal cancer. Are the asbestos companies liable for everybody who at one time worked for them or was exposed in even a slight way to an asbestos product? Are they liable for diseases unlikely to be caused by asbestos? If you get skin cancer, are they liable for that, or heart disease or throat cancer? Maybe, maybe not; it depends on what the science says.

Efforts have been made to place into this system liability requirements on defendants to pay damages for diseases that may have had no connection whatsoever to asbestos. That is the way you kill this system. We can't do that. We cannot have this fund, which has a limited amount of money—huge as it is—with these thousands of claimants—to pay people who are not sick because of asbestos—we have to be generous with victims, but we cannot be paying people whose sickness is not related to asbestos.

Again, there is very little evidence, if any, that colorectal cancer would be connected to asbestos.

As I noted, we now have 8,400 companies that are being sued as a part of

this process. Many of these have a limited link, if any at all, to asbestos but are named in the lawsuit because most of the original manufacturers that were sued have gone bankrupt.

In a statement to the New York City Bar Association, U.S. District Judge Jack Weinstein—one of the most famous judges in the country, I would add—had this to say about the impact asbestos litigation was having on certain companies' ability to stay in business:

> If the acceleration of asbestos lawsuits continues unaddressed, it is not impossible that every company with even a remote connection to asbestos may be driven into bankruptcy.

These bankruptcies are not only a threat to jobs and the incomes of American workers, they threaten retirement savings. The average worker at a bankrupt asbestos-related firm with a 401(k) plan suffered $8,300 in pension losses. Of course, in a number of instances, when a person loses his job, he loses his health insurance as well. So this litigation is having an impact on real people.

Judge Weinstein said even a company with a remote connection to asbestos could go bankrupt. One could ask, How is this possible? It is like I said before; this litigation is like an IV system that goes through one person, sucking all the blood out of them, and if they can find another person that has blood in them, they will begin to suck it out of them, too. It is just that simple. Whoever has the money is who they will go to next. Whoever is left standing is the next one this litigation turns on and in an attempt to show they are liable.

We need to bring predictability to this system by creating a national trust fund. If we succeed, I believe the companies with asbestos liability will then be able to start creating jobs rather than eliminating them.

We have a lot of important issues we are going to confront as we hammer out the final language in this legislation. It would be a shame on this Congress if somehow, some way, we cannot pass solid legislation that takes 60 percent of the money that is now going to overhead and lawyer's fees and use that to create better benefits for the plaintiffs and provide certainty to the defendants so they can plan their future without going bankrupt.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Montana.

Mr. BURNS. Mr. President, I don't think we have ever seen anything as complicated as the issue before us. We have a vested interest in this issue in Libby, MT.

I ask unanimous consent to proceed as in morning business for 10 minutes, not thinking I will use all the 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. BURNS pertaining to the introduction of S. 2256 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I appreciate the comments of the Senator and his leadership on this important issue. It is certainly one important for our State and all States.

I see the Senator from New Mexico. I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, parliamentary inquiry: Is it appropriate for the Senator from New Mexico to speak as in morning business?

The PRESIDING OFFICER. It is.

Mr. DOMENICI. I yield myself 5 minutes and ask I be permitted to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEASEHOLD 181

Mr. DOMENICI. Mr. President, I rise to speak about a matter that is obviously dear to the occupant of the chair because it has to do with leasehold 181, off the coast of Florida, Alabama, Louisiana. The bill, which was introduced yesterday by Senator BINGAMAN, myself, Senator TALENT, and Senator DORGAN, seeks to permit drilling on a portion of section 181 within 1 year. The bill protects a 100-mile buffer from the coastline of the State of Florida. This bill protects a portion of 181 that the U.S. Armed Forces indicated they might someday need to perform on and use for some military purposes.

These two exceptions and protections are explicit. That is, how far from the coast of Florida and the military protection area. But more than this, this bill seeks to protect the American people from the rising cost of heating their homes and filling up their cars, and, yes, soon, cooling their homes.

Today, the price of oil is about $65 a barrel, and the price of natural gas, while lower than a few months ago, is $8.24 for a million Btu's. To put that in perspective, if you go back only 6 years, the United States in its totality was spending $50 billion on natural gas. Today, we are spending $200 billion, and rising. That means many American businesses have already gone broke because they cannot pay for the price of natural gas. It means the petrochemical industry in America is hanging on, can't grow, and certainly, where they were going to build here, they are building elsewhere. The fertilizer industry is almost bankrupt, and the manufacturing industry is suffering from many things, but they will tell you the highest priority is to get natural gas prices under control.

While we are protecting Florida, we are charged with the responsibility of doing what we can to help the American consumer.

This year, we were very lucky, although Katrina was unlucky. The price of natural gas did not stay high, as high as it was going, because we had a warm winter. It still is at an enormously high price, and I just told you about that. Many Americans had their budgets and had disposable income. They woke up when they got their natural gas bill and half of their disposable income was gone. Where? To their gas bill, because many of them went up from $100 to $200, $200 to $400.

I must say to Senators, we have been told—the Energy Committee, Senator BINGAMAN and I have been told—that the highest priority for natural gas production in the United States—not second, not third, not fourth; the highest—is Leasehold 181. It is ready. It is known. They have drilled all around it with no damage. We had Katrina and no spills. It is 100 miles from Florida, and it will produce a minimum approximating 6 trillion cubic feet. What is that? It is one-fourth of the entire natural gas use of the United States per year; 10 million houses cooled and heated for 6 years. This piece of coast, offshore land.

It seems to me that every year we come into session, we hope we can prove to the American people that we can do something. We say: Can't we prove that we can move? We are going to move this bill out of committee within 3 weeks. If the leader permits, we will bring it to the floor. We are going to tell the Senate: You can let us help the American people or you can play games; you can take 3 weeks on this bill. It doesn't require but 2 or 3 days of debate. If somebody wants to filibuster, that is learned quickly. Let us decide whether we want to kill the bill or not. At least everybody is going to know they are not all so tough, that we have to tell the American people we just can't do it, too complicated, too many committees, too much argument. Not so.

The highest supply production issue for the United States and our people today is this little bill. If we do it, we take one high-priority item off the table and we say: Well, we can do something for a change.

It is bipartisan. My good friend from my State and I have the luxury of being the only committee for many years which has two Senators from the same State being the lead Republican and the lead Democrat. We are going to bring this down here together. It was introduced together. We just had a press conference. We say the same things. We both speak differently, obviously, but we are going to do it because it brings immediate relief to millions.

That is probably 6 minutes instead of the 5 I reserved. If so, I ask consent that it be all right with the Senate.

I yield the floor.

Mr. SESSIONS. Mr. President, the Senator from New Mexico should be congratulated for his leadership on this issue. He has understood it from the beginning. He warned us about the dangers of surging natural gas prices for years and years. As a matter of fact, I can remember a host of committee hearings in which Alan Greenspan

warned us that we need to do something about natural gas.

Isn't it true that we have now not only homes being heated and businesses being heated and we are using natural gas for fertilizer and other things, but electricity is using more natural gas than ever, to create our electricity? Is that the Senator's understanding?

Mr. DOMENICI. That is correct. Not only is that correct, every single new powerplant—98 percent of powerplants built in the United States in the last 15 years—is natural gas.

Mr. SESSIONS. Natural gas wells. I live in Mobile, AL, on the gulf coast. We have a lot of production right around where we live. We have never had any serious spills, to my knowledge, that amounted to real damage to the environment since the beginning. They are more safe and careful today than they have ever been, and the technology is better than it has ever been.

We are having a debate now about liquefied natural gas and building terminals where we send our money off to some foreign country that may be hostile to us, and they freeze, liquefy this natural gas at great expense, transfer it all the way over the ocean, and then they have to heat it up, which causes environmental problems, and then put it in our pipelines, and instead of the money staying in our country, it goes around the world.

When we have these huge reserves right off our own shore, doesn't it make sense to the Senator that we ought to go forward and produce? I see the smile on the Senator's lips. We have been through this before. But it is really pretty basic.

I hope the American people are beginning to understand that we can't deny ourselves. Do you know where they get the oil and gas from the Persian Gulf? They get it out in the water. If it is an environmental issue, it is as bad to get it out of the Persian Gulf, I suppose, as out of the Gulf of Mexico, and certainly economically it makes more sense, I believe.

Mr. DOMENICI. Mr. President, I guess this shouldn't get me started because I should not be here, I have something else to do, but I guess when you are in the Senate, you ought to stay in the Senate.

But on liquefied natural gas—I might as well make sure the Senate hears this—we can't get along without liquefied natural gas for the next 25 years, and when you add up demands, unless something really breaks—maybe if we had all of the Alaskan plants for natural gas down here, but it takes long enough to—I think the statement is we must have energy. But we were counting on a lot of it. It is happening, however. It is being bought in place by foreign countries.

Let me tell you that what means. Qatar, a country with huge supplies of natural gas, may very well decide that they could sell the whole natural gas field to China. There won't be any ships on the sea on which to bid. That could happen.

Right now, natural gas in the form of liquefied natural gas is not coming to America in large quantities. We need a lot more ports to get ready. But they are paying more for it to go to Spain than what we pay to bring it here because there is such a demand.

While we sit on the natural gas expecting LNG, the LNG is being bid up and going elsewhere, and we sit here wondering whether we should pass this bill to use our own, which is 100 miles offshore.

It isn't all so clear where we are going to get this natural gas, this beautiful product. It is so good that we burn it right in our kitchens. That ought to show you it is pretty safe. It is so good that we said no nuclear, no coal; let's just use it to make electricity. We decided to do that. That is when we got into this problem. I am not so sure we should have done it differently, but that is what happened.

Mr. BURNS. Mr. President, I ask the Senator from New Mexico to add me as a cosponsor of the bill.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Senator BURNS be made a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, that bill was introduced yesterday. I don't have the number, but the clerk has it. Senator SESSIONS is not on that bill.

Mr. SESSIONS. Mr. President, I would be pleased to be part of it and sign onto it. I thank the Senator from New Mexico for his leadership in constantly pressing to make sure this Nation does not make a mistake. We have made a lot of them in our energy policy. We have been blessed to have the Senator there.

We are now talking in Mobile about a new LNG terminal. Some people are concerned about it. We need to be very careful about it. But it costs so much more to import liquefied natural gas and then to regasify it and ship it around our Nation than to produce it off our own shore. And when we produce it off our own shore, the money stays in the United States; it doesn't go to these foreign countries.

I believe, from an economic point of view, we have huge reserves out there. I will share, maybe, my thoughts a little later. Maybe Florida was legitimately nervous in the early days about these wells and whether they would damage their beaches. But this far offshore, production has proven now year after year after year to be safe. It is not their waters. These deep waters are not Florida waters; they are U.S. waters.

We need to begin in a careful way to examine how we deal with this and see if we can't increase our production in the gulf. Alabama has found it to be safe. It is somewhat beneficial to our Treasury.

Mr. DOMENICI. Mr. President, I wish to make two more observations while my friend from Alabama is still here, and one in a general way.

I say to Senator SESSIONS that we spoke a little bit about the Energy Policy Act which we passed last August. It is a phenomenal bill. People stopped paying attention to it. But in the proposals the President put forth, all but one of those were in the Energy bill. They are waiting to be funded. He proposed them, so we are going to fund them. But from that day that it was passed until today—on the day it was passed, there were zero applications, permit applications for nuclear powerplants. Zero. Today, there are 18. It is not in China that they want to build 20, or something like that; it is in the U.S.A. because of that bill. I am not saying all of them are going to be built, I am not saying they have turned a shovel, but clearly the strong indication from consortia and individual companies is that because of what we did in that bill, it is time to add to the diversity.

What does that mean? That means had we had those, we wouldn't have a natural gas shortage today because little of the gas would have gone into powerplants and would have been available for what we are arguing about today. We would have been able to tell Florida, although we don't think it is the case, You will never have to drill there, but that didn't happen. There are many other things that are going to happen because of that bill, but we didn't do this one, the offshore, because we were told there would be a filibuster on the bill, the big bill, and we had to make a decision. It was open and made right here. Everybody heard it. So now we have to take our one shot at a time. This is one.

My last observation would be just in advance—I know the floor is a valuable tool for every Senator. They can offer amendments, and they can delay things. We are going to work very hard to make this one, single, big consumer present all by itself. Please, if you have big ideas, we will bring another energy bill, and put it on that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. As I listened to the statement of my good friend from Texas, I thought I would clear up a few things as the debate on this asbestos bill moves forward. I know that Members have some very real concerns with the size of this trust fund and who may make claim to it. I think the Libby language that we have in the bill now is fair, and I will make the case for that because we think it is perceived to be inequitable in its treatment.

The only inequity for Libby residents will occur if their recovery in this bill is removed. The medical criteria as it currently stands are actually insufficient for Libby victims. So members of this body, in particular, my good friend from Texas, is mistaken to conclude that they confer such enormous benefits on Libby's residents. That is not

really the case as I illustrated yesterday.

The bill as it is currently drafted will exclude 40 percent of the folks that live in Libby, MT. Now, to remedy that problem, I filed an amendment to strengthen the Libby provisions rather than remove them entirely. I felt I had to do that.

While I understand that my colleagues will take issue with specific medical criterion in Libby, I fail to see how the exposure in Libby is equal to the suffering in any other cities. The exposure to asbestos was limited in some of those cities into confined areas. If any community exposures existed, they were the result of a factory worker exposing his family through his clothing.

As I explained yesterday the circumstances in Libby are much worse. The main thing in Libby, MT, is that the community was exposed. The entire community was exposed by the wind from an open pit mine as opposed to communities that had enclosed facilities that processed the ore from the Libby mines. So we are talking about an entire valley, an entire city that was exposed by the wind from an open-pit mine. Not only did family members of the mine workers fall ill, but the entire town was contaminated.

Yesterday I showed a picture of a baseball field of little-guy baseball, and it was contaminated. In fact, the amounts of asbestos meant the asbestos in the playing field were as high as 15 percent in some areas. So it has been reported that concentrations as low as .001 percent in asbestos contamination generates dangerous exposures. So the children that were playing on that baseball field in 1978 are now experiencing health problems, and we believe they were caused by that exposure.

This is a unique incident. It is a unique area. And we are not talking about a structure. And we are not talking about a factory. We are talking about an entire community that was exposed to asbestos.

I think I read yesterday where this Memorial Day they will put up over 200 crosses for people who died from asbestos. They have added 20. Twenty crosses due to asbestos diseases in the last year. So I think we have a unique situation.

And also, the disease is a little bit different, we are finding now from talking to medical people who understand, and pulmonary doctors who under stand this asbestos and the related diseases around it.

So I would ask my colleagues to study this very closely.

I thank my friend from Alabama, and I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I see the other Senator from Montana in the Chamber. I thank both of them for their strong advocacy on this question. Senator BURNS is, again, offering an amendment, I believe.

To carry this further, I will say this to our colleagues. Now is a good time for debate. If you have amendments, let's bring them on and discuss them. Senator SPECTER and Senator LEAHY, the chairman and ranking member of the Judiciary Committee, with bipartisanship, are committed to this legislation and trying to make it work. We are delighted to hear the debate. We cannot accept everything. But your ideas are being listened to. Some will be voted on. We will have a better bill when we complete the process.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, first of all, I thank my colleague, Senator BURNS, for helping out in our effort to help the people of Libby, MT. In all the years I have been in public service, I am hard pressed to think of any situation that has bothered me more, that has urged me more to solve, or to help people out, than the people of Libby, MT. They have been put out by so much. It is a community that has faced hardship in so many ways up in northwestern Montana. The sawmills fold up and they go under. The economy there has been extremely difficult to sustain. And on top of that, we have this problem of asbestos, a particularly vicious form of asbestos in Libby, MT, called tremolite.

I would like to help remind my colleagues what goes on in Libby and introduce Libby to those who have not paid much attention to Libby.

Libby is a very special, very small community up in a remote part of Montana, up in northwest Montana. In a valley deep in the Rocky Mountains, Libby resides on the Kootenai River.

And this is not an exaggeration: The people of Libby are struggling. They are struggling mightily day in and day out. They have been uniquely impacted by asbestos exposure. I do not know of any community in the United States that comes close to the level of suffering that the people of Libby have suffered on account of asbestos. Once you visit Libby, you realize very quickly this is a situation which is very different from other asbestos problems in other parts of our country. There is no comparison.

First, just a bit about Libby. It is surrounded by staggering natural beauty. It is up near the Cabinet Mountains, next to a divide, the Kootenai River. It is a very special part of the world. The wonder of the mountains and the beauty of the river, however, contrast dramatically to Libby's other major distinction; that is, a community suffering from the worst concentration of asbestos poisoning in America.

Many of the people of Libby do not have the luxury now, as a consequence of asbestos, of enjoying all of this natural beauty and luxury I mentioned. They cannot hike the Cabinets. They cannot go up in the mountains to hunt elk. They can no longer scale down the river bank of the Kootenai to enjoy their favorite fishing holes.

Why, might you ask, can't people do that anymore? I will tell you a very basic reason. They cannot breathe. They have such difficulty and struggle so much with the very basic human activity of breathing—breathing in, breathing out. They are just out of breath. They just cannot breathe.

So you are asking, why can't the people of Libby breathe? Why are they struggling so much to breathe? The simple answer is W.R. Grace. Until 1990, a company called W.R. Grace used to mine vermiculite from a mountain called Zonolite Mountain, just on the outskirts of there. Until the mid-1970s, W.R. Grace processed that vermiculite mined in Libby in a nearby mill.

I remember years ago when I was meeting people up in Libby, going up to that mill, I was just stunned with how dusty it was, the conditions up there. I assumed it was just a dusty mill, not poisoning the air. If it were, people would know about it. But I was wrong. The people of Libby made that same assumption. The workers made the same assumption, and they were wrong. In fact, the mill was so dusty that workers often could not see their hands when they were sweeping with their brooms.

It is hard for me to find the words to describe the situation. I can remember guys coming off the hill, coming out of the mine, getting off the bus, and it was just a dust bag, just caked with dust. I never had seen anything like it. Mill workers swept dust outside and tried to do the best they could. They dumped it. Once they swept the mill, the dust and stuff outside, what did they do with it? They just dumped it down the mountain. And the mill's ventilation stack spewed dust up into the air. The ventilation stack released 5,000 pounds of asbestos every day—5,000 pounds of asbestos every day. When the wind blew from the east, a deadly white dust would cover the town. It would just cover it with dust.

For decades, 24 hours a day, the dust fell all over Libby. It fell on Libby's gardens, fell on the homes. Dust fell on Libby's high school track, Libby's playgrounds. Everywhere there was this dust from the mine, this asbestos dust.

Now, some of the vermiculite went downtown to a plant, right next to the baseball diamond. I know right where that baseball diamond is: right next to the Kootenai River. Vermiculite is a shiny material. You heat it and it pops like popcorn. People used to pop vermiculite to make building insulation. They called that popped vermiculite Zonolite.

The plant popped the vermiculite into Zonolite, and batches of Zonolite spilled all over the plant, all around the plant.

What happened? Well, kids played in this stuff. Kids played in the Zonolite. Workers at the mine brought back bags of Zonolite to pour in their attics as insulation. They put Zonolite in their

walls for insulation. They put Zonolite in their gardens. I guess it helped make things grow—they thought. They put vermiculite in road beds. Families used vermiculite and ore to build their driveways. They used to use this stuff.

But the layers of rock where people found the vermiculite contained harmful asbestos. Nobody knew it at the time. The people did not. The people did not. The company did. And the vermiculite outside Libby is laced with a particularly dangerous type of asbestos. It is called tremolite. This is not ordinary asbestos, which is bad enough. This is a very pernicious, special, terrible kind of asbestos called tremolite. The usual, more common asbestos is chrysotile asbestos. This is not chrysotile asbestos. This is tremolite.

Why is tremolite so terrible? Why is it even worse? Well, tremolite has long fibers that are barbed like fishhooks. These fibers work their way into soft lung tissue. These fibers do not come out; like fishhooks, they are stuck.

Now, the Zonolite Mountain now sits peacefully with the damage that has already been done. People in Libby are sick—very sick. They suffer from asbestos-related disease at a rate 40 to 60 times the national average—40 to 60 times the national average. People from Libby suffer from asbestos cancer. They suffer from mesothelioma, which is a form of asbestos-related cancer. And they suffer that mesothelioma at a rate 100 times the national average.

This sickness does not just affect the people who worked in the mill. W.R. Grace infected the whole town.

An article in the journal Environmental Health Perspectives concludes that based on the unique nature of vermiculite contamination in Libby, along with elevated asbestos concentrations in the air, it would be difficult to find Libby residents unexposed. They are all exposed.

Every day men from the valley went to the mountain to work in the mine and the mill. Every day, these men came home covered with the fine, deadly white powder. The powder got in their clothes. It got in their curtains. It covered their floors.

I talked to one miner. His name was Les Skramstad. And this is when I really got radicalized about this.

In talking to Les several years ago in his living room, to hear Les, a young fellow who is very ill now, he has a hard time breathing. He would come off the mine. He would go home to see his wife. His wife would embrace him. His children would jump up into his lap. They all have asbestos-related disease now, not just Les but Les's wife, his children. And the prognosis is not good.

The fine fibers of tremolite asbestos are very easy to inhale. Miners inhaled fibers in the mine. Workers inhaled the fibers in the mill. Wives inhaled the fibers when they washed their husband's clothes, and children inhaled the fibers when they played on the carpet or hugged their fathers.

The fibers are deadly. They cause respiratory disease. Those fibers caused a serious lung disease called asbestosis. Those fibers caused a serious form of cancer, mesothelioma, which infects the chest and abdominal cavities. Asbestos in Libby is tremolite asbestos. Tremolite asbestos is far different from the other chrysotile asbestos, which is the predominant cause of asbestos-related diseases. Let me explain the difference. Tremolite diseases are highly progressive and also highly deceptive. People with initial markers of chrysotile asbestos, the usual asbestos disease, have a 25-percent chance of progressive illness. Patients with initial markers of tremolite asbestos are more than 75 percent likely to develop more destructive diseases.

Because of the W.R. Grace mine and mill, hundreds of people in Libby died from asbestos-related diseases already. Hundreds of current and former area residents are now ill. Hundreds of people live in discomfort, and hundreds of people live in pain. Seventy percent of those affected with tremolite asbestos disease never worked in the mine.

Let me introduce you to some people from Libby. Arthur Bundrock worked in the mine for 19 years. He suffered from asbestosis for 21 years and his suffering was made worse from the knowledge that he carried the asbestos dust back home to his family. Arthur's son applied for work at W.R. Grace, had to get an x ray before they would hire him. The x ray showed he already had asbestosis. Grace never told him the results of the screening. The company never told him. Arthur's work in the mine affected his whole family. When Arthur died in 1998, six out of seven members of his family had asbestosis.

Then there is Toni Riley. Toni Riley never worked in the mine. But similar to many kids in Libby, she played in piles of vermiculite ore as a child. These piles were all over the town. Similar to playing in a sandbox, kids played in piles of asbestos. Toni Riley was a member of the local research and rescue team and an emergency medical technician with the Libby volunteer ambulance. She was also a reserve deputy at the sheriff's office for 5 years. In 1996, she was diagnosed with mesothelioma. Toni died on December 4, 1998. Toni is 1 of the more than 200 known cases where people from Libby have died as a result of asbestos-related disease.

W.R. Grace may have closed its doors, but the people of Libby will be plagued with asbestos for years to come. The company has closed its doors, but the people will be plagued probably forever.

These diseases can take 40 years to appear. Hundreds more will fall victim to these diseases in the future. The people of Libby must watch their neighbors struggle to tend their gardens, to walk into the cafe. They must watch their neighbors struggle to provide a future for their children, and they must wonder if they, too, will fall ill. Remember, these diseases can take up to 40 years to appear.

In 1999, the Environmental Protection Agency started to investigate. The EPA found tremolite contamination in the air around the nursery. They found it near the ballfields. They found it inside homes. Last year, we learned that trees near the Grace mine contained asbestos. Recently, a University of Montana study revealed another example of the horrific level of contamination in Libby. In the new study, asbestos fibers were found in the bark of trees growing near Libby Middle School.

Libby is not a rich city. In 2000, the median family income of Libby was just under $30,000. That compares with just over $40,000 in the whole State of Montana and just over $50,000 in all of America. The median family income is much below the national average. Libby is working to overcome years of asbestos exposure from W.R. Grace. They have been through enough. They did not ask for this lot. That is why I have fought to make sure that asbestos bills working through the Senate address the needs of the people of Libby, MT. The good people of Libby need our help. They are dying up there. The town has risen mightily to the challenge it has faced, but they need our help. They deserve our help.

I made a commitment to the people of Libby, and I intend to work together with my colleagues to see that commitment honored. Asbestos disease has devastated many communities across the country, but tremolite asbestos hit Libby hardest of all. Libby is unique. The type of asbestos at Libby is unique. The duration of exposure at Libby is unique. The manner in which asbestos disease manifests itself in Libby is unique, and the community-wide exposure in Libby was unique. That is why the tailored solution that the committee has proposed makes sense.

I urge my colleagues to support the Libby provisions in the asbestos bill and help us right this terrible wrong. Help these hundreds of suffering people to get health care and help save the life of this town.

There are not many things that I have experienced in the last, roughly, 30 years I have been in public service that equal the tragedy which is Libby, a tragedy caused by W.R. Grace and asbestos, a particularly pernicious form of asbestos in Libby, tremolite asbestos, which is so harmful to the community. Libby is struggling mightily. Libby wants to put this chapter behind them. The people of Libby are doing all they can. They don't complain. It is a wonderful feature of westerners, generally, and especially of the people of Libby, MT. They are not crybabies. They don't whine. But they want justice. They deserve justice.

We must take advantage of this unique opportunity we have in the legislation before us to make sure that the people of Libby get their fair due.

The provisions in this bill help assure that compensation is given to the people of Libby who are affected by asbestos so they can pay the medical bills, so they can somehow, some way, get back to normal lives, knowing all along that for many of them, for the indefinite future, they are still going to have a terrible infliction and difficulty breathing in and breathing out.

I implore my colleagues, please listen to the people of Libby. Please, in your heart, help the people of Libby, MT. That is the very least they deserve.

I yield the floor.

The PRESIDING OFFICER (Mr. THUNE). The Senator from Florida.

Mr. MARTINEZ. Mr. President, I ask unanimous consent to speak for 5 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. MARTINEZ are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, under arrangements worked out between the leaders of the two parties, we will be open for amendments tomorrow. Senator LEAHY and I wrote to all Senators back on January 24, urging Senators to let us know what amendments they intended to offer so that we could schedule the business of the Senate. I renew that request at this time. We have a bill where, as previously announced, we are open for modification. During the some 36 negotiating sessions which Judge Becker and I have presided over during the course of the past 2½ years, we have made many modifications. We accepted many amendments in committee. Some were voted upon and defeated. But we are interested in making this the best bill we can.

We have carried the offer beyond amendments. If any companies are having special problems, we are interested to hear of the problems to see if we can find a way to accommodate them. We are dealing here with an enormously complex subject and we have limited time. In order to manage the bills, in order to conserve the time of the Senate, it is our request that Members bring forward to us amendments they want to have offered, which they intend to offer, with suggestions for time limits so we can proceed to manage the bill.

There has been extensive debate on the bill. The Washington Post reported today about the success of moving forward with the motion to proceed and, as I say, tomorrow we will be proceeding with the amendment process. The Post noted, as they put it, referring to me, that I had ''a bit of an obsession with the passage of this bill.'' I think that is an erroneous statement. I don't have a bit of an obsession; I have a total obsession with the passage of this bill. I say that because I have been working on this bill for the entire time I have been in the Senate.

Shortly after I was elected in 1980, Senator Gary Hart came to me and was with a constituent, Johns Manville, and said there is a terrible asbestos problem. I have been a party to efforts over the course of the past two and one-half decades-plus to try to find an answer. It has been extremely elusive. Finally, Senator HATCH came up with the idea of a trust fund. When we passed the bill out of committee during the 108th Congress in July 2003, I then enlisted the aid of a senior Federal judge, Edward Becker, who had been chief judge of the Third Circuit, and who is very knowledgeable on asbestos matters. Judge Becker had written the opinion which was upheld by the Supreme Court of the United States, which said you could not use class actions on asbestos. That might have been an answer on consolidation class action status to handle the issue in the courts. The Supreme Court of the United States said that mode of procedure was not suitable for asbestos. Then the Supreme Court of the United States issued a challenge to the Congress to provide a legislative solution. That challenge has been issued by the Supreme Court on some four occasions, telling us that it was our business to come up with a solution. Judge Becker agreed to mediate and, as I say, we have had some 36 meetings in my conference room, attended by anywhere from 20 to 60 people. Stakeholders were principally involved, and that is defined as labor, AFL–CIO, which was represented ably at those meetings; we invited the trial lawyers and they attended the meetings, even though we knew there would be opposition from them because, realistically, it impacted their livelihoods; we had the manufacturers and we had the insurers.

Last week, we saw come forward a very prominent plaintiffs' lawyer in the asbestos field, Dickie Scruggs, Esq., of Mississippi. He is also Senator LOTT's brother-in-law. Senator LOTT put the two of us in touch and we talked about the matter. He was one of the originators, if not the originator, of the litigation involving asbestos. From what he has seen over the years, he came to the conclusion that it was not a good idea to keep these asbestos cases in the courts; that a better idea was to have the trust fund, and he came in and made public statements. I believe he may even be on a commercial. I don't have a chance to watch too much television, except for C–SPAN. But he pointed out that the victims are simply not being compensated. When we have had a lot of talk on the Senate floor about special interests, this is one interest group which is not a special interest; it is a general interest, and that general interest is the large group of victims who are suffering from deadly diseases—mesothelioma and lung cancer and other ailments from exposure to asbestos—who are not being compensated. It is their interest we are seeking to take care of.

When their companies go bankrupt, they don't have anybody to sue and that is why the trust fund has been created—a trust fund where the figure was established jointly by Senator FRIST on behalf of the Republicans and then-Senator Daschle on behalf of the Democrats at $140 billion. !1The interested parties, the manufacturers and insurers, agreed to put up that money. The fund had started out with substantially less, but it was calculated that that would be an amount realistically calculated to take care of the problem. It is very hard when making projections to know with certainty what is going to happen. The Congressional Budget Office has made an exhaustive study and concluded it would cost in the range of $120 billion to $135 billion. They outlined one contingency which might be a little higher than $150 billion, but they said it was impossible to make the calculation, as they put it, ''with great certainty.'' !1Well, you cannot function in all cases with great certainty, but these projections are realistically calculated to do the job. If we are wrong, and when you talk about thousands of cases projected over decades, if our projections are not accurate, the claimants have the right to go back to court so that they are no worse off than they would be at the present time. They are limited to either Federal or State courts—but they cannot judge shop for special counties anywhere in the country, which is the practice today. Madison County, IL, was singled out and some counties in some other States. They have to go to the State courts where they live or where they worked. So we have a realistic plan to take care of this issue. !1But if we can have a better bill, we are very anxious to have that better bill. That is why we have invited our colleagues to come forward with any amendments they may have. The three Senators from the other side of the aisle who have spoken in opposition to the bill have conceded the very grave, difficult problem. They say this bill is not right, but they don't deny the transparency of how we have worked, and they don't deny the evidence that has gone into it or the comprehensive analysis. I have said I believe this is the most complicated piece of legislation that has ever confronted a legislative body. That is a very grandiose, sweeping statement, but I believe it to be true. I repeat that I challenge anybody who knows of some legislative activity that is more complicated than the one at hand. There have been extensive hearings, extensive negotiations, extensive analyses, extensive amendments, and we are still open for the amendment process. !1It is my hope we will do what the Democratic leader said yesterday, and that is go to the amendments and take them up, and that we will not face additional procedural challenges. If we do, we are prepared. There has been some talk in the cloakrooms and hallways about challenging them on a budget point of order, and we are prepared for that. The underlying merits

are that there is no realistic budget problem, because there is no Federal money involved here. We have made the bill airtight that the Federal Government cannot be involved. It is all private contributions. If the plan does not succeed, we have alternative ways of dealing with the issue, but not to come back to the Federal Government. There are three possibilities of points of order. One is you cannot have legislation before there is a budget resolution. But on that situation, consulting with the experts on procedure, we can have the date of October 1 in the next fiscal year to solve that. !1There is an issue about an allocation that was made at the discretion of the chairman of the Budget Committee, and we believe that will be accomplished with that allocation being released by the chairman. All of this is a bit presumptive, but I think that is how it will work out.

There is a third concern, which is that there not be more than $5 billion spent in any 10-year period between 1960 and about 40 years beyond that. So we will see what eventuates. We are working to cap expenditures so that we stay within that $5 billion limit.

Mr. President, I ask unanimous consent that three additional letters from the International Association of Heat and Frost Insulators and Asbestos Workers, the United Automobile Workers, and the International Union of Painters and Allied Trades in support of S. 852, the Fairness in Asbestos Injury Resolution Act of 2005, be printed in the RECORD.

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

INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS,
Lanham, MD, February 6, 2006.

DEAR SENATOR, we strongly support the courageous and bi-partisan work of Senator Arlen Specter (R.) and Senator Patrick Leahy (D.), co-sponsors of the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005 (S. 852) which comes to the Senate Floor this week.

We support the Bill as presently drafted. We ask that you support the Bill as well.

Our U.S. Supreme Court has held that federal legislation is necessary to solve the asbestos compensation crisis—and we agree. Currently, only 42 cents of every dollar spent in this broken system goes to victims, their widows and kids.

I recently wrote our membership across the country to advise them of our support for this Bill, and to urge them to contact you in support of S. 852. I advised our membership that this Bill is not perfect. But nothing ever is when problems of this magnitude are addressed.

We believe S. 852 offers the best hope of providing fair and equitable compensation on a national basis for those who have suffered, or will suffer from the devastating effects of asbestos exposure in decades to come.

We urge you to reject amendments of special interest groups on either side of the issue that would change the core provisions of the Bill.

Such amendments can only be hostile to the interests of fundamental fairness and equity. We have promised our membership that we would fight vigorously to oppose any change that would make this Bill unfair or inequitable.

Very truly yours,

JAMES A. GROGAN
General President.

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS & ASBESTOS WORKERS,
Lanham, MD, January 31, 2006.

To: Members of the International Association Heat and Frost Insulators and Asbestos Workers.

DEAR BROTHERS AND SISTERS: The Fairness in Asbestos Injury Resolution Act of 2005 (Asbestos Bill S. 852) is scheduled to be brought to the floor of the United States Senate in early February of this year.

Bi-Partisan Co-Sponsors of S. 852: Senator Arlen Specter (R.) and Senator Patrick Leahy (D.): Nobody has worked harder than Senate Judiciary Chairman Arlen Specter (R.) of Pennsylvania and Ranking Minority Member Senator Patrick Leahy (D.) of Vermont in trying to get a fair and equitable and bi-partisan Bill that helps those who have suffered the devastating effects of exposure to asbestos. These two courageous Senators have worked tirelessly during the last three years—to craft changes to the Bill after listening to reasonable suggestions from Labor, Business and Insurance negotiators.

Special interest groups on both sides of the issue have tried to de-rail their good work. But Senators Specter and Leahy have stood tall in search of an equitable legislative solution.

This Office Has Actively Participated in the Negotiating Process of this Bill Over the Last Three Years: Your International has been actively involved in extended and complicated negotiations to bring about this legislative is necessary to solve the asbestos compensation crisis—and we agree.

Let us begin by stating that this Bill is not perfect. Nothing ever is. For the last 10–20 years the current asbestos compensation system has produced inequitable and unfair results. Tens of Billions of dollars have gone to people who are not sick. This is wrong. The current system is broken, notwithstanding what special interest groups may claim. We believe this Bill offers the best hope of providing equitable compensation while expediting the compensation and review process on a national basis, regardless of where you live, or who your attorney might be.

Over 300,000 Pending or Current Asbestos Claims Cry out for a Fair Legislative Solution from Congress: Currently it is estimated that there are more than 300,000 pending asbestos-related claims. In a recent study by RAND, it was determined that only $0.42 (42 cents) of every dollar spent on litigation is awarded to the actual victims, their widows and kids. A majority of the funds is paid to transaction costs, including lawyers' fees for corporations and claimants.

$140,000,000,000 ($140 Billion) Trust Fund For Victims of Asbestos Induced Mesothelioma, Lung Cancer and Asbestosis under a No-Fault System with Set Awards Based on Severity of Disease: This Bill would establish a $140 Billion Trust Fund to compensate victims who are truly sick from asbestos exposure under a no-fault compensation system administered by the Department of Labor. Objective medical criteria that will rule in asbestos induced disease, and will rule out disease not caused by asbestos exposure has been negotiated and approved by us and medical experts we have retained. This legislation will offer the following expedited settlements:

Mesothelioma: $1,100,000 per case.

Lung Cancer with Asbestosis: $600,000–975,000 per case.

Lung Cancer with Asbestos Pleural Markers: $300,000–725,000 per case.

Disabling Asbestosis (not cancerous): $850,000 per case.

Asbestosis with Some Impairment: $100,000–400,000 per case.

Attorneys' fees have been limited to 5% under the legislation. It is to be expected that lawyers who have received tens of millions of dollars in asbestos fees might voice some objection to the Bill. Insurance companies who will have to pay hundreds of millions of dollars into the Trust are likewise objecting to this courageous attempt by Senators Specter and Leahy to solve the asbestos compensation crisis.

The Pipefitters, Painters and United Auto Workers Have Joined With Us: The leadership of the Plumbers and Pipefitters (the UA), the Painters (IUPAT) and the United Auto Workers (UAW), have joined with us in supporting this Asbestos Bill S. 852. We believe the leadership of other trade unions will come to join us in the weeks ahead in support of this Bill.

Funding: We are aware of those who, in good faith, question whether $140,000,000,000 ($140 Billion) will be sufficient to fund the Trust to compensate all American victims of asbestos induced cancer and asbestosis. We share their good faith concern.

But there have been too many bankruptcies as a result of the current asbestos litigation crisis. If funding mandated under the Bill proves insufficient, the Bill provides that individuals may return to the court system and pursue a lawsuit in their State or Federal Court before a jury of their peers. This was a hard fought and fair compromise.

Let me close by saying that this International Union remains deeply committed to supporting a meaningful, comprehensive solution to our national asbestos litigation crisis. Be assured if we become aware of changes or amendments to this Bill that will be to the detriment of workers and their families, we will fight them, and will not hesitate to change our position if needed.

We urge you to contact your Senators to gain their full support for this legislation. Attached is a complete listing of Senators and their contact information for your convenience.

With kind regards, we remain,

Fraternally yours,

JAMES A. GROGAN,
General President.
TERRY LYNCH,
Political director.
JAMES P. MCCOURT,
General Secretary-Treasurer.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
Washington, DC, February 3, 2006.

DEAR SENATOR: Next week the Senate is scheduled to take up the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005 (S. 852), sponsored by Senators Specter and Leahy. The UAW strongly supports this legislation. We urge you to support this critically important legislation, and to support cloture both on the motion to proceed and on the bill itself.

The UAW supports S. 852 because we are firmly convinced it would be far superior to the current tort system in compensating the victims of asbestos-related diseases. Under the existing tort system, many victims receive little or no compensation because those responsible for the asbestos exposure are bankrupt, immune from liability or can't

be identified. Even when victims do receive some award, the litigation takes far too long, and the amounts are highly unpredictable. Far too much money is wasted on attorney fees and other litigation costs, or dispersed to individuals who are not impaired.

The Specter-Leahy bill would solve these problems by establishing a $140 billion federal trust fund to compensate the victims of asbestos-related diseases through a streamlined, no-fault administrative system. This system will provide much speedier compensation to victims according to a predictable schedule of payments for specified disease levels that focuses compensation on those who have the most serious impairments. It will also guarantee that victims can receive adequate compensation, regardless of whether those responsible for the asbestos exposure are bankrupt or otherwise immune from liability.

The UAW strongly supports the provision in the Specter-Leahy bill that does not permit any subrogation against worker compensation or health care payments received by asbestos victims. We believe this provision is essential to ensure that victims receive adequate compensation, and do not have their awards largely offset by other payments. We strongly urge you to oppose any amendment that would undermine victims' compensation by allowing subrogation.

The UAW also urges you to reject any other amendments that would reduce or restrict eligibility for compensation for the victims of asbestos-related diseases. This includes any amendments that would strike medical monitoring or eliminate Level VI awards.

The UAW supports the provisions in S. 852 that require broad sections of the business and insurance industries to make contributions to finance the $140 billion federal trust fund. We believe this broad-based, predictable financing mechanism is vastly preferable to the current tort system, which has already driven many companies into bankruptcy, and is threatening the economic health of other companies that used products containing asbestos, including the major auto manufacturers. Continuation of the existing tort system will inevitably lead to more bankruptcies, resulting in more lost jobs and wage and benefit cut backs for workers and retirees. However, to ensure that the financing mechanism in S. 852 remains equitable and workable, the UAW believes it is essential that the Senate reject any amendments that would severely narrow or cap the financing base and jeopardize the guarantee that $140 billion will be made available to compensate asbestos victims.

The UAW recognizes that a number of specific concerns have been raised by other labor organizations about various provisions in S. 852. We are continuing to work for improvements in the legislation, and are hopeful that Senators Specter and Leahy will largely address these concerns in a manager's amendment.

However, the UAW does not agree with those who have taken exception to the 5 percent cap on attorney fees for monetary daimants. This cap ensures that asbestos victims will be adequately compensated, and not see their awards severely reduced by exorbitant attorney fees. This cap will not impede the ability of claimants to get adequate legal representation. Because S. 852 establishes a non-adversarial, no-fault administrative system, the difficulties and costs involved in bringing asbestos claims will be greatly reduced. Indeed, much of the work can be done by paralegals. We also believe that labor unions and other groups can help provide free or lower cost representation for asbestos victims by hiring staff attorneys and other professionals to process the claims under the no-fault administrative system. Through such mechanisms, asbestos victims can receive competent representation with little or no attorney fees being deducted from their awards.

Finally, the UAW recognizes that questions have been raised about the projections for asbestos claims and the solvency of the trust fund. We would note that most stakeholders agreed to $140 billion in financing early last year. Although all of the projections are subject to some element of uncertainty, the UAW believes that the $140 billion in financing is sufficient to enable the trust fund to compensate asbestos victims for a lengthy period of time. It is also important to remember that S. 852 provides for reversion of asbestos claims to the tort system in the event the federal trust fund should ever have insufficient funds to pay all claims. While we hope these reversion provisions will never be triggered, they do provide assurance that victims will always have some recourse for seeking compensation.

It is easy for critics to point out shortcomings in S. 852. The UAW submits, however, that it is abundantly clear the asbestos compensation system established by the Specter-Leahy bill would be far preferable to the existing tort system. It would do a much better job of providing prompt, equitable compensation to asbestos victims. And it would finance this compensation through a rationale system that does not lead to bankruptcies that threaten the jobs, wages and benefits of thousands of workers.

For all of these reasons, the UAW strongly supports the FAIR Act (S. 852). We urge you to vote for this legislation, and to support efforts to invoke cloture on the motion to proceed and on the bill itself.

Thank you for considering our views on this vital issue.

Sincerely,

ALAN REUTHER,
Legislative Director.

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, AFL–CIO, CLC,

Washington, DC, February 7, 2006.

DEAR SENATOR: The Senate is now considering the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005 (S. 852), sponsored by Senators SPECTER and LEAHY. The International Union of Painters and Allied Trades (IUPAT) strongly supports this legislation and, as it moves forward, we urge you to support cloture on S. 852 on both the motion to proceed and the bill itself.

The IUPAT believes that S. 852 offers the best hope of providing fair and equitable compensation on a national basis for those who have suffered, or will suffer, from the devastating effects of asbestos exposure in decades to come. We believe that S. 852 and the establishment of a $140 billion federal trust fund to compensate the victims of asbestos-related diseases through a streamlined, no-fault administrative system is a vast improvement over the current tort system that all too often is unfair to victims of asbestos exposure. Under the current tort system, many victims receive little or no compensation because those responsible for the asbestos exposure are bankrupt, immune from liability or cannot be identified. If a victim is fortunate enough to secure an award, the litigation can drag on for years, the award amounts are highly unpredictable, and far too much money is wasted on attorney fees, other litigation costs, and individuals who are not impaired.

Furthermore, while this important legislation is considered on the Senate floor, we urge you to reject any amendments that would weaken core provisions of the bill. Namely, agreements reached on the issues of insurance subrogation, medical monitoring, CT scans, statute of limitations, medical criteria, awards values, $140 billion in guaranteed private funding, enforcement provisions for contributors, transparency of fund contributors and a reversion to the current tort system should the fund become insolvent. Should any amendments be adopted on the Senate floor that would weaken any of these core provisions, we will be forced to withdraw our support for S. 852. We also look forward to ongoing efforts included in a manager's amendment and during Senate floor debate that would, in our view, positively address outstanding concerns with regard to start-up and sunset provisions as well as individuals suffering from both asbestos and silica related diseases.

In dealing with a highly complex and emotional issue, S. 852 reflects years of negotiations and compromises that will undoubtedly allow critics to point out various ''shortcomings'' in this bill. The IUPAT recognizes that this bill is not perfect but perhaps it represents the last best chance to provide prompt, equitable compensation to asbestos victims and is undoubtedly a vast improvement over the existing tort system. The U.S. Supreme Court has held that federal legislation is necessary to solve the current asbestos compensation crisis, and we agree. We believe that S. 852 deserves your consideration and ultimate support, and for that reason, the IUPAT urges you to support cloture on both the motion to proceed and the bill itself.

Thank you for your time and attention to this critical issue.

Sincerely,

JAMES A. WILLIAMS,
General President.

Mr. SPECTER. Mr. President, I see the distinguished Senator from West Virginia, the senior Member of this body, the former President pro tempore, former chairman of the Appropriations Committee. He has held every title there is around here. We consider Senator BYRD's longevity and stature as phenomenal. He was in Congress when Harry Truman was President, so he has served with a lot of Presidents. Senator BYRD makes a key distinction between serving with and serving under. He says serving with, and I think he is right. And if you are dealing with Senator BYRD, of course, he is right.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I shall quote Alexander Pope in saying to my distinguished friend, Senator SPECTER:

Thou art my guide, philosopher, and friend.

I thank the distinguished Senator.

Mr. President, I ask unanimous consent to proceed for not to exceed 3 minutes as in morning business for the purpose of submitting a resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from West Virginia is recognized.

Mr. BYRD. I thank the Chair.

(The remarks of Mr. BYRD pertaining to the submission of S. Res. 370 are located in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, it is about a quarter of 5, so we still have a fair amount of time left on today's calendar. There is no Senator in the Chamber, except you and me, Mr. President. So if there are any of our colleagues who want to speak on the asbestos bill, now would be a good time to come over and speak.

There is a certain tempo about this Chamber. When there are a lot of Senators who want time, there is very limited time, fighting for the last extension of time, unanimous consent for 2 more minutes here and a little more there. Now is the time for anybody who wants to speak to come to the Senate Chamber.

I might comment that we all have a lot of other things to do, beyond any question. I have been spending a lot of my time meeting with Senators in their offices talking about the bill and also working on the issue of electronic surveillance, which is very heavy on the Judiciary Committee calendar. I am now about to go to a meeting on immigration, but I will be available if the action on the floor heats up.

Again, I urge any of my colleagues who want to speak, now is a good time. Again, I urge my colleagues to follow up on the request Senator LEAHY and I made back on January 25: If you have amendments, let us know so we can manage this bill in an efficient way.

In the absence of any Senator on the floor seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, pending before the Senate is S. 852, which is a bill that has been written to address what has become a scourge in America: asbestos-related illness and death.

We understand that as early as 1934, some of the companies that were making products out of asbestos came to realize there was a danger, that some of the employees working around this asbestos ended up developing lung problems and some of them were fatal.

Rather than protect the employees or disclose the danger, some of these companies did nothing, said nothing. In fact, there is ample evidence that they covered it up. They didn't want their employees to know the dangerous situation they were in. They didn't want to end up with liability for their employees' illness and death, and they didn't want to lose their profitability. So this secret was kept for a long time, from the 1930s onward.

Through World War II, when men and women serving this country were busy building the ships and other vehicles necessary for our troops, they were exposed to asbestos in many different forms.

Asbestos became a very common element that was used in construction and a lot of different products, from brake linings to home insulation. It was considered to be a valuable resource that was fireproof and light in weight. It was somewhat revolutionary. But during this entire period of time, the development of asbestos product, the asbestos itself, and the fibers that were floating in the air, breathed in by workers and bystanders and innocent people, were creating mini-timebombs in the lungs of the people who were exposed. They didn't know it. They didn't sign up for it. They were not warned. They only learned much later in life that they had some exposure and it ended up killing them.

I wish the story of asbestos had started and ended long ago, but it continues to this day. People still turn up with this disease, mesothelioma, the most fatal form of asbestos exposure, similar to lung cancer, but much more virulent in terms of its devastation on the human body.

The persons diagnosed with mesothelioma have limited time to live. Some of them go through harrowing, extraordinary surgical procedures to buy the possibility of a few more months of life. It can strike anybody at any time, young and old alike, men and women alike. It can strike someone in your family, Mr. President. It can strike a friend. Asbestosis, which is a form of it, is a disease which limits your activities and limits your lifespan. Mesothelioma is a killer.

So hundreds of thousands of Americans have come to learn, because of exposure to this product, that they are sick and facing huge medical bills and the prospect of illnesses of great duration or death, and they ask who is responsible.

Occasionally, they will find an employer that used asbestos. In some cases, they will find a product they purchased that ended up creating asbestos exposure, and they try to seek compensation in court.

What they are doing is very common in America. People who are guilty of wrongdoing are held accountable in court. Drunken drivers are held accountable in court. People who sell defective products are held accountable in court. People who strike other people and cause injury are held accountable in court.

So over the years these hundreds of thousands, maybe millions, of people have asked for their day in court, asked for a judge or jury to decide whether they are entitled to compensation for medical bills, for lost wages, for the family they will leave behind if they are going to die.

It is not unusual. These are the types of lawsuits filed every day in America, and we trust our system. The system says that ultimately a judge and a jury will decide what is fair and what is right. A judge and a jury of the peers of the person who is in the courtroom will decide if compensation is something that should be given. In many cases, it is clear, and large verdicts are given; in some cases, the answers are no.

So over the years, as this asbestos exposure has become better known, many of the companies that were deeply involved in making profits with asbestos have faced huge lawsuits from numerous people who have been injured. Some of these companies, because of the lawsuits and other circumstances, have gone out of business.

Johns Manville was a big name 30 years ago in America. Now it is a trust fund created to pay asbestos victims. Johns Manville made its fortune, in some part, by using asbestos. But by using asbestos and creating asbestos products, they endangered and harmed a lot of people. Courts across America said: Johns Manville, you are responsible; you have to pay. That has happened over and over.

There are many corporations that wonder if they, too, will face many lawsuits. Some already have; others have not. The victims keep coming because so many people were affected by this product. And because of the concern of some businesses as to their exposure and liability, they started coming to Congress over 20 years ago, saying we have to close the courthouse door, we can't let these people come into the courtrooms anymore because they keep winning. They are winning because no one willingly exposed themselves to asbestos. They were innocent victims and their lives were changed dramatically.

So these businesses came to Congress and said: You have to take these cases out of the courtroom; you have to create some other way to deal with it.

We have been talking about it for a long time here on Capitol Hill. Finally, this week, S. 852 has come to the Senate floor in an attempt to create a system that will replace the courtroom in America. This bill creates a trust fund that is supposed to pay the victims.

Think about these victims for a moment. There are some, when you think about them, you might be surprised to know why they died. One of them we talked about earlier today was a great colleague of mine from the State of Minnesota, Bruce Vento. What a terrific guy. I believe he was formerly mayor of St. Paul, MN. He represented St. Paul in the House of Representatives. Bruce was a terrific fellow, an outdoorsman, physically fit. I would see him in the House gym every morning. His locker was down from mine.

Then came the day when they diagnosed him with mesothelioma, and that was, sadly, a death sentence. At some point in his life, something he had done had exposed him to asbestos. It was a tough situation. His family tried to face it, get the best of medical care, but it was hopeless. As a consequence, Bruce passed away.

Here is someone certainly the older people in the audience will recognize, actor Steve McQueen. He died in 1980

from mesothelioma. Some exposure at some point in his life led to this deadly disease. This man who was so handsome, daring, and courageous in all the movies could not fight back when he was struck with mesothelioma.

Recently, singer Warren Zevon—I recall when he did his last CD. It was a big hit. He made that CD realizing it was the last one he would ever record. At some point in his life, he was exposed to asbestos. He has died.

Admiral Elmo Zumwalt, most people remember him, his service to America in the U.S. Navy during Vietnam. He is a well-known figure, spokesman. He, too, was exposed to asbestos at some point in his life and died of mesothelioma.

These are some of the big names who died of mesothelioma, but there are others.

Patricia Corona is a mesothelioma victim. I wish to tell you a little bit about her story.

Patricia, 72 years old, was diagnosed with malignant mesothelioma in the spring of 2001. Her exposure began when she was a young woman in the course of her employment as a sales manager at various automotive dealerships. They used asbestos brake linings, pads, and clutches. She was a sales manager. She frequently walked around the service area. Unknowingly, she was exposing herself to deadly asbestos fibers.

Mrs. Corona and her husband Carl, shown in this picture, have two children. After leaving the automotive dealership, Mrs. Corona decided to stay at home with her kids. While at home, she led an active life. She remodeled her entire house by adding on, painting, putting up drywall, putting in new floors, among other things, just the kind of ambitious, energetic, and talented woman you want to have in your own home. Unbeknownst to her, many of the products she used in home construction contained asbestos. Again she was exposed, unknowingly, to these deadly asbestos fibers.

When Carl and Patricia's kids were grown up, Mrs. Corona went back to work as a sales manager, and eventually bought her own custard stand. After quitting her sales manager job and selling the custard stand, she stayed home to take care of her handicapped brother.

While taking care of her brother, she did some small remodeling. In the spring of 2001, Mrs. Corona's active life came to a screeching halt. She was stricken with shortness of breath and extreme chest pains. She was diagnosed with mesothelioma in May 2001. Mrs. Corona's life, along with her husband's, changed dramatically due to the effects of the disease.

Mrs. Corona is obviously restricted in her activities and realizes that in a short period of time, she will succumb to this disease. Patricia Corona of Glen Ellyn, IL, another asbestos victim.

This is businessman John Rackow. John is from Lake Zurich, IL, grew up in Chicago and moved to the suburbs. His father Ron owned a plastics factory, and Jack helped him run it. He married and raised three kids. Along the way, he worked for a lot of different businesses. He worked in the property development business. He was athletic and active, but he recently noticed when he went out running, he would become short of breath. He was an avid golfer. Jack also noticed his golf game wasn't what it used to be. He went to see a doctor. Some routine tests revealed a mass in his body. When the biopsy was done, the doctor diagnosed him with mesothelioma.

Jack didn't believe it. He went to all kinds of specialists. He took medication to manage the pain. He continued to play golf and even entered a golf tournament. However, after a few days, he was flat on his back in the hospital. He became weaker by the day, and in less than 2 weeks from the time he entered the hospital, he passed away at the age of 64. Jack Rackow is survived by his children and grandchildren. He is another asbestos victim.

The last one I will talk about from Illinois is policeman Donald Brozych from Tinley Park. He studied for the priesthood. He eventually decided to become a police officer. While he was in school, he worked in construction. He was handy at home and worked on his own car.

After he retired, Don and his wife enjoyed traveling and spending time with their friends, but he found himself worn out all the time. During a physical exam, the doctors found some abnormalities, did some tests, and diagnosed him with malignant mesothelioma.

After diagnosis, Don has gone through numerous treatments—chemotherapy, extensive surgery. He even went into an experimental program. He lost his hair. As of the time of this writing, he has been in treatment for over 2 years. He says each day is a blessing and he doesn't know what to expect in the future. He and his wife Donna pray for a future.

When was he exposed? He doesn't know. He looks back at his life and tries to figure out was it while he was working on construction, trying to earn his way through school? Was it while he was working on his car, doing home repairs? There were so many common experiences he was involved in, never knowing he was exposed to asbestos.

I tell you these stories because people such as those I just described have cases pending in courts across America today. They are people whose lives have been shortened and whose lives have been changed dramatically because of exposure to asbestos. They want to know if they can find the party responsible for their illness, whether that party will pay to their family the cost of medical bills and do something to keep their family together when they are gone. It is not an unreasonable request, and it is a request which many times leads to a jury verdict or a judge finding, yes, they are entitled to recover.

This bill that we have before us, S. 852, is a bill which will close the courthouse doors to every one of those people. If they don't have a case being argued before a judge in trial, when this bill is signed their case will be closed. No matter how long they have worked on it, no matter how much effort they put into bringing together medical bills, bringing together all the evidence of where they worked and how they could have been exposed—despite all that effort, it is over.

Where do they turn? They will turn to this trust fund, a trust fund that has been created in this bill. How much money are we going to have in this trust fund to take care of all these asbestos victims for the next 50 years? The amount, according to the chairman and the sponsor of the bill, is $140 billion.

Repeatedly today and on previous occasions, Chairman SPECTER has been asked: Where did you come up with the number $140 billion? By what method did you calculate the number of potential victims, the amount of compensation, to come up with this number of $140 billion? Without exception, the chairman of the committee and lead sponsor of the bill, Senator SPECTER, has said he cannot explain that calculation. He cannot tell us where $140 billion came from. At best, he says, it was a figure that he heard from Senator FRIST and Senator Daschle a year or two ago. That doesn't sound like a very valid starting point to establish the amount of money you need in a trust fund to take care of some of the victims that we have talked about.

To close the courthouse door to Donald Borzych and his family, and to say to them you cannot pursue your lawsuit, you must turn to this trust fund, the starting point should be that the trust fund has enough money to take care of the victims. But, sadly, there is no way of establishing that.

In fact, today Senator KENT CONRAD, who is a colleague of mine from the State of North Dakota and is the Democratic spokesman on the Senate Budget Committee, made a presentation to our caucus lunch. By best estimate, $140 billion is grossly inadequate, totally unfair in terms of what it will cover in the future. They have turned to a variety of different groups and said: What would it really cost? The Congressional Budget Office, outside consulting groups—each and every one of them says $140 billion is not enough.

Senator SPECTER was asked yesterday: What happens if this trust fund runs out of money? What if claims of people like Donald Borzych, Patricia Corona, are still out there, or people just like them, when the fund runs out of money? Senator SPECTER was very candid. He said we will just have to cut back on the amount we have to pay the victims. Think of that for a moment. Facing deadly mesothelioma or asbestosis, losing your day in court for just

compensation for your injuries, you turn to a trust fund that fails you when you need it, and you receive a token amount for having given up your life, having given up the quality of your life, having given up all that time with your family.

Over the last year or two I frequently have met with the families of these mesothelioma asbestos disease cases. Some of them are still heartbroken because in many cases that father and that husband was taken from them in a short period of time. In other cases they fought valiantly, with great pain and sacrifice, to try to beat this disease—and they failed. Just last week, in a corridor upstairs, a family came to see me. A great young little fellow there who looked like he was about 8 years old—he had a white shirt on and a bow tie—he was coming to the U.S. Capitol. He talked about losing his grandfather. He said he was glad he lived long enough to at least know him, but he lost him to asbestos.

I thought to myself at that moment: If you are going to take that family out of court, if you are going to close the courthouse door to their effort to recover at least for the medical expenses and the injuries that have been suffered, shouldn't you put them in a system that will work, a system that you can say with some confidence will compensate them?

We cannot say this about this bill—$140 billion—and no one can come to this floor and explain how that $140 billion is going to be adequate. It turns out that as soon as you close the courthouse door, if this bill passes, and you open up this trust fund, there will be a flood of people rushing to it. We know that. Some of them are on their last leg, literally, trying to get some compensation. So will there be enough money in the trust fund to get started? The answer is no, not nearly enough.

What is the trust fund going to do? It is going to turn around and borrow enough money to start to pay them over an extended period of time. And as the trust fund borrows money, it has to pay interest for the money it borrows. The best estimates are that out of $140 billion, more than a third of it is going to be paid in interest because of borrowing to start the trust fund in its earliest years. So there will not even be $100 billion to deal with all of these cases.

Where will the money come from, $140 billion? That is another good story. I yielded today several times to Senator SPECTER. We talked about this. It is still not clear what happened, but some outside group—whether a consulting group or private corporation, I don't know—was called on to figure out how you create $140 billion in a trust fund. How do you turn to businesses and insurance companies and have them pay that much money? What standards do you use? How many companies are affected? Which companies will be responsible? Which will not be?

All the time we were considering this bill in committee, many of us were asking: How did you come up with $140 billion, and who is going to pay it? We never could get an answer. In May of last year I wrote a letter to the chairman and I asked: Can you tell us the answers to those questions? This was 8 months ago. I never received a reply.

Over time, the chairman said he would provide the information, then announced that he had to issue a subpoena to get the information to explain his own bill—subpoena. Today he acknowledged it. They subpoenaed the information—not from a Government agency but from some private business, private corporation that was writing this bill, or at least writing the means by which they would fund the bill. They subpoenaed the information. So, obviously, we believed that in the interest of a real public debate that information should be public. But it is not. Somehow or another it has been characterized and classified as confidential information so that any person—the family of Donald Borzych, for example—who wants to know how this trust fund will ever be funded can't even see this. It is a secret list, a secret list of the companies that are going to fund the trust fund to $140 billion.

Is this how we write laws in America? Do we go to private companies to write the laws? And then, when you ask them to give you the information as the basis for the law, you have to subpoena it? Demand it from them? Is that what the American people expect? I don't think so.

I think they expect people, public officials and our staff, to put their best efforts into writing a bill that is not written by special interest groups, is not written by private companies. In this case, this bill clearly was, in many respects.

There are big winners in this bill. I wish I could go through the bill with some certainty and tell you what is in it, but I cannot. Standing here today, facing the prospects of voting on the bill tomorrow, I cannot tell you what we will be voting on. A lot of people think Senators do not even try. The fact is, we were given a bill, this bill here, S. 852. That is the one that was passed around here. It is on everybody's desk. But it turns out this is not the bill at all. Listen to what was printed today in Congress Daily, which is a publication on Capitol Hill:

> Senate Judiciary Chairman Specter is drafting a managers' amendment to the asbestos litigation bill with more than 40 new provisions in hopes of garnering enough votes to pass the legislation. Senator Specter said in a news conference, ''There is so much of this bill that is a work in progress.''

I can tell you, that means that neither this Senator nor, frankly, any Senator other than perhaps the chairman, has a clue what we will be voting on tomorrow. While the fate and lives of millions of Americans who have been exposed to asbestos hang in the balance, we are being asked to vote for a bill that will be changed so dramatically in just a few hours that no one knows what is in it. No one knows what is in it. This is what gives Congress a bad name—for us to be moving on a bill of this importance and this magnitude without knowledge as to what is included.

What is interesting is that the White House usually comments on these bills. They kind of send us a statement of administration policy, as to whether they support a bill or oppose it. What I find interesting is we received an interesting statement from the White House on the administration's approach to it. I might say, before I read it, that they could not possibly know what is in this bill because no one else knows. It is going to change overnight. A managers' amendment will bring 40 new provisions in the bill. But nevertheless, the administration, the Executive Office of the President, February 8, 2006, Statement of Administration Policy on S. 852:

> The administration supports Senate passage of S. 852.

He goes on to say asbestos related litigation has clogged up courts, deprived those with injuries of meaningful remedies, costing tens of thousands of jobs, and so forth.

Then they come down to the second paragraph in this very brief statement of policy in which they say:

> Although the administration has serious concerns about certain provisions of the bill, the administration looks forward to working with Congress in order to strengthen and improve this important legislation before it is presented to the President for his signature.

Serious concerns—well, they should have serious concerns because they have not seen the bill. Forty new provisions are going to be added tonight that no one in the White House could possibly have read before they gave this reservation of an endorsement.

Here we are in a situation with a trust fund in an amount that cannot be explained, coming from companies that are on a secret list that cannot be disclosed, as part of a bill that does not exist.

If you were out there with a member of your family exposed to asbestos, I think you would have justifiable concerns that what the Senate is about to do is nothing short of a disaster—a disaster for so many victims across the United States.

Several things ought to be said about the problems that we face with this bill. I could talk to you about the difficulties in the bill. One of them relates to Libby, MT. Libby, MT, could have been ground zero for asbestos contamination. W.R. Grace & Company was mining asbestos and their workers were being exposed to dangers on a daily basis. This company is now gone, but the lawsuits and the injuries and the deaths continue from Libby, MT.

I can recall when Peter Grace, the head of W.R. Grace, was brought to Washington during the Reagan administration to tell us how to run the Government. Peter Grace was the head of a

commission to end waste and fraud and abuse in Government.

It turns out that Peter Grace's company, W.R. Grace, had been guilty of fraud on its workers for decades, concealing the dangers of asbestos. Part of this bill says we ought to give these Libby, MT, workers good treatment. I support it. I think it is a good thing to do.

But only Libby, MT. It turns out across the United States of America there are smaller examples of exactly the same thing in State after State. There are over 25 different sites around America—some in my own home State of Illinois, some in Texas, some in Louisiana, some in New York—that are just like Libby, MT. But when the chairman wrote the bill, special consideration was only given to one place in America—one place. Why? Why would you single out one place in America to give special treatment under the bill? Sadly, that is exactly what happened. And because it happened, we are going to be facing an amendment, which I believe Senator GRAHAM will offer, to make sure that there is fair treatment for many others who are going to be involved.

I hope the Senate will support it. As I said, I am not against Libby, MT, receiving their fair share. But who were the winners and losers when it gets right down to it? The list is pretty interesting.

I talked earlier about U.S. Gypsum, a company based in Illinois. They have been sued by lots of people exposed to asbestos from their products. U.S. Gypsum made an announcement last week as follows:

> We believe that we have about $4 billion in damages that we have to pay to victims of asbestos exposure from our products.

Then they went on to say that they were going to pay it, unless this bill passes. If this bill passes, U.S. Gypsum will be required to pay into the trust fund $900 million.

Think about that for a moment. One company benefits to the tune of $3.1 billion—U.S. Gypsum—because of this bill.

When it comes to the question about who wants this bill, you can bet that company wants this bill.

Honeywell is another company—estimated future asbestos payments, $2.75 billion.

How much will they pay into this trust fund? Somewhere in the range of $300 million or $400 million, about 14 percent or 15 percent of what they would otherwise pay in court. So now Honeywell wants this bill.

Dow Chemical, estimated future asbestos payments up to $2.2 billion. What is the amount of money they will pay into the asbestos trust fund? Somewhere in the range of $300 million. So they are going to do quite well.

But there are other companies that will be forced to pay into this trust fund with exactly the opposite results.

A.W. Chester, a company that has an estimated future asbestos payment in the court system, zero; never been sued, never paid. They will have to pay annually $16.5 million into this trust fund; never been sued, never paid a penny.

They have said, quite frankly—this company has been around for a long time—they are going out of business.

The same thing is true with Hopeman Brothers, no exposure; $16.5 million a year into the trust fund.

National Service Industries, estimated future asbestos payments, $11 million. They have to pay $16.5 million a year into this trust fund.

Is it any wonder that many of us have asked to come up with a list of companies that are going to be winning and losing with this asbestos bill? There are going to be some big, huge winners, and they have been working night and day to get this passed.

There was a study released by Public Citizens Congress Watch in May 2005, entitled, ''Federal Asbestos Legislation: The Winners Are.''

It looked at lobbying efforts behind this bill. They have been going for a long time.

I mentioned, in an earlier statement, that over 20 years ago people were talking about legislation. There has been a real intensity in that lobbying effort over the last several years.

This public citizen organization concludes the big winners will be an unknown number of Fortune 500 companies and at least 10 asbestos makers who have filed for bankruptcy.

It concludes: Some of the Nation's largest and savviest investment firms have positioned themselves to score big if the bill passes.

Everybody following this debate—especially Americans fed up with the way Washington works against the interests of the mainstream and for the interests of Wall Street—I hope they will go to the Public Citizen Web site, www.Citizen.org, and read it for yourselves. You can read their report and analysis of the lobbying effort. And you will find the money which has been spent—estimates by some are as high as $140 million—in lobbying to get this bill passed.

It sounds like a huge sum of money, until you look at one company that could win $3.1 billion if this bill passes. It means a lot to them. You can understand why that company hired 40 lobbyists to come and beg us to vote for this bill.

But I don't worry so much about the companies. I want them to stay in business, if they can. I worry most about the victims. I worry about a system that would not pay those victims.

Is this the best we can do in America? Is this what fairness has come to? This bill is called the FAIR Act. Sadly, I think it is unfair. It is unfair to the hundreds of thousands of people who, through no fault of their own, have been exposed.

Luckily, we have a lot of supporters who have come and talked to us about their support for this legislation opposition. They include many businesses that will be shortchanged, as I mentioned earlier, which include some insurance companies that feel this is fundamentally unfair. They include asbestos victims groups united to oppose this legislation and a score of major labor unions across America representing workers who may have been exposed and may need their day in court.

I am afraid that when you add up this lobbying effort that I have in my hand against the $140 million to pass this legislation, this poor group just didn't have the firepower.

That is why this legislation is on the floor today and why it will be considered very soon.

Once again, we are going to say to America, We don't trust the courts in America, we don't trust the judge, we don't trust the juries. We trust the special interest groups pushing legislation that takes the power away from the individual to have their day in court, to have their neighbors decide what they are entitled to.

Some who want to put their trust in that operation should pause and reflect.

This is the same gang who came up with the Medicare prescription drug benefit program that has become an unsalvageable fiasco across America; again, that program driven by the pharmaceutical companies, this legislation driven by a handful of corporations that will do extremely well.

I am going to close by saying that I can't think of a more important bill to be considered since I have been in Congress. I can't think of a bill that is going to have more impact on ordinary people.

It is unfortunate that special interest groups will dominate this debate. Some people say: Aren't there special interest groups on both sides? I will concede that point; business groups on both sides, trial lawyers on one side, major corporations on the other side, unions on one side. This is a clash of the special interest titans.

That is what this bill is.

The obvious question is: Why are we doing this? If you ask the American people to pick any city in America, whether it is in Nevada or Illinois, you pick it, go on the street and ask: What is the first bill the Senate should take up this year? My guess is that many of them would say: I hope it is ethics, with that culture of corruption in Washington. You had better clean that mess up before you do anything else. Someone else may say: After I sat down with my mother and tried to do that prescription drug form, I hope you will change that. Someone else might say: I hope you will do something about the cost of health insurance. That is a real issue facing businesses, families, and individuals.

In my part of the world, they would say: Have you seen your heating bill at your home lately? It is double, Senator, if you didn't notice. What are you doing about energy in this country?

Some workers who come by my office ask: What are you going to do to protect pensions which we have worked a lifetime for?

There is a long list of things we could do not driven by special interest groups. No. The first item on the agenda for the Senate is the asbestos bill, the clash of the special interest titans.

That is where we are going to spend our time.

When it is all over, I am afraid those who couldn't afford lobbyists, couldn't afford the people who stand outside the corridors with signals, hand signals, with a wink and a nod on how we are supposed to vote, those are the ones who are going to be the losers.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ENSIGN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DEMINT). Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ELECTRONIC SURVEILLANCE

Mr. SPECTER. Mr. President, on Monday, the Judiciary Committee held a hearing on the administration's electronic surveillance program and we dealt solely with the issues of law as to whether the resolution to authorize the use of force on September 14 provided authority in contradistinction to the Foreign Intelligence Surveillance Act, which flatly prohibits any kind of electronic surveillance without a court order. Then we got into the issue of the President's inherent powers under article II. It is difficult to define those powers without knowing more about the program and we do not know about the program. It was beyond the scope of our hearing, but it is something that may be taken up by the Intelligence Committee.

But I made a suggestion to the administration in a letter, in which I wrote to Attorney General Gonzales and put in the RECORD at our Judiciary Committee hearing, that the administration ought to submit this program to the Foreign Intelligence Surveillance Court. They have the expertise and they are trustworthy. It is a regrettable fact of life in Washington that there are leaks from the Congress and there are leaks from the administration, but the Foreign Intelligence Surveillance Court has been able to maintain its secrecy. The Attorney General said the administration was disinclined to do that.

In response to the letter, he wrote, a written response, he said that they would exercise all of their options. I am now in the process of drafting legislation which would call upon the Congress to exercise our article I powers under the Constitution to make it more of a matter for congressional oversight, but respecting the constitutional powers of the President under article I. The Congress has very substantial authority. The President has powers under article II; the Congress has very substantial powers under article I. In section 8, there are a series of provisions which deal with congressional authority on military operations. One which hits it right on the head is to make rules for the Government and regulations of the land and naval forces. That would comprehend what is being done now on the electronic surveillance program.

The thrust of the legislative proposal I am drafting and have talked to a number of my colleagues about, with some affirmative responses, is to require the administration to take the program to the Foreign Intelligence Surveillance Court.

I think that they ought to do it on their own because I think that there are many questions which have been raised by both the Republicans and Democrats. We want to be secure and we want the military, the administration and the President to have all the tools that they need to fight terrorism, but we also want to maintain our civil liberties. If that unease would be solved by having the Foreign Intelligence Surveillance Court tell the administration that it is constitutional, if they say that it is unconstitutional, then there ought to be a modification of it so what the administration is doing is constitutional.

This comes squarely within the often-cited concurring opinion of Justice Jackson in the Steel Seizure case about the President's authority being at its utmost when Congress backs him, on middle ground when Congress has not spoken, and weakest when Congress has acted oppositely in the field, which I think Congress has done under the Foreign Intelligence Surveillance Act because the President's congressional authority then is whatever he has minus whatever Congress has that is taken away from him.

As Justice Jackson said, what is involved is the equilibrium of the constitutional system. That is a very weighty concept—the equilibrium of the constitutional system.

The legislation I am preparing will set criteria for what ought to be done to establish what the Foreign Intelligence Surveillance Court should apply in determining whether the administration's program is constitutional. The standard of probable cause ought to be the one which the Foreign Intelligence Surveillance Court should apply now—not the criminal standard, but the one for gathering intelligence. Then they ought to weigh and balance the nature of the threat, the scope of the program, how many people are being intercepted, what is being done with the information, what is being done on minimization—which is the phrase that the information is not useful in terms of deleting it or getting rid of it—how successful the program has been, if any projected terrorist threats have been thwarted, and all factors relating to the specifics on the program—its reasons, its rationale for existence and precisely what is being undertaken, its success—and that the Foreign Intelligence Surveillance Court ought to look to this, essentially, prospectively.

The court does not have punitive powers, and I do not believe that it is of matter, except to work from this day forward as to what is being done. No one doubts—or at least I do not doubt—the good faith of the President, the Attorney General, and the administration on what they have done here. But as I said in the hearing, I said to Attorney General Gonzales, the administration may be right but, on the other hand, they may be wrong.

The Foreign Intelligence Surveillance Court ought to take a look at the program, make a determination from this day forward whether it is constitutional, and if it is constitutional, then they ought to, under the statute, report back to Congress with their determination as to whether it is constitutional.

The court ought to further make a determination as to whether it ought to be modified in some way which would be consistent with what the administration wants to accomplish but still be constitutional and not an unreasonable invasion of privacy.

The President has represented that his program is reevaluated every 45 days. That is in terms of the evaluation of the continuing threat and what ought to be done. I think a 45-day evaluation period would be in order here as well.

This question is one which is not going to go away. We had, yesterday, the comment by a Republican Member of the House of Representatives in the Intelligence Committee who chairs the subcommittee that oversees the National Security Agency. There are quite a number of people on both sides of the aisle who have expressed concerns regarding this program. It is my judgment that having it reviewed by the Foreign Intelligence Surveillance Court would accomplish all of the objectives, would maintain the secrecy of the program, would allow the President to continue it when there has been the determination by a court—that is how we determine probable cause on search warrants, on arrest warrants, on the activities, the traditional way of putting the magistrate, the judicial official between the Government and the individual whose privacy rights are being involved.

I yield the floor.

OIL AND GAS EXPLORATION IN GULF OF MEXICO

Mr. MARTINEZ. Mr. President, the Senator from New Mexico, chairman of the Energy Committee, whom I greatly admire and respect and consider a good friend, spoke about the bill he proposes to create opportunities for oil and gas exploration in the Gulf of Mexico.

I rise to point out that last week Senator NELSON and I offered a bipartisan bill that also deals with opening some aspects of lease area 181 to oil and gas exploration. The bill Senator NELSON and I propose is a bill that I believe should find favor with many Senators. It allows protection to Florida's coast of 150 miles. It is the kind of protection that Florida's economy depends upon and demands. The people of Florida fully understand the significance of this. This is what jobs in Florida are about, opportunities for people to continue to come to our State to enjoy the wonderful open air, the beaches, the great environment that we have to offer. It also protects the military mission line. This is a very important area for military training out of Eglin Air Force Base and other adjoining bases that utilize this area of the Gulf of Mexico as a primary area for training exercises.

More than that, it also gives the State of Florida permanent protection. This buffer of protection around the State, unlike all the other proposals, gives the State of Florida permanent protection. Once and for all we will define where in the Gulf of Mexico we will drill and where we will not drill, where in the Gulf of Mexico the State of Florida will find permanent protection.

The chairman's bill opens more area for drilling in lease area 181. We don't like that as well as what the Senator from Florida and I proposed, but we understand it does also conflict with what is being proposed and today was outlined by the Minerals Management Service of the Department of the Interior. The Department of the Interior today proposed the next 5-year leasing area for the Gulf of Mexico in lease area 181, and they speak of an area open for drilling that is even less than what the Senator from New Mexico is proposing. But equally flawed, this is protection for 5 years. It is another 5-year moratorium.

Five years from now, we will be right back here where we are today discussing how yet another portion of the Gulf of Mexico might be open to oil exploration. The bill Senator NELSON and I propose is the only one that opens areas in lease area 181 and a substantial portion south of lease area 181 to further oil and gas exploration but also provides the State of Florida with permanent protection, permanent protection the State of Florida ought to decide whether they wish to have. And we representatives of the State of Florida believe strongly this is important to us.

What is the rationale for this? Why must we continue this quest for more and more drilling in the gulf? We are talking about the price of gas. Since we were debating this a couple months ago, the price of gas has dropped dramatically. It is now not almost but almost 50 percent of what it was a couple of months ago. In addition, for the last 15 years, we have gone to a very inefficient way of producing electricity by generating electricity with gas. Almost 95 or 92 percent of all new generating facilities that have been built over the last 10 years or so have been powered by gas, a very inefficient way of doing it. Why? Because it was cheap. Because gas was so cheap, this was the best alternative, just as the energy companies moved in the direction of gas because it was inexpensive. As the price of gas has risen, it will dictate that they will move to other fuel sources.

I continue to believe that inefficient power, generating decisions made 10 years ago, should not inure to the detriment of the people of Florida, Florida's economy, and environment. It is fine to use the Gulf of Mexico for oil exploration in areas where it is sufficiently far away from the State of Florida. It is fine to go into lease area 181. We are willing to open up more of 181 to oil and gas exploration. What we are not willing to do is not insist that the State of Florida be provided with some permanent protection.

There is more than one bill to discuss. There is more than one way to go here. I believe that we offer a way for more gas and oil exploration in the State of Florida while at the same time providing our State with the vital permanent protection that the people of Florida expect and demand.

I yield the floor.

STAMINA, LEADERSHIP, AND RESPECT FOR THE SENATE

Mr. LEAHY. Mr. President, all of us who are friends and colleagues of the senior Senator from Pennsylvania, Senator SPECTER, are delighted with his robust recovery from a difficult illness.

Nearly a year ago Senator SPECTER announced that he had been diagnosed with Hodgkin's disease. He declared that he was going to beat it, just as he had beaten a brain tumor, heart surgery and several other challenges. We are delighted that his promise has been fulfilled, as we knew it would be.

Over the last year he underwent a regimen of grueling treatments. Throughout dozens of Judiciary Committee hearings and voting sessions on difficult topics, he and I sat side by side, month after month, as his treatments progressed. He slowly lost his hair, but he never lost his grit, his sense of fairness or his respect for the Senate and its special role in our system of Government. Nor did he lose his legislative skill, or his humor. Then, and now, he has maintained for himself, and for our committee—a brisk schedule, fueled by an energy level that would be daunting to many who are half his age.

He has all of the vigor of his earlier days, and maybe more. His hair is back, and if I may say so, he looks better than ever.

He is an inspiration to us all, and his example is a particular inspiration to millions of victims and survivors of cancer, and their families, across the Nation.

I value the partnership that he and I have forged over the years, and especially during the time that he has been our committee's chairman. One product of our partnership is the asbestos trust fund bill that is now before the Senate. Bringing this bill on its long journey to the Senate floor has required unending commitment and effort. I have been proud to work with him on this project, and I applaud him for all he has done to bring the bill to this point.

I commend to the attention of our colleagues an editorial about Senator SPECTER in today's edition of The Hill newspaper.

I ask unanimous consent that the editorial be printed in the RECORD.

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

[From the Hill, Feb. 8, 2006]

LOOMING SPECTER

The past year has been tumultuous for Sen. Arlen Specter (R-Pa.), but he has emerged from its trials triumphant.

It is not quite 12 months since the lawmaker announced he had been diagnosed with Hodgkin's disease, a form of cancer. In his statement disclosing his ailment and the imminent start of chemotherapy, Specter said, ''I have beaten a brain tumor, bypass heart surgery and many tough political opponents, and I'm going to beat this, too.''

He has been as good as his word. He lost his hair but continued to shoulder his heavy workload (and to keep in shape playing squash before he got to his desk in the morning). He was never absent, and his hair is back. At 75, Specter is looking spry.

At the time of his diagnosis, the senator had only just secured his chairmanship of the Judiciary Committee, after a tough battle against conservative Republicans who feared he would not fight hard for conservative Supreme Court justices should President Bush have the opportunity to nominate them.

Those fears have proved unfounded. There are now two new members of the high court, Chief Justice John Roberts and Justice Samuel Alito, whose conservative credentials are not in doubt. Those on the right trust and hope (just as those on the left believe and fear) that the new justices, replacing the late Chief Justice William Rehnquist and Justice Sandra Day O'Connor, will move the court toward conservative textualism and away from the ''living Constitution'' ideas that have produced liberal change on social issues for the past two generations.

It is Specter, a supporter of abortion rights, who has presided over these changes to the bench. And he has done so with aplomb and without any hint either of truckling to those on either his right or his left. He rejected, for example, conservative demands that Alito's confirmation hearings be

brought forward in December so that the nominee would not be left hanging out as a target for too long. At the same time, he did not allow his own ideological positions to blind him to the nominees' obvious qualifications. Alito's and Roberts's critics were given ample time to air their concerns, yet both were steered swiftly and comparatively easily to confirmation.

Bush must surely be well-satisfied with his decision in 2004 to back Specter's re-election despite their obvious differences in ideology, temperament and outlook.

Specter is not resting on his laurels. His agenda is dominating Senate business. He is presiding over a Judiciary investigation of the National Security Agency's controversial terrorist surveillance program. And his asbestos reform bill, an effort to clean up a mountain of debilitating litigation, is atop the legislative calendar put together by Majority Leader Bill Frist (R-Tenn.).

People who know Specter rarely make the error of underestimating him. They are even less likely to do so following his performance in the past 12 months.

NEW MARKETS TAX CREDIT

Ms. SNOWE. Mr. President, I rise today to bring to my colleagues' attention a significant and exciting article that appeared in the Wednesday, January 25, 2006, edition of The New York Times entitled ''Luring Business Developers Into Low-Income Areas,'' as written by Ms. Lisa Chamberlain.

I believe my colleagues will be especially interested in this article because it explains how the new markets tax credit, NMTC, can create new jobs, and economic development, in the destitute rural and urban areas. I know that sincere Members of Congress, both Republicans and Democrats alike, recognize the credit's ability to transform communities and break the poverty cycle. From the beginning, the credit's power to help communities overcome poverty has garnered strong bipartisan support for the measure.

The new markets tax credit is unique among Federal antipoverty initiatives. Its innovative approach uses the Tax Code to encourage long-term capital investments in downtrodden communities identified by the census as historically plagued by high unemployment, low levels of private investment, and stifling poverty rates.

The credit provides a modest incentive—a 39-percent credit against Federal taxes over a 7-year period—to lure new private investments to struggling communities. For this credit, developers agree to invest in projects that benefit the community and undertake measures, like charging lower rents, to encourage these projects' success.

Over the next 10 years, private investors will dedicate over $15 billion in new money to poor urban and rural areas in order to revitalize, develop, and ultimately transform these impoverished, low-income communities. The program's rate of return, as measured by increased economic development and lower poverty rates, easily justifies its modest costs to the Treasury of $4.5 billion over 10 years.

The credit's greatest innovation is its ability to create partnerships between the public and private sector that encourage and cultivate investments within a diverse range of businesses and organizations. These investments propel growth by providing funding for small business startups, enable the expansion of manufacturing facilities, and the building of retail, mixed use, commercial and housing developments. The investments also provide communities with important services by creating childcare centers, employment training facilities, charter schools, and community health care centers.

I have seen the credit's ability to reenergize and save local economies in my home State of Maine. During the 1990s, Maine's Katahdin Forest region fell on hard times. One of the areas largest employers, the Great Northern Paper Company, struggled against depressed global paper prices and low financial returns associated with owning trees. Combined, these factors made it extremely difficult to raise the capital necessary to make the mill improvements needed to keep the company competitive and retain jobs.

Because of a $31.5 million NMTC investment made by Coastal Enterprises, a community development corporation based in Wiscasset, ME, two of Great Northern Paper Company's pulp and paper mills in the Katahdin Forest area were able to stay in business and modernize. This crucial investment resulted in the direct employment of 650 people.

The credit also made it possible for Coastal Enterprises to partner with The Nature Conservancy in a ground breaking arrangement to promote the twin goals of environmental protection and economic development. The credit enabled the Nature Conservancy to purchase 41,000 acres, of Great Northern Paper Company's 341,000-acre land base, that contain critical lake and stream watershed lands. As part of this deal, Great Northern Paper Company agreed to place a perpetual conservation easement on 200,000 of the remaining 300,000 acres they retained. These projects will benefit Maine's environment, and economy, for years to come.

These Maine examples represent a few of the innovative and revolutionary ways the new markets tax credit is being used nationwide to address local economic troubles. These projects ranges from smaller loans to help local business owners become more self-sufficient by purchasing their office space to larger ventures like developing a new aircraft repair facility.

Additionally, projects also work to address community deficiencies like the building of a much needed shopping center to transform a rundown, major transit stop. Such investments enable companies located in low-income communities to add jobs, provide more people with needed goods and services, and increase the strength of their local tax base and economies.

Competition among applicants for access to the new markets tax credit program is spurring the private sector to reach beyond the minimum requirements of the law in order to secure a tax credit allotment. According to the results of a May 2005 survey conducted by the New Markets Tax Credit Coalition, investors are targeting communities to develop projects with higher poverty and unemployment rates than the law requires. These private investors are also directing capital into low income areas faster rate than required by law.

The credit enables the public and private sectors to work together in a way that is truly transforming the Nation's most impoverished communities. Through these partnerships, investors are now deploying their capital in areas where before they never would have invested because the great risks kept flexible capital from being conventionally available in these depressed areas.

The credit is seen as one of the most hopeful ways to address the devastating effects of Hurricane Katrina and Rita on the Gulf States. We in Congress overwhelmingly recognized and supported the power of the credit by dedicating $1 billion dollars in additional funding to projects along the gulf coast financed by the NMTC. Many broken Gulf State communities desperately wait for the rebuilding, and renovation, projects the credit will provide.

As a bipartisan effort to continue the credit's great successes, I am pleased to join my colleague on the Senate Finance Committee, Senator ROCKEFELLER, in sponsoring S. 1800, the New Markets Tax Credit Reauthorization Act. A companion bill, H.R. 3987, has been introduced in the House of Representatives by Congressman RON LEWIS of Kentucky.

Our legislation extends the new markets tax credit through 2012. Under current law, the credit, which was enacted in December 2000 as part of the Community Renewal Tax Relief Act, will expire on December 31, 2007. I ask my colleagues to enthusiastically support this innovative and necessary legislation.

In addition to our legislation, the Senate version of the tax reconciliation measure, S. 2020, includes a 1-year extension of the new markets tax credit through 2008. I know that my respected colleagues, both Republicans and Democrats, support the extension of this important bipartisan provision because of its impressive results fighting entrenched poverty and unemployment. I urge my colleagues to strongly support keeping this provision in the final version of the tax bill.

The new markets tax credit is able to improve the physical infrastructure of low-income communities as well as the lives of its residents by harnessing the combined talents of the public and private sectors to create jobs, foster entrepreneurialism, construct facilities, conserve the environment, and even promote greater access to health

care and education. I hope my colleagues will join me assuring that the new markets tax credit program remains strong for the future.

I ask unanimous consent that Ms. Chamberlain's entire article be printed in the RECORD. I ask unanimous consent that this letter, showing the support of over 240 representatives of community development corporations and financial institutions for S. 1800, be printed in the RECORD.

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

[From The New York Times, Jan. 25, 2006]

LURING BUSINESS DEVELOPERS INTO LOW-INCOME AREAS

(By Lisa Chamberlain)

When the low-income housing tax credit was created in 1986, it took years for developers, investors and advocates to understand the program and to learn how to make the most use of it. Now it is one of the most important tools for low-income residential real estate, responsible for creating approximately 1.5 million units of affordable housing to date.

Advocates of a little-known development tool called new-market tax credits, the only federal tax credit program for commercial projects in low-income areas, believe the same thing is beginning to happen with commercial real estate. Efforts are already under way to reauthorize the program, which expires next year.

Enacted in December 2000, the new-market tax credit program is helping to create jobs and revitalize streets and even entire downtowns. Projects large and small that most financial specialists agree would never come to fruition otherwise are taking shape because of tax credits worth $500,000 to $150 million and even more.

For instance, the tax credits are currently financing the rebuilding of a butter manufacturing cooperative in New Ulm, MN, that was damaged in a fire. The loss of the cooperative put 130 people out of work, caused economic hardship for 400 family farms and indirectly affected hundreds more jobs in the low-income rural area.

Just south of the central business district in Grand Rapids, MI, is a nearly completed arts-related mixed-use redevelopment project in an area largely abandoned since the 1950's. Called Martineau Division-Oakes, the 12,000-square-foot commercial space is occupied by the art department of Calvin College and a cafe. There are also 23 spaces for artists to live and work in. Once the project got off the ground, the city committed $2 million to landscaping, repaving, new lighting, signage and sidewalk improvements in the development's neighborhood.

''It's a very flexible and powerful program,'' said Robert Poznanski, president of the New Markets Support Company, one of the main recipients of credits from the Treasury Department, which administers the program.

''It's driven by market forces. The federal government doesn't say, 'Use it for this type of business.' It can be used for commercial real estate, a charter school or a community center, as long as the application is competitive and the project is in a low-income area as identified by census tract data.''

Tax credits make riskier projects more viable by reducing the debt associated with development costs. Private investors pay less in taxes and the developer passes the savings on to the community by, for example, lowering rent per square foot.

The federal program will allocate up to $15 billion in tax credits to community development groups over seven years to make businesses or commercial real estate projects in low-income areas more attractive to private investors. Applicants vie for the credits, and so far the process has been highly competitive. In the first three rounds of allocation, beginning in 2003, demand for the credits has outpaced supply by 10 times, according to figures provided by the Treasury Department. Though the tax credits can be used for business development, the majority are used for commercial real estate because of the way the program is structured.

The most recent allocation was completed last fall, bringing the total disbursement to $8 billion to date. Recipients have five years to use the tax credits to attract private investment, or they are withdrawn and can be reissued elsewhere through 2014.

Dennis Sturtevant, president of Dwelling Place, a nonprofit community development organization, spearheaded the Martineau Division-Oakes project in Grand Rapids. The project used historic tax credits and other grants, in addition to new-market tax credits, to generate $2.2 million in equity from National City Bank.

''When you're talking about tough neighborhoods and all the costs associated with renovating dilapidated, obsolete buildings with lead and everything else,'' Mr. Sturtevant said, ''you need to combine all these resources to make it work.''

Sean P. Welsh, regional president of National City Bank, said: ''It required a lot of creativity. It's complicated, but it's really driving a lot of the urban redevelopment in this and other areas around the country.''

One deal that most everyone agrees would have never happened were it not for the tax credits is Plaza Verde in South Minneapolis. Formerly an abandoned building in a low-income Hispanic neighborhood, it is now a 43,000-square-foot business incubator, with locally owned retailing on the ground floor, office space on the second level and a theater company on the top floor.

JoAnna Hicks is the director of real estate for the Neighborhood Development Center, the nonprofit organization that spearheaded Plaza Verde. Even after expenses were deducted, including legal fees, new-market tax credits created almost $1 million in equity for a project that cost $4.2 million total.

''Because it's such a complicated financial tool, it's hard for small nonprofits to use,'' Ms. Hicks said. ''But now that we understand it better, we're able to apply it to other projects as well.''

Using another allocation of the tax credits, Ms. Hicks's organization has also undertaken the development of a nearly completed public market, called Midtown Global Market, a $17 million project that will be home to more than 60 vendors selling fresh and prepared foods, as well as handmade arts and crafts.

As the program has only begun to mature, larger projects are just getting under way. Bridgeport, CT, is undertaking a major redevelopment of its downtown, with approximately 25 percent of the financing coming from new-market tax credits. The total project is estimated to cost up to $150 million.

''If structured properly, it makes a real difference between a scary development and the deal not being done at all,'' said Kevin Gremse, director of the National Development Council, which provides financial advice and services to municipalities.

Mr. Gremse used his organization's new-market tax credit allocation to attract a New York City-based private developer, Eric Anderson of Urban Green Builders, to take on the task of reviving downtown Bridgeport, which has suffered years of decline.

Advocates are cautiously optimistic that the program will be reauthorized in 2007. Congress recently passed a bill to assist Gulf Coast states with rebuilding efforts after Hurricanes Rita and Katrina, which included $1 billion more for the new-market tax credit program geared toward that region.

''The fact that Congress expanded the program is a good sign,'' said Robert Rapoza, who manages the New Market Tax Credit Coalition, an advocacy organization pushing for the program's reauthorization. ''But we have work to do. This is a new tool and government-sponsored finance is relatively uncommon. We're continuing to put together data to strengthen our case.''

Of course, it helps to have banks advocating for the tax credit as well. As one of the more active players in the tax credit industry, Zachary Boyers, a senior vice president of U.S. Bank in St. Louis, closed more than 50 deals involving new-market tax credits in 2005 alone.

''The banking community is behind this,'' Mr. Boyers said. ''We are deeply involved in spreading the word. We are working on ways to quantify its impact, which is not easy to do. But other investors, including banks and large corporations, would confirm that they would never be investing in these projects without it.''

NEW MARKETS TAX CREDIT COALITION

DEAR SENATOR/REPRESENTATIVE: We are writing to you to indicate our support for the New Markets Tax Credit Reauthorization Act of 2005 (S. 1800 and H.R. 3957). This legislation extends the New Markets Tax Credit through 2012.

The New Markets Tax Credit was established in the Community Renewal Tax Relief Act of 2000. The purpose of the Credit is to increase private sector investment in low income communities by providing a modest federal tax incentive. There is ample evidence that the Credit is working to do just that.

Thus far, the Department of the Treasury has finalized allocations of $6 billion in Credits. After only two years, close to $3 billion in investments in low income communities have been made. These investments have resulted in the financing of projects in economically distressed urban and rural communities including:

Creation of the first new supermarket and shopping center in a low-income community in 30 years in Cleveland;

In Baltimore, economic revitalization and thousands of jobs in an urban community where past efforts foundered;

Development of a new facility for daycare and other community services that shows the potential to lead the way for other development in Chicago;

Business expansion, job creation and opportunity in rural Oklahoma;

Revitalization of the timber industry in northern Maine.

The New Markets Tax Credit has attracted a wide range of private sector investors including private financial institutions and insurance companies. A list of investors in New Markets Tax Credits includes Bank of America, Wachovia, GE Commercial and Industrial Finance, NationalCity Bank of Ohio, Spirit Bank of Bristow, Oklahoma and TD Banknorth in Maine.

The Credit has had an important impact on the lending practices of these institutions. For example, since gaining access to New Markets Tax Credits, GMAC Commercial Holding has increased its direct investments in low-income communities by more than 20%.

For these reasons, we support reauthorization of the New Markets Tax Credit. We urge your support for this important program.

Sincerely,

(Signed by 225 Signatories).

ENERGY AND NATURAL RESOURCES

Mr. BURNS. Mr. President, today I join Senators DOMENICI, BINGAMAN, TALENT and DORGAN in sponsorship of legislation instructing the Secretary of the Interior to develop an oil and gas leasing program for Lease Area 181, located 100 miles off the coast of Florida in the Gulf of Mexico.

As oil and natural gas prices continuously increase, many Americans, especially Montanans, are feeling the strain of increased prices for energy use in their homes and businesses. Montana ag producers are particularly hard hit because the costs of fuel and fertilizer have skyrocketed. While I strongly support the idea of renewable energies, it will take years of research and development before there are practicable and affordable alternatives to oil and natural gas. Development of the American-owned offshore Lease Area 181 would provide nearly 5 trillion cubic feet of natural gas as a near term solution for our country's growing energy needs. That amount would be enough to heat 5 million homes for 15 years.

In order to strengthen American energy security, it is our obligation to use our own domestic resources whenever we can. Offshore drilling has proven to be a safe, reliable, and valuable technology for oil and gas production. Lease Area 181 is a phenomenal resource, and time after time in energy committee hearings when we ask expert witnesses for their opinions on how to best stabilize and lower natural gas prices, the answer is, ''Open Lease Area 181.'' It is not the entire answer to our energy challenges, but it is an important step forward. I applaud the leadership of the chairman and ranking member of the Energy and Natural Resources Committee for acting on this important issue. Next, I hope we examine the potential for additional onshore resource development. I come from an energy producing state, and I can tell you, without reservation, that Montana stands ready to serve the energy needs of this country. We have oil, natural gas, more coal than any other state, and a great potential for wind energy.

I am confident that my fellow Senators will see the value in providing a supply of affordable energy from our domestic resources, and hope the Senate acts quickly on this important legislation.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, today, I speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On January 11, 2006 in Stuart, FL, two men allegedly beat and robbed John Sprunger, a mentally handicapped man for $150. Earl Shanks called his friend Raymond Lee Dawson to the home of the victim, after trying to get Sprunger to give him money. When Dawson entered the home, he pistol-whipped Sprunger, and, assisted by Shanks, got his wallet before both men left the trailer.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

RECOGNITION OF TOBEY SCHULE

Mr. BAUCUS. Mr. President, I rise today to recognize Mr. Tobey Schule, of Kalispell, MT, for his valuable testimony today before the Senate Finance Committee.

The Senate Finance Committee played a key role in enacting Medicare drug benefits. We must be diligent in overseeing their implementation. In 2003, after years of debate, Congress added prescription drug coverage to Medicare. I was proud to help pass that law. The law was not perfect. But it has the potential to do some good.

The Medicare drug bill has the potential to make prescription drugs available to millions who could not otherwise afford them. It has the potential to make drugs available that will lessen pain. It has the potential to save lives.

Unfortunately, the administration has implemented the new law poorly. After Congress passed the law, the Centers for Medicare and Medicaid Services—CMS—had the duty to ensure that Medicare drug benefits were up and running by January 1, 2006. I appreciate CMS's efforts to implement the new law. It is a huge task. CMS worked hard. But CMS's efforts have come up short, in two major areas.

First, CMS made the new drug benefit needlessly confusing.

As part of the new law, Congress passed a temporary drug discount card, available in 2004. The card was supposed to give temporary relief from high drug costs. Seniors of modest means were eligible for a $1,200 Federal subsidy for their drug purchases.

But most Medicare beneficiaries did not sign up for the drug card. Why? They were paralyzed by the choices. CMS approved 40 Medicare drug cards in my State of Montana alone. Instead of celebrating their choices, most seniors in my State decided not to sign up.

Less than a year later, CMS was approving drug plans for the new drug benefit. I urged CMS not to repeat the mistakes that they made with the drug card. I urged CMS to approve only plans meeting the highest standards.

But CMS repeated the mistakes of the drug card. CMS approved dozens of plans for participation in the new drug program. CMS approved more than 40 drug plans in Montana. I support choice, competition, and the free market. It is great that Americans can choose from hundreds of different models when buying a new car. But when people don't know what they are buying, choice can lead to confusion. That is particularly true of health care.

Ask elderly Americans whether they prefer a four-speed automatic or a five-speed manual, and they will probably choose the automatic. Ask them whether they prefer a drug plan with a four-tiered formulary to a plan with five, and they will probably look at you with a mixture of confusion and anger.

My second concern relates to the warnings that CMS ignored. Last year, I asked the independent Government Accountability Office to report on CMS's plans for seniors eligible for both Medicaid and Medicare. I asked: What were CMS's plans for seniors whose drug coverage was moving from Medicaid to Medicare? In December 2005, GAO reported that CMS's plans were insufficient to avoid big disruptions in coverage.

CMS disagreed. CMS said: ''[We have] worked diligently on the transition from Medicaid to Medicare drug coverage . . . and . . . these individuals will get effective, comprehensive prescription drug coverage . . . on January 1, 2006.''

That did not happen. GAO was right. Data systems failed. Pharmacists and States were stuck with the bill for copays that should never have been charged. And some vulnerable seniors left the pharmacy without the medicines that they needed.

Today the Finance Committee heard from Tobey Schule, an independent pharmacist from Kalispell, MT. Mr. Schule is one of thousands of pharmacists who have been burdened with the failed transition from Medicaid to Medicare. I will ask that his testimony from today's hearing be submitted in the CONGRESSIONAL RECORD, next to my remarks.

Last month, Secretary Leavitt and Doctor McClellan briefed members of this committee on problems implementing the new drug program. They outlined seven specific problems. And they outlined plans to fix them. I appreciate CMS's attempts to fix the problems. But some problems remain unsolved. Dr. McClellan, I look forward to hearing how and when CMS plans to fix the problems.

In addition to ensuring that the implementation flaws are fixed, Congress should also address the problem of confusion. We can do that by learning the lessons of Medigap. In 1980, Congress enacted amendments that I offered to fix marketing abuses and consumer confusion with Medigap. The reforms

required Medigap issuers to meet minimum standards and have minimum loss ratios.

Ten years later, Congress again took up Medigap reform, passing legislation to standardize Medigap policies. Ten different Medigap options would be offered, each with a basic set of benefits. This gave consumers an apples-to-apples comparison of Medigap coverage.

We should do the same with the new drug program. We should standardize the drug plans. We should make it easier for people to make good choices about which plan is best for them. I intend to introduce legislation to do just that.

I understand that the drug benefit is young. But I want this benefit to work. We simply cannot afford another round of confusion. We need broad participation. And that's not going to happen unless we make the program more accessible and understandable. I supported enactment of the Medicare drug benefit in 2003. I still support it. Health insurance needs to cover prescription drugs. But we need to make it work. And I look forward to hearing from our witnesses on how we can do so.

I thank Mr. Schule for taking time from his important work to tell the committee about his experiences with the new Medicare drug benefit.

Mr. President, I ask unanimous consent that Mr. Schule's testimony be printed in the RECORD.

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

Chairman GRASSLEY, Senator BAUCUS, members of the Committee, I appreciate the privilege and opportunity to speak about Medicare Part D and how it is affecting my patients and pharmacy.

I am the co-owner of a small independent pharmacy in Kalispell, Montana that was established in 1981. There are about 32,000 people in Kalispell and the surrounding areas; we are 200 miles from the state capitol in Helena. Our pharmacy employs two pharmacists, my son and me, and two pharmacy technicians. There are five senior apartment buildings within three blocks of the pharmacy, and we serve primarily geriatric patients. In addition, we provide weekly medication box exchange for three assisted living facilities and the mental health center in our community. About ninety percent of our walk-in patients are elderly.

Medicare Part D has become a major factor in my pharmacy. I contracted with every company offering drug plans in Montana, so I could continue to serve my patients. I would like to address my concerns with this new benefit, in the following four areas: confusion among patients and pharmacists, education and outreach, coverage of dual-eligibles, and burden on pharmacists.

The implementation of Part D has caused confusion and frustration for my patients. And it has caused confusion and frustration for me. This program doesn't need to be so complicated.

The frustration and confusion for my patients began last summer, when they started receiving information from insurance companies offering Medicare Part D coverage. With over 40 plans to choose from in Montana, my patients said they were scared and intimidated by all of the options. Many of my patients were not fortunate enough to have a family member help them through the process of deciding which plan was best for them. I work with the elderly every day, and this has been overwhelming for them. Bewildered by the complexity, some patients are choosing not to enroll.

Those patients who could make sense of the Medicare mailings faced new obstacles. They were instructed to check the internet to see if the coverage was appropriate for their individual situation. I question this approach, since the vast majority of my elderly patients do not have computers and cannot use the internet. Access to the information through the 1–800 Medicare number was not much better. The phone systems are automated, and many of my elderly patients are unable to navigate through them. Others had the ability to use the phone system but gave up because of long hold times.

Despite this enormous confusion, there were few opportunities for Kalispell patients and pharmacists to get answers. Several meetings were sponsored by the state of Montana, by insurance companies and by senior citizen advocates to help the elderly make their choices and explain Medicare Part D. After attending these sessions, many patients came back to my pharmacy saying they were even more confused. Patients received different answers from different people. They had trouble understanding the literature that they received, and felt a lawyer was necessary to make heads or tails out of it.

On top of this complexity, elderly patients feared they would select the wrong plan. At educational events, patients were instructed to focus on the formularies and pick one that had their medications on the list. But patients found only some of their drugs listed on formularies, requiring patients to choose between medications.

Education for pharmacists wasn't much better. I heard of only one event sponsored by CMS to educate pharmacists, and that was in Billings, nearly 500 miles from my store. I could not attend this meeting, although I did send a pharmacy technician to a local educational event sponsored by an insurance counselor. This seminar did not help us serve our patients enrolling in Part D. But it did help us understand why our patients were so frustrated.

With little information coming from CMS or the insurance plans, I relied on my drug wholesaler to learn how to handle patient in Part D. For instance, in mid-December I called my software vendor to ask how I would determine patients' Part D drug coverage. It was only through this call that I learned about the E–1 transaction, which shows patient plan eligibility. I now use this system many times a day when trying to figure out a patient's coverage, but I had to learn about it on my own.

Over the last few weeks, drug plans have been my only source of information describing the administrative procedures that I must follow to provide drugs and submit claims. But this information is often incomplete. I recently received a notice that patients enrolling in Part D in late January wouldn't be in the system on February 1st. So the problems we heard about at the beginning of January are happening again.

Many of my patients have both Medicaid and Medicare. These ''dual-eligibles'' were automatically enrolled into the new drug plans as their drug coverage was shifted from Medicaid to Medicare. Unfortunately, these plans did not always meet patients' medical needs. I found many patients' medications were not covered by their plans.

Further complicating matters, information systems did not recognize these patients as dually-eligible. They could not afford the high co-pays that the system said they should be charged. I handled each patient on a case-by-case basis, and it required a huge time commitment to sort out problems in drug plan data and information systems. Fortunately, we are a small pharmacy and we know all of our patients. So we were able to give them their medications on the spot. I cannot help but think of how many patients across the country must have gone without their medications. Now we are working through billing issues, trying to determine how we will be reimbursed.

I am very concerned for my patients because we are being forced to change their medications to match the formulary for their plan. By changing medication, I expect to see increases in physician visits, labs, and hospitalizations. This will increase costs to the program. Medicare should have a plan to track the costs associated with medication changes.

Some of the plans are offering the mail-order pharmacy, and I do not think that mail-order should even be an option for Medicare Part D. If patients are getting some medications from mail-order and others from local pharmacies there is no continuity of care. This lack of coordination between mail-order and bricks-and-mortar pharmacies increases the likelihood of adverse events and noncompliance. If a patient using mail-order pharmacy is hospitalized, it is very difficult for doctors at the hospital to get drug information when prescriptions are not filled locally. If patients need drug information about a medication and are using mail order, they must attempt to use automated phone systems. In contrast, local pharmacists are readily available to answer questions. The ordering process of mail-order is also difficult for the elderly. These patients have trouble remembering to order a medication before they run out, but if they order too soon the script will not be processed.

As a pharmacist I want to know how certain medications were picked for the formularies. An example is why is one plan using Zocor and another is using Lipitor. I would like to know why some formularies use a branded drug when a generic is available. This appears costly to the program.

As the program began on January 1st, it became apparent that the insurance companies were not prepared for the start. Patients had not received their cards or enrollment letters. When this documentation had been received, the information was often incomplete. Missing data included BIN numbers, group numbers, ID numbers and processor control numbers. When I tried to access through the E–1 system, patients would come back as not enrolled. I was not able to bill the appropriate plan.

We have spent a tremendous amount of time on the phones with the different companies getting patient billing information or prior authorization to fill. We have been on hold to talk to a representative for as long as four hours before we were able to get through. In other cases, we were simply disconnected after hours on the phone. This is unacceptable.

Drug plans are sending out lists of the pharmacies associated with their plan. While I have contracted with every plan offered in Montana, my pharmacy is not on every company's list. As a result, several of my patients have come in very upset because they think they will have to change pharmacies. I tell my patients that I can fill for them even though I am not on the list. Insurance companies should not send only a partial list of in-network pharmacies. It should be all or nothing. Also, I think that it is totally unacceptable for the drug plans to co-brand patient insurance cards with Wal-Mart, Walgreens, or other chain drug stores. It is

confusing to the patient, leading them to think that they can only go to those pharmacies.

The insurance companies have created problems on the business side of my practice. There is no ''negotiation'' between pharmacists and drug plans on reimbursement rates. If I am going to continue serving my patients, I am forced to accept the low rates offered by insurance companies. Plans are slow to pay claims, and my drug wholesaler requires that I pay for drugs much more quickly than the plans pay me. My pharmacy has over $45,000 in unpaid claims from Medicare Part D.

Pharmacist and pharmacy technician salaries are climbing because of the shortage of available personnel. I am not sure how long independent pharmacies will be able to stay in business with the low reimbursement rates.

I wish that before this program started on January 1st that Medicare and the insurance companies would have taken the time to truly consider the elderly. If the people setting up the program had thought about the needs of their own elderly parents, I am sure this plan would be different.

Chairman GRASSLEY, Senator BAUCUS and Members of the Committee, thank you again for inviting me to appear before you here today. I will now answer any questions you may have.

ADDITIONAL STATEMENTS

RECOGNITION OF THE CALIFORNIA TEAMSTERS HISPANIC CAUCUS

● Mrs. BOXER. Mr. President, I rise to recognize the important work and accomplishments of the California Teamsters Hispanic Caucus. I am also pleased to commend International Brotherhood of Teamsters, IBT, General President James P. Hoffa, and General Secretary-Treasurer C. Thomas Keegel for their continued support of the California Teamsters Hispanic Caucus's efforts in awarding educational scholarships and conducting community improvement and community education programs.

The California Teamsters Hispanic Caucus, formed in 1989 as a nonprofit organization, has experienced phenomenal growth and success. Since the Hispanic Caucus' early beginnings, membership has grown to include more than 250 active members. The support that the caucus has provided to its members has also grown throughout the years. In nearly two decades of service, the Hispanic Caucus has increased the number of its educational scholarships from 3 to nearly 20 and has distributed more than $200,000.

Both General President Hoffa and General Secretary-Treasurer Keegel have shown tremendous support for the California Teamsters Hispanic Caucus through their involvement in increasing the availability of educational scholarship funding and participation in annual Hispanic Caucus events. Their work, in combination with the fine work of the Hispanic Caucus, has allowed the children of Teamsters to continue their education and pursue their dreams.

I invite all of my colleagues to join me in commending the California Teamsters Hispanic Caucus, International Brotherhood of Teamsters General President James P. Hoffa and General Secretary-Treasurer C. Thomas Keegel for their continued support for education, for strong communities, and for all working people.●

IN MEMORIAM OF CORETTA SCOTT KING

● Mr. CARPER. Mr. President, I rise today to honor the life of Coretta Scott King, who peacefully left this world on Monday, January 30, 2006, at the age of 78.

Coretta Scott King was born on April 27, 1927, in Marion, AL, during a time of great social injustice. Despite the many barriers that society had placed in front of her, she refused to let hate and prejudice stand in the way of her dreams. She was valedictorian of her graduating class at Lincoln High School and went on to receive a B.A. in music and education from Antioch College in Yellow Springs, OH. She also earned a degree in voice and violin at Boston University's New England Conservatory of Music. It was during this time that she met Martin Luther King, Jr., who was then studying for his doctorate in systematic theology at Boston University. They married on June 18, 1953, and began their lives together in Montgomery, AL.

As Dr. Martin Luther King, Jr., began his civil rights work, Mrs. King worked closely with him by organizing marches and arranging sit-ins at segregated restaurants to draw attention to the unfairness of Jim Crow laws. She also played a central role behind the scenes of many of the major civil rights campaigns of the 1950s and 1960s. She was by her husband's side when he received the Nobel Peace Prize in 1964 and walked by his side during the infamous march from Selma to Montgomery in 1965 that eventually led to the passage of the Voting Rights Act. Mrs. King also performed in ''Freedom Concerts'' where she would sing songs and read poetry to help raise money for the Southern Christian Leadership Conference, the organization that Dr. King led during the civil rights movement.

Following her husband's death on April 4, 1968, Mrs. King demonstrated remarkable strength and courage by continuing the struggle to bring equality to all Americans. She established the Atlanta-based Martin Luther King, Jr. Center for Nonviolent Social Change as a living memorial to her husband and his dream of social equality. During the 1980s, Mrs. King participated in a series of sit-in protests to highlight the inequality of South Africa's racial policies.

Mrs. King also led the campaign to establish Dr. King's birthday as a national holiday. In 1983, Congress instituted the Martin Luther King, Jr. Federal Holiday Commission, which she chaired during its duration. And on January 20, 1986, the Nation celebrated the first Martin Luther King, Jr. Federal holiday.

Mrs. King has received honorary doctorates from more than 60 colleges and universities, has authored three books and has served on, and helped found, dozens of organizations including the Black Leadership Forum, the National Black Coalition for Voter Participation, and the Black Leadership Roundtable.

I rise today to celebrate the life and accomplishments of Mrs. Coretta Scott King. As wife, mother, social activist, musician, and author, she used her words and actions to spread the message of racial equality and justice throughout the world. I hope that her vision, as well as the vision of her late husband, Dr. Martin Luther King, Jr., will continue to live on in all of us through our work and our deeds.●

A TRIBUTE TO GEORGE WEEKS

● Mr. LEVIN. Mr. President, for the past 22 years, George Weeks' column for the Detroit News has been required reading for anyone interested in Michigan politics. It has been the gold standard for fair, insightful commentary, and I am proud to have known and worked with George over these years. Our mornings—and our public life—won't be the same without him.

George Weeks' life and career have been spent in service to the people of Michigan. In a journalism career that took him to Lansing, MI; to Washington, DC; and around the world, George Weeks always put his responsibility to his readers first. And although we are honoring him today for his legendary accomplishments as a reporter and columnist, George also served his State as chief of staff to Governor William Milliken and his country in the U.S. Army.

In his work as a political columnist, it has seemed at times that George knows everything that is happening or has ever happened in Michigan. He reports on which candidate wowed the crowd—or otherwise—at a recent dinner, what issues are resonating with voters, and who he thinks has the right stuff to go all the way—or the other kind of stuff. His column is a treasure trove of political information. And not only does he have great information, he is also able to put it into perspective. George has a deep knowledge of history. He has written a history of Michigan through the lens of its governors as well as several works on Michigan's Native Americans. Although I admire his trove of knowledge, I do wish he would quit reminding me—and his readers—of how many years I have served in the Senate, a metaphor for the aging process.

George has earned both the loyalty of his readers and the respect and admiration of those he covers. His approach is impartial, issue-oriented, and assumes good faith on the part of public figures. He starts from a belief that public officials of both parties are motivated

mostly by good intentions, not petty politics. He takes the view that politicians are like other people—no better and no worse—and that public service is a worthy calling. We in public life are grateful for that, believe me.

It is a great loss that George is retiring from the News because we need that attitude now more than ever. In recent years, there has been a coarsening of political life. These are meaner streets these days, with more personal attacks and sharp edges. With his civility and his moderation, George has been in the vanguard of smoothing out those rough edges.

In his farewell column, George referred to me as his ''most-interviewed Senator.'' That is a distinction I will wear with honor, and I want to thank him for the professional way he has treated our conversations. George is a man of his word, whom you can talk to with confidence that he will get the story straight and whom you can talk to in confidence from time to time as well. I don't know if George is counting in his tally our informal chats, including annually at the Cherry Festival in his beloved Traverse City. But I do know that I have come to look forward to those talks, and I still will.

Thank you, George Weeks, for your years of service and for your magnificent, ongoing career.●

AWARD FOR EXCELLENCE IN EDUCATION

LORING COMMUNITY SCHOOL, MINNEAPOLIS, MINNESOTA

● Mr. DAYTON. Mr. President, I rise today to honor Loring Community School, in Minneapolis, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Loring Community School is truly a model of educational success. This neighborhood elementary school, which educates children in kindergarten through fifth grade, is named for the distinguished Charles M. Loring, father of the Minneapolis Park System and first president of the Park Board.

Loring Community School prepares children for lifelong learning in a respectful environment that nurtures their growth into knowledgeable, skilled, responsible, and confident citizens capable of succeeding personally as well as professionally. The school is 45 percent African American, 29 percent white, and 22 percent Asian. Seventy-two percent of the children are from low-income families.

The school's success is firmly rooted in basic community values. Each child is treated like an important person, in the classroom and in the school, which sets high standards and expectations for all children, in order to foster growth academically, socially, and personally. Loring School also emphasizes the importance of family involvement, to encourage the educational success of their children.

Loring School goes well beyond the basics, offering a number of enrichment programs, including accelerated math and reading programs, a Math Master competition, a science fair, an art fair, band, and a fifth grade environmental camping experience. A special feature is the student-run radio station, KBEM Radio. All Loring pupils have opportunities to participate in dance, music, theater, and visual art enrichment programs.

Much of the credit for Loring School's success belongs to its principal, Jane Thompson, and her dedicated teachers. The children and staff at Loring School understand that, in order to be successful, a school must go beyond achieving academic success; it must also provide a nurturing environment where students develop the knowledge, skills, and attitudes for success throughout life. All of the faculty, staff, and students at Loring School should be very proud of their accomplishments.

I congratulate Loring Community School in Minneapolis, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.●

HERMANTOWN PUBLIC SCHOOLS, HERMANTOWN, MINNESOTA

● Mr. DAYTON. Mr. President, I rise today to honor Hermantown Public Schools, in Hermantown, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

The Hermantown Public School District is truly a model of educational success. Mr. Brad Johnson, superintendent of Hermantown Public Schools, was hired last summer to lead the district. Upon his arrival in July, he was greatly impressed that the community demonstrated such strong support for education and such tremendous pride in its schools.

The success of Hermantown Public Schools is evidenced by the large number of students from surrounding districts who have enrolled. The schools have a waiting list of additional families that would like to enroll. Further, 95 percent of the parents of students at Hermantown participate in parent-teacher conferences.

Much of the credit for Hermantown Public Schools' success belongs to its superintendent, Brad Johnson, its principals, Lois Backscheider, Dave Radovich, and Dennis Nelson, and their dedicated teachers. The students and staff at Hermantown Public Schools understand that, in order to be successful, a school must go beyond achieving academic success; it must provide a nurturing environment where students can develop knowledge, skills, and attitudes for a lifetime of success. All of the faculty, staff, and students at Hermantown Public Schools should be very proud of their accomplishments.

I congratulate Hermantown Public Schools in Hermantown, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.●

BAY VIEW ELEMENTARY SCHOOL, PROCTOR, MINNESOTA

● Mr. DAYTON. Mr. President, I rise today to honor Bay View Elementary School, in Proctor, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Bay View Elementary School, a neighborhood school for 450 pupils in kindergarten through fifth grade, is truly a model of educational success.

Earlier this year, in their campaign to raise money to construct a boardwalk through their school's greatly prized forest, Bay View pupils collected 2,000 box tops. With the proceeds from the box tops, they were able to purchase $200 worth of lumber for the boardwalk. When someone absconded with the lumber, however, the children were not foiled by the theft; instead, turning a challenge into an opportunity, Bay View fifth-graders staged a publicity event and held placards urging the thieves to return the ill-gotten lumber. Their skillful tactic, combined with newspaper stories describing how hard the students worked to raise the money, generated an outpouring of community support. Over $5,000 in contributions from citizens and corporations streamed in; not only that, but the lumber was returned.

Bay View's school forest, which merited such avid initiative, truly offers an academic highlight, serving as an active, environmental learning laboratory for children in all grades. In January, I toured the forest and saw for myself its many opportunities for hands-on learning. Last summer, eight Bay View teachers used their own personal staff development days to take part in an Audubon Center training program, learning to integrate environmental education into their daily lessons.

Two other notable features are Bay View's artist-in-residence program and its student-run television studio, which affords opportunities to learn live-television production skills through a local, public access television production and broadcast studio. Students' daily news broadcasts are televised in classrooms throughout the school.

Much of the credit for Bay View Elementary School's success belongs to its Principal, Jon Larson, and his dedicated teachers. The children and staff at Bay View Elementary School understand that, in order to be successful, a school must go beyond achieving academic success; it must also provide a nurturing environment where students develop the knowledge, skills, and attitudes for success throughout life. All of the faculty, staff, and children at Bay View Elementary School should be very proud of their accomplishments.

I congratulate Bay View Elementary School in Proctor, Minnesota, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

TRANSMITTING, CONSISTENT WITH THE OFFICE OF NATIONAL DRUG CONTROL REAUTHORIZATION ACT OF 1998 (21 U.S.C. 1705), THE 2006 NATIONAL DRUG CONTROL STRATEGY—PM 37

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on the Judiciary:

To the Congress of the United States:

I am pleased to transmit the 2006 National Drug Control Strategy prepared by my Administration, consistent with the Office of National Drug Control Reauthorization Act of 1998 (21 U.S.C. 1705).

Four years ago, my Administration issued its first National Drug Control Strategy. That Strategy set out an ambitious, balanced plan to reduce drug use in our Nation. Since 2001, drug use by 8th, 10th, and 12th graders has dropped by 19 percent, translating to nearly 700,000 fewer young people using drugs.

I appreciate the support the Congress has given for previous Strategies. I look forward to your continued support as we work together on this critical endeavor.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 8, 2006*.

REPORT RELATIVE TO BLOCKING PROPERTY OF CERTAIN PERSONS CONTRIBUTING TO THE CONFLICT IN CÔTE D'IVOIRE—PM 38

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Consistent with subsection 204(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(b) (IEEPA), and section 301 of the National Emergencies Act, 50 U.S.C. 1631 (NEA), I hereby report that I have issued an Executive Order (the ''order'') blocking the property of certain persons contributing to the conflict in Côte d'Ivoire. In that order, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by that conflict, as described below.

The United Nations Security Council, in Resolution 1572 of November 15, 2004, expressed deep concern over the resumption of hostilities in Côte d'Ivoire, the public incitement of hatred and violence, and the repeated violations of the ceasefire agreement of May 3, 2003. United Nations Security Council Resolution (UNSCR) 1572 determined that the situation in Côte d'Ivoire poses a threat to international peace and security in the region and called on member States to take certain measures against persons responsible for the continuing conflict. The United Nations Security Council has continued to express serious concern at the persistence of the crisis in Côte d'Ivoire and of obstacles to the peace and national reconciliation process from all sides in UNSCRs 1643 of December 15, 2005, and 1652 of January 24, 2006.

Despite the intervention and efforts of the international community, there have been massacres of large numbers of civilians, widespread human rights abuses, significant political violence and unrest, and attacks against international peacekeeping forces in Côte d'Ivoire. Such activity includes the killing of large numbers of civilians in Korhogo in June 2004, and in Abidjan in March 2004; significant violence and unrest, including public incitements to violence, in Abidjan in November 2004; human rights violations, including extrajudicial killings, in western Côte d'Ivoire in April and June 2005; attacks on a police station and prison in July 2005 in Anyama and Agboville, and violent protests in Abidjan and attacks on U.N. and international nongovernmental organization facilities in western Côte d'Ivoire in January 2006. Also, notwithstanding the Linas-Marcoussis Agreement signed by the Ivorian political forces on January 24, 2003, the related ceasefire agreement of May 3, 2003, the Accra III Agreement of July 30, 2004, the Pretoria Agreement of April 6, 2005, and the Declaration on the Implementation of the Pretoria Agreement of June 29, 2005, consolidating the implementation of the Linas-Marcoussis peace and national reconciliation process, Ivorian parties have continued to engage in military operations and attacks against peacekeeping forces in Côte d'Ivoire leading to fatalities.

Pursuant to the IEEPA and the NEA, I have determined that these actions and circumstances constitute an unusual and extraordinary threat to the national security and foreign policy of the United States and declared a national emergency to deal with that threat and have issued an Executive Order to deal with the threat to U.S. national security and foreign policy posed by the situation in or in relation to Côte d'Ivoire.

The order blocks the property and interests in property in the United States, or in the possession or control of United States persons, of the persons listed in the Annex to the order, as well as of any person determined by the Secretary of the Treasury, after consultation with the Secretary of State, to constitute a threat to the peace and national reconciliation process in Côte d'Ivoire, such as by blocking the implementation of the Linas-Marcoussis, Accra III, and Pretoria Agreements; to be responsible for serious violations of international law in Côte d'Ivoire; to have directly or indirectly supplied, sold or transferred to Côte d'Ivoire arms or any related materiel or any assistance, advice, or training related to military activities; or to have publicly incited violence and hatred contributing to the conflict in Côte d'Ivoire.

The designation criteria will be applied in accordance with applicable domestic law, including where appropriate, the First Amendment to the United States Constitution.

The order also authorizes the Secretary of the Treasury, after consultation with the Secretary of State, to designate for blocking any person determined to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities listed above or any person listed in or designated pursuant to the order. I further authorized the Secretary of the Treasury, after consultation with the Secretary of State, to designate for blocking any person determined to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person listed in or designated pursuant to the order. The Secretary of the Treasury, after consultation with the Secretary of State, is also authorized to remove any persons from the Annex to the order as circumstances warrant.

I delegated to the Secretary of the Treasury, after consultation with the Secretary of State, the authority to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the IEEPA and the United Nations Participation Act, as may be necessary to carry out the purposes of the order. All executive agencies are directed to take all appropriate measures within their authority to carry out the provisions of the order.

The order, a copy of which is enclosed, became effective at 12:01 a.m. eastern standard time on February 8, 2006.

GEORGE W. BUSH.

The White House, *February 8, 2006*.

MESSAGE FROM THE HOUSE

ENROLLED BILL SIGNED

At 3:10 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 4636. An act to enact the technical and conforming amendments necessary to implement the Federal Deposit Insurance Reform Act of 2005, and for other purposes.

The enrolled bill was signed subsequently by the President pro tempore (Mr. STEVENS).

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5604. A communication from the Executive Director, National Capital Planning Commission, transmitting, pursuant to law, the Commission's Fiscal Year 2005 Competitive Sourcing Report and planned competitions for Fiscal Year 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5605. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled ''Audit of Advisory Neighborhood Commission 8B for Fiscal Years 2003 Through 2005, as of March 31, 2005''; to the Committee on Homeland Security and Governmental Affairs.

EC–5606. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–250, ''Washington Convention Center Authority Advisory Committee Continuity Second Temporary Amendment Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5607. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–251, ''New Columbia Community Land Trust 22nd and Channing Streets, N.E. Tax Exemption Temporary Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5608. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–252, ''Tenant Evictions Temporary Amendment Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5609. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–253, ''DC–USA Economic Development Temporary Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5610. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–264, ''Library Enhancement, Assessment, and Development Amendment Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5611. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–265, ''Domestic Partnership Equality Amendment Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5612. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–266, ''Terrorism Prevention in Hazardous Materials Transportation Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5613. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–267, ''Nuisance Abatement Reform Amendment Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5614. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–268, ''Health Care Benefits Expansion Amendment Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5615. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–269, ''Office of Administrative Hearings Term Amendment Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5616. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–270, ''Parkside Terrace Economic Development Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5617. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–271, ''Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Temporary Amendment Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5618. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–272, ''Contracting and Procurement Reform Task Force Establishment Temporary Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5619. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–273, ''Uniform Mediation Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5620. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–274, ''Low-Emissions Motor Vehicle Tax Exemption Temporary Amendment Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5621. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–275, ''Office of Gay, Lesbian, Bisexual, and Transgender Affairs Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5622. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 16–276, ''Department of Health Functions Clarification Amendment Act of 2006''; to the Committee on Homeland Security and Governmental Affairs.

EC–5623. A communication from the Assistance Secretary of Defense (International Security Policy), transmitting, pursuant to law, a report entitled ''Cooperative Threat Reduction Annual Report to Congress Fiscal Year 2007''; to the Committee on Armed Services.

EC–5624. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, a report relative to H.R. 1400, the ''Securing Aircraft Cockpits Against Lasers Act of 2006''; to the Committee on the Judiciary.

EC–5625. A communication from the Counsel for Legislation and Regulations, Office of the Chief Procurement Officer, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Amendments to HUD Acquisition Regulation (HUDAR)'' ((RIN2535–AA27) (FR–5010–F–01)) received on February 7, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5626. A communication from the Regulations Officer, Office of Disability and Income Security Programs, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled ''Work Activity of Persons Working as Members of Advisory Committees Established Under the Federal Advisory Committee Act'' (RIN0960–AG07) received on February 7, 2006; to the Committee on Finance.

EC–5627. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Escrow Funds and Other Similar Funds'' ((RIN1545–AR82) (TD9249)) received on February 7, 2006; to the Committee on Finance.

EC–5628. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Announcement of Rules Adopting a Reasonable Cause Standard for Section 1503(d) Filings'' (Notice 2006–13) received on February 7, 2006; to the Committee on Finance.

EC–5629. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Coordinated Issue: Redemption Bogus Optional Basis Tax Shelter'' (UIL NO: 9300.42–00) received on February 7, 2006; to the Committee on Finance.

EC–5630. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Residence Rules Involving U.S. Possessions'' ((RIN1545–BC86) (TD9248)) received on February 7, 2006; to the Committee on Finance.

EC–5631. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Revenue Procedure: Renewal Community Depreciation Provisions'' (Rev. Proc. 2006–16) received on February 7, 2006; to the Committee on Finance.

EC–5632. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Tentative Recomputed Differential Earnings Rate for 2004 under section 809'' (Notice 2006–18) received on February 7, 2006; to the Committee on Finance.

EC–5633. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Extension of Safe Harbor Date for Charitable Remainder Trusts in the Case of Spousal Election Rights'' (Notice 2006–15) received on February 7, 2006; to the Committee on Finance.

EC–5634. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled

''Medicare and Medicaid Programs; Requirements for Long Term Care Facilities; Nursing Services; Posting of Nurse Staffing Information'' (RIN0938–AM55) received on February 8, 2006; to the Committee on Finance.

EC–5635. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the Agency's proposed fiscal year 2007 budget; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5636. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Boscalid; Pesticide Tolerance'' (FRL No. 7757–9) received on February 7, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5637. A communication from the Executive Director, Commodities Futures Trading Commission, transmitting, pursuant to law, the report of a rule entitled ''17 CFR Parts 36, 37, 38, 39 and 40, Technical and Clarifying Amendments to Rules for Exempt Markets, Derivatives Transaction Execution Facilities and Designated Contract Markets, and Procedural Changes for Derivatives Clearing Organization Registration Applications'' (RIN3038–AC23) received on February 7, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5638. A communication from the Executive Director, Commodities Futures Trading Commission, transmitting, pursuant to law, the report of a rule entitled ''17 CFR Part 30, Foreign Futures and Options Transactions (70 FR 75934, December 22, 2005)'' received on February 7, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5639. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Black Stem Rust; Movement Restrictions and Addition of Rust-Restraint Varieties'' (Doc. No. 04–003–2) received on February 7, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5640. A communication from the Chief, Regulatory Review Group, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Cottonseed Payment Program'' (RIN0560–AH29) received on February 7, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5641. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Increased Assessment Rate'' (Docket No. FV06–905–1 IFR) received on February 8, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5642. A communication from the Assistant Secretary for Congressional and Intergovernmental Affairs, Department of Labor, transmitting, pursuant to law, the Department's final report on the National Emergency with respect to the suspension of the Davis-Bacon Act in response to Hurricane Katrina; to the Committee on Health, Education, Labor, and Pensions.

EC–5643. A communication from the Inspector General, Railroad Retirement Board, transmitting, pursuant to law, a report relative to budget request for the Office of Inspector General, Railroad Retirement Board, for fiscal year 2007; to the Committee on Health, Education, Labor, and Pensions.

EC–5644. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Prohibited Transaction Exemption 84–24 (PTE 84–24) For Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, Investment Companies and Investment Company Principal Underwriters'' (Exemption Application D–11069) received on February 7, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5645. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Prohibited Transaction Exemption (PTE) 75–1, Exemptions from Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Dealers and Banks'' (Exemption Application D–11184) received on February 7, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5646. A communication from the Assistant Secretary, Veterans' Employment and Training Service, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Uniformed Services Employment and Reemployment Rights Act of 1994'' (RIN1293–AA09) received on February 7, 2007; to the Committee on Health, Education, Labor, and Pensions.

EC–5647. A communication from the Legal Advisor, Wireless Telecommunications Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, Reports and Order'' (Doc. No. 05–211) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5648. A communication from the Secretary of Communication, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled ''Commission Reporting Requirements Under Section 8 of the Clayton Act'' received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5649. A communication from the Secretary of Communication, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled ''Notice Announcing 2006 Adjusted Thresholds for Clayton Act 7A'' (RIN3084–AA91) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5650. A communication from the Legal Advisor, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Shorter, Orrville, Selma, and Birmingham, Alabama)'' (Doc. No. 04–201) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5651. A communication from the Legal Advisor, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Ringwood, Oklahoma and Taos Pueblo, New Mexico)'' (Doc. No. 04–201) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5652. A communication from the Legal Advisor, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Randsburg, California and Mooreland, Oklahoma)'' (Doc. No. 04–201) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5653. A communication from the Legal Advisor, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lovelady, Texas and Oil City, Louisiana); Reclassification of License of FM Station KYKS, Lufkin, Texas'' (Doc. No. 05–36 and 37) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5654. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Supplemental Oxygen; Direct Final Rule Withdrawal'' ((RIN2120–AAI65)(2006–0002)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5655. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (61)'' ((RIN2120–AA65)(2006–0004)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5656. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileira de Aeronautica SA Model EMB 120, 120ER, 120FC, 120QC, and 120RT Airplanes'' ((RIN2120–AA64)(2006–0012)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5657. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Aerospatiale Model ATRE 42–200, ATR42–300, and ATR42–320 Airplanes'' ((RIN2120–AA64)(2006–0013)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5658. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A320–111 Airplanes, and Model A320–200 Series Airplanes; Correction'' ((RIN2120–AA64)(2006–0014)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5659. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empressa Brasileira de Aeronautica SA Model EMB 135 Airplanes and Model EMB 145, 145ER, 145MR, 145LR, 145XR, and 145EP Airplanes'' ((RIN2120–AA64) (2006–0015)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5660. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Raytheon Aircraft Company Model 390, Premier 1 Airplanes'' ((RIN2120–AA64) (2006–0017)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5661. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa Model SZD 50–3 ''Puchacz'' Gliders'' ((RIN2120–AA64) (2006–0018)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5662. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Shadin ADC Air Data Computers'' ((RIN2120–AA64) (2006–0019)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5663. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Arctic Village, AK'' ((RIN2120–AA66) (2006–0003)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5664. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace, San Luis Obispo, CA'' ((RIN2120–AA66) (2006–0004)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5665. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Class E Airspace; Nenana, AK'' ((RIN2120–AA66) (2006–0005)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5666. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of the Norton Sound Low Offshore Airspace Area, AK'' ((RIN2120–AA66) (2006–0006)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5667. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Nilolai, AK'' ((RIN2120–AA66) (2006–0007)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5668. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Kennett, MO'' ((RIN2120–AA66) (2006–0008)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5669. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Class E Airspace; Egegik, AK'' ((RIN2120–AA66) (2006–0009)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5670. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Hillsboro, TX'' ((RIN2120–AA66) (2006–0010)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5671. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Class E Airspace; Wenatchee, WA'' ((RIN2120–AA66) (2006–0011)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5672. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (2)'' ((RIN2120–AA65) (2006–0005)) received on February 7, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5673. A communication from the Assistant Administrator for Fisheries, Department of Commerce, and the Director, U.S. Fish and Wildlife Service, Department of the Interior, transmitting jointly, the 2005 Biennial Report on Atlantic Striped Bass Studies; to the Committee on Commerce, Science, and Transportation.

EC–5674. A communication from the Acting Chairman, National Transportation Safety Board, transmitting, pursuant to law, a Report on the Fiscal Year 2007 Budget Estimates; to the Committee on Commerce, Science, and Transportation.

EC–5675. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the Cooperative Threat Reduction Act with respect to Armenia, Azerbaijan, Georgia, Ukraine, Kyrgyzstan, and Tajikistan; to the Committee on Foreign Relations.

EC–5676. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the Cooperative Threat Reduction Act with respect to both the Russian Federation and Uzbekistan during fiscal year 2006; to the Committee on Foreign Relations.

EC–5677. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $50,000,000 or more to Russia; to the Committee on Foreign Relations.

EC–5678. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, (8) reports on current vacancies in covered positions within the State Department; to the Committee on Foreign Relations.

EC–5679. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to Extension of Waiver of Section 907 of the FREEDOM Support Act With Respect to Assistance to the Government of Azerbaijan; to the Committee on Foreign Relations.

EC–5680. A communication from the Executive Secretary and Chief of Staff, U. S. Agency for International Development, transmitting, pursuant to law, the report of a vacancy in the position of Administrator, received February 7, 2006; to the Committee on Foreign Relations.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. FEINSTEIN (for herself, Ms. COLLINS, Mr. DORGAN, Ms. SNOWE, Mr. BINGAMAN, Mr. CHAFEE, Mrs. CLINTON, Mr. SCHUMER, Mrs. MURRAY, and Mrs. BOXER):

S. 2255. A bill to amend title XVIII of the Social Security Act to prohibit removal of covered part D drugs from a prescription drug plan formulary during the plan year once an individual has enrolled in the plan; to the Committee on Finance.

By Mr. BURNS:

S. 2256. A bill to amend the Communications Act of 1934 to ensure the availability to all Americans of high-quality, advanced telecommunications and broadband services, technologies, and networks at just, reasonable, and affordable rates, and to establish a permanent mechanism to guarantee specific, sufficient, and predictable support for the preservation and advancement of universal service, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. OBAMA (for himself, Ms. LANDRIEU, Mr. DURBIN, and Mr. KERRY):

S. 2257. A bill to provide for an enhanced refundable credit for families who resided in the Hurricane Katrina disaster area on August 28, 2005; to the Committee on Finance.

By Mr. ISAKSON (for himself and Mr. CHAMBLISS):

S. 2258. A bill to amend the Tennessee Valley Authority Act of 1933 to increase the membership of the Board of Directors and require that each State in the service area of the Tennessee Valley Authority be represented by at least 1 member; to the Committee on Environment and Public Works.

By Mr. OBAMA:

S. 2259. A bill to establish an Office of Public Integrity in the Congress and a Congressional Ethics Enforcement Commission; to the Committee on Homeland Security and Governmental Affairs.

By Mrs. CLINTON:

S. 2260. A bill to amend titles XVIII and XIX of the Social Security Act to make improvements to payments to Medicare Advantage plans and to reinstate protections in the Medicaid program for working families, their children, and the disabled against excessive out-of-pocket costs, inadequate benefits, and health care coverage loss; to the Committee on Finance.

By Mr. OBAMA:

S. 2261. A bill to provide transparency and integrity in the earmark process; to the Committee on Rules and Administration.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BYRD (for himself, Mr. ROCKEFELLER, Mr. ENZI, and Mr. KENNEDY):

S. Res. 370. A resolution honoring the sacrifice and courage of the 16 coal miners killed in various mine disasters in West Virginia, and recognizing the rescue crews for their outstanding efforts in the aftermath of the tragedies; considered and agreed to.

By Mr. FRIST:

S. Con. Res. 80. A concurrent resolution relating to the enrollment of S. 1932; considered and agreed to.

ADDITIONAL COSPONSORS

S. 267

At the request of Mr. CRAIG, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 267, a bill to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes.

S. 843

At the request of Mr. SANTORUM, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 843, a bill to amend the Public

Health Service Act to combat autism through research, screening, intervention and education.

S. 854

At the request of Mr. FEINGOLD, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 854, a bill to require labeling of raw agricultural forms of ginseng, including the country of harvest, and for other purposes.

S. 1109

At the request of Mr. LOTT, the names of the Senator from Arkansas (Mrs. LINCOLN), the Senator from Colorado (Mr. SALAZAR), the Senator from California (Mrs. BOXER) and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 1109, a bill to amend title XVIII of the Social Security Act to provide payments to Medicare ambulance suppliers of the full cost of furnishing such services, to provide payments to rural ambulance providers and suppliers to account for the cost of serving areas with low population density, and for other purposes.

S. 1200

At the request of Mr. BUNNING, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1200, a bill to amend the Internal Revenue Code of 1986 to reduce the depreciation recovery period for certain roof systems.

S. 1358

At the request of Mr. DURBIN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1358, a bill to protect scientific integrity in Federal research and policymaking.

S. 1408

At the request of Mr. SMITH, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 1408, a bill to strengthen data protection and safeguards, require data breach notification, and further prevent identity theft.

S. 1791

At the request of Mr. SMITH, the names of the Senator from Alabama (Mr. SHELBY), the Senator from Maine (Ms. COLLINS) and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. 1791, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for qualified timber gains.

S. 1841

At the request of Mr. NELSON of Florida, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1841, a bill to amend title XVIII of the Social Security Act to provide extended and additional protection to Medicare beneficiaries who enroll for the Medicare prescription drug benefit during 2006.

S. 2010

At the request of Mr. HATCH, the names of the Senator from New York (Mr. SCHUMER), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from New York (Mrs. CLINTON) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. 2010, a bill to amend the Social Security Act to enhance the Social Security of the Nation by ensuring adequate public-private infrastructure and to resolve to prevent, detect, treat, intervene in, and prosecute elder abuse, neglect, and exploitation, and for other purposes.

S. 2019

At the request of Mr. SMITH, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 2019, a bill to provide for a research program for remediation of closed methamphetamine production laboratories, and for other purposes.

S. 2178

At the request of Mr. SCHUMER, the names of the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S. 2178, a bill to make the stealing and selling of telephone records a criminal offense.

S. 2235

At the request of Mr. SCHUMER, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 2235, a bill to posthumously award a congressional gold medal to Constance Baker Motley.

S. 2253

At the request of Mr. DOMENICI, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 2253, a bill to require the Secretary of the Interior to offer the 181 Area of the Gulf of Mexico for oil and gas leasing.

S. CON. RES. 69

At the request of Mr. ISAKSON, the names of the Senator from South Carolina (Mr. GRAHAM) and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. Con. Res. 69, a concurrent resolution supporting the goals and ideals of a Day of Hearts, Congenital Heart Defect Day in order to increase awareness about congenital heart defects, and for other purposes.

S. RES. 313

At the request of Ms. CANTWELL, the names of the Senator from Indiana (Mr. BAYH) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of S. Res. 313, a resolution expressing the sense of the Senate that a National Methamphetamine Prevention Week should be established to increase awareness of methamphetamine and to educate the public on ways to help prevent the use of that damaging narcotic.

S. RES. 320

At the request of Mr. ENSIGN, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. Res. 320, a resolution calling the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide.

S. RES. 359

At the request of Mr. DODD, his name was added as a cosponsor of S. Res. 359, a resolution concerning the Government of Romania's ban on intercountry adoptions and the welfare of orphaned or abandoned children in Romania.

S. RES. 365

At the request of Mr. LOTT, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. Res. 365, a resolution to provide a 60 vote point of order against out-of-scope material in conference reports and open the process of earmarks in the Senate.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN (for herself, Ms. COLLINS, Mr. DORGAN, Ms. SNOWE, Mr. BINGAMAN, Mr. CHAFEE, Mrs. CLINTON, Mr. SCHUMER, Mrs. MURRAY, and Mrs. BOXER):

S. 2255. A bill to amend title XVII of the Social Security Act to prohibit removal of covered part D drugs from a prescription drug plan formulary during the plan once an individual has enrolled in the plan; to the Committee on Finance.

Mrs. FEINSTEIN. Mr. President, today I am introducing legislation along with Senators COLLINS, DORGAN, SNOWE, BINGAMAN, CHAFEE, CLINTON, SCHUMER, MURRAY and BOXER to ensure that when a senior signs up for a Medicare prescription drug plan, the drugs covered by their plan cannot be removed or changed throughout that year.

Under the legislation, if you sign up for a plan in January, the drugs covered by your plan will continue to be covered the rest of that year.

If you become eligible for Medicare during the year, for instance you turn 65 in May, and you sign up for a plan, the drugs covered by your plan when you enroll in it will continue to be covered the rest of that year.

At the end of the year, if a plan wants to change its coverage, it can do that. The bill does nothing to prevent plans from changing their drug coverage for the coming year. However, that can only happen at the end of the year, at the time all Medicare beneficiaries have the option to switch plans.

Seniors deserve the peace of mind to know that the drug plan they enroll in will cover the drugs it says it will all year.

Under current law, a prescription drug plan can change its formulary as many times as it wants throughout the year so long as it gives notice to its enrollees.

However, seniors have no recourse other than going through a lengthy appeals process if their drug plan suddenly drops their medicines. At the end of that appeals process, there is still no guarantee that seniors will get their drugs.

Under current law, they have to wait until the next open enrollment period which may be as much as nine months away. That is unacceptable.

Seniors can't and shouldn't have to wait all year to obtain lifesaving and life sustaining drugs they thought would be covered by their drug plan.

The bill allows a prescription drug plan to add drugs to its formulary—for instance in cases where a new drug is approved by the FDA or a generic alternative to a brand name drug becomes available.

The bill also allows a prescription drug plan to remove a drug from its formulary if the FDA issues a clinical warning about the drug, if the FDA pulls a drug from the market like in the case of Vioxx, or if the drug has been determined to be ineffective.

But, in those instances, the prescription drug plan must notify the HHS Secretary, affected enrollees, physicians, and pharmacies of the change.

Seniors in California have an overwhelming array of prescription drug plan options. There are at least 110 drug plan options for Californians.

It can take days, if not weeks to determine which plan is best based on your drug needs and health status.

Unless this bill is approved, seniors have no guarantee that their drugs will be covered throughout the year.

I think that is wrong. This legislation will change that.

Some might argue why this bill is necessary now. We are one month into the new Medicare drug benefit and what we have witnessed throughout the Nation is widespread confusion. Seniors are being turned away at the pharmacy counters and they are being incorrectly asked to pay hundreds of dollars for their drugs.

States are absorbing the costs to provide drugs for a Federal program. So far, California has spent more than $18 million of its own money. I support efforts to reimburse States fully for the drug costs they've absorbed as a result of implementation errors by this Administration and I support transitional relief for the so-called ''dual eligible'' Medicare beneficiaries whose transition from Medicaid to Medicare has been disastrous.

The Administration contends that this legislation isn't necessary because plans can't change their formularies without notifying the Centers for Medicare and Medicaid Services (CMS) and enrollees first and that CMS won't allow plans to make changes to their formularies that hurt seniors.

This ''just trust us'' argument being used by the Administration is anything but reassuring, especially given all the major program implementation problems it has caused due to poor planning and inadequate foresight.

I believe seniors deserve more and they deserve the protections guaranteed under this legislation.

We must act now to protect all Medicare beneficiaries from the type of ''bait and switch'' tactics like signing up for a plan thinking you were getting certain drugs only to find out down the road that those drugs were no longer covered.

The bill is about parity for seniors. If seniors are prohibited from changing drug plans except during the annual open enrollment period, then they deserve to know that the plan they are locked in to is also locked in to covering the drugs it said it would.

I urge my colleagues to support this legislation.

Mr. DORGAN. Mr. President, I am pleased to join Senators FEINSTEIN, COLLINS and a number of my other colleagues to introduce the Medicare Drug Formulary Protection Act of 2006. This legislation will improve the new Medicare prescription drug benefit by preventing prescription drug plans from unexpectedly dropping coverage of prescription drugs that were covered when seniors enrolled in the plan.

Although seniors enrolled in the new Medicare drug program are only able to change their health plans once a year, nothing prevents insurers from dropping drugs from their plans on a whim. Under current law, prescription drug plans can change which drugs they cover as long as they provide 60 days notice to their enrollees.

It is difficult enough for seniors to navigate the confusion and complexity the Administration has built into the Medicare prescription drug benefit. They ought to be able to do so secure in the knowledge that once they have picked a plan, the plan will not change on them midstream. Seniors need the protection and certainty this legislation extends to them.

I had some hopes for this new Medicare plan, but it has become a complete and utter mess. In North Dakota, we have 41 different plans being offered by 17 different companies, and we have the highest percentage of senior citizens in the nation with no prescription drug coverage.

In North Dakota, 68 percent of seniors still do not have prescription drug coverage. With the sign-up period nearly one-third over, only 9,000 seniors in North Dakota have voluntarily signed up for the program. More than 70,000 seniors still lack coverage.

Other States in the northern Great Plains region are not far behind. Fully 67 percent of South Dakota seniors have no prescription drug coverage and in Montana 65 percent lack coverage. Wyoming also ranks high, with 61 percent of its seniors without prescription drug coverage.

I have asked Secretary Leavitt to dispatch a survey team to North Dakota and neighboring States to determine why enrollment rates in the new Medicare prescription drug program are among the lowest in the nation in our region of the country.

In the meantime, we need to enact the Medicare Drug Formulary Protection Act and other commonsense reforms like the Medicare Informed Choice Act and the Medicare State Recovery Act.

The Medicare Informed Choice Act would extend the enrollment deadline until December 31, 2006. We need to enact this legislation right away. Seniors need more time to evaluate their options. Extending the enrollment deadline will also give Congress time to address some of the problems that have kept more seniors from enrolling in the benefit.

The Medicare State Recovery Act will ensure States are reimbursed for the cost of prescriptions for low-income seniors and people with disabilities who were improperly denied coverage under Medicare.

I want this new benefit to work. That is why I urge my colleagues to support these efforts to improve the benefit and make it less confusing for seniors.

By Mr. BURNS:

S. 2256. A bill to amend the Communications Act of 1934 to ensure the availability to all Americans of high-quality, advanced telecommunications and broadband services, technologies, and networks at just, reasonable, and affordable rates, and to establish a permanent mechanism to guarantee specific, sufficient, and predictable support for the preservation and advancement of universal service, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. BURNS. Mr. President, this is a special day to those of us who serve on the Commerce Committee and have served on the Commerce Committee ever since we have been in the Senate because today is the 10th anniversary of the Telecom Act of 1996. I want to talk about a bill I am introducing today as the Internet and Universal Service Act of 1996, or the NetUSA, if you will.

When I first came here and went to work, I was very much interested in telecommunications. The big reason is in my State of Montana we have only 900,000 people but we have 148,000 square miles. I remind my colleagues, if you drew a straight line from Yaak, MT, to Alzada, MT, it is farther than it is from Chicago to Washington, DC.

So we went to work in telecommunications for the simple reason we had to do something about distances, and we did. But it took almost 6 or 7 years before we came up with a bill that overhauled the old Telco Act of 1935. What we were trying to do is deal with the 1990s technology with a 1930 law and we found it almost impossible to do, so the whole act had to be rewritten.

Since the Telecom Act, the only thing that is certain is change. With change, several trends have emerged, including the development of new technologies, industry consolidation and convergence, and product bundling.

The pace of technological change has been astounding. We have a plethora of new technologies including WiFi and WiMAX, and all new words in telecommunications—wireless Internet access, voice over Internet protocol, which we refer to now as VOIP, the

telephone service using the Internet and broadband over powerline—BPL—for Internet access via electrical lines.

While the Telecom Act promised industry and technology convergence, only recently is it materializing—with telephone, cable, and wireless companies invading one another's turf. Cable companies are offering television service over the Internet, telephone companies are offering video services over their facilities. New technologies have brought consumers a variety of choices for local, long distance, video, wireless, and Internet services, and many companies are offering bundled services.

The radical transformation of the industry has led some to call for a complete rewrite to the Telecom Act. Central issues in the debate today are the reform of the Universal Service Fund—the USF, reform of intercarrier compensation, franchising issues for video providers, and net neutrality are some among a whole host of other challenges.

As Congress begins working to rewrite the telecom laws, my central focus will be encouraging broadband deployment in every corner of the U.S. and preserving and improving universal service. Broadband deployment is more vital now than ever before, and it is a key to our future. In the 21st century, how do we compete against workers who work in economies of scale and their salaries are a little bit less than ours? We ensure that U.S. workers can obtain broadband services at affordable prices no matter where they live in this great country.

The GAO recently agreed, recommending the Government make more broadband infrastructure investments to improve the U.S. workforce's human capital and skill level. I think the President talked much about this in his State of the Union.

Technology provides a greater chance to live where you want and hold a good job. If a community does not have broadband, it is at a huge competitive disadvantage. It is just that simple.

Even though the technologies were developed in the United States, we still lag behind other countries in the deployment of broadband. We need to provide incentives for companies to continue to expand their broadband facilities and to ensure all Americans have access to the Internet, regardless of where they live—particularly since, although Internet penetration has grown in rural communities, a gap still exists between them and the suburban and urban communities.

One way I will provide such incentive is to continue my support of universal service, although it may take a little bit different direction in the distribution. The nearly 100-year commitment Congress and this Nation have had to USF has been indispensable in providing the same opportunities for rural America to participate in the Nation's education and health care systems that exist for Americans in urban areas, and for every American to participate fully in the Internet economy.

Just as rural electrification in the 1930s led to the surge in economic growth and raised the living standards across rural America, universal service plays the same role in the Internet era. We didn't get electricity on my farm until early in the 1950s. I can remember when you used to go to town and that electricity seemed like a pretty special thing. Had not the Government created the REC, or the rural electrics, I contend that out on the farm we would still be watching television by candlelight.

Without universal service support, phone bills in rural areas across the country, such as Montana, would increase dramatically. Universal service also helps to ensure that schools and libraries receive access to the Internet at rates they can afford. Because of universal service, the Internet now reaches almost all school-age children, no matter where they live. Universal service helped link rural health facilities to urban medical centers, promoting telemedicine. My State of Montana is on the cutting edge of that. Many people in remote communities would not have access to health care just using the Internet. The all-important issue in Montana is where these counties do not even have a doctor. I have 13 counties that have no physician.

For those who say universal service no longer makes sense, or that it should be repealed or scaled back, I encourage them to visit my State and see the fund in action. As one official from a carrier serving a remote corner of Alaska recently commented, universal service is ''more than a line item on a bill. . . . [It] provides a link to the outside world.''

That is not to say that changes do not need to be made in universal service. They do need to be made. It is a different world. Technologies are different and we must respond. As the length of time that new technologies emerge shortens, we must be able to deal with them. As consumers switch to new technologies such as wireless service, e-mail, voice over IP, universal service is slowly taking in less money every year. Therein lies the problem.

At the same time, the amount of money we disburse is increasing. This situation is obviously not sustainable, nor is it acceptable to Congress.

Additionally, we need to ensure the universal service is distributed where it is needed. The Senator from Alabama understands universal service and the impact it has on rural Alabama. In revising universal service to adapt to the changing technology landscape, it is essential to maintain the commitment levels to universal service programs to foster the continued availability of telecom and advanced services in rural communities, and to strengthen and improve the overall fund.

My proposed legislation will speed up deployment of broadband in rural areas and preserve and improve universal service.

Some things my bill seeks to do are to ensure that companies that receive universal service funds will invest in deployed broadband services; to ensure that universal service support contributions are assessed in a fair and competitively neutral manner; ensuring the integrity of the Schools and Libraries Program to deter waste, fraud, and abuse by strengthening the FCC's management and oversight, including imposing sanctions on applicants or vendors who repeatedly and knowingly violate the rules. That is what my bill does, in part. Lastly, improving the effectiveness of rural health care programs. It is unbelievable what we can do for rural health care when we can move massive amounts of information.

I look forward to working with my colleagues to craft creative solutions to these issues that are so vital to our Nation's future. It is the 10th anniversary. It took us almost 50 years—in fact, a little over 50 years, to change the act in 1996. This time, we had to act a little bit quicker because emerging technologies wait for no man. They are there, they are being used, and we must deal with them as they emerge.

I thank the Senator from Alabama for allowing me this little time and I look forward to working with my colleagues on the passage of the universal bill in this body.

I yield the floor.

By Mr. OBAMA (for himself, Ms. LANDRIEU, Mr. DURBIN, and Mr. KERRY):

S. 2257. A bill to provide for an enhanced refundable credit for families who resided in the Hurricane Katrina disaster area on August 28, 2005; to the Committee on Finance.

Mr. OBAMA. Mr. President, I rise today to introduce the Hurricane Katrina Working Family Tax Relief Act of 2006. I am proud to introduce this bill, along with Senators LANDRIEU, DURBIN, and KERRY, to keep a promise the President made to rebuild the Gulf Coast in the wake of Hurricane Katrina. Last week the Senate approved a $70 billion bill laden with tax cuts for the wealthy and well-connected. This bill, which costs less than 1 percent as much, uses a proven tool in our tax code—the child tax credit—to extend aid to low-income working families affected by Hurricane Katrina.

Currently, the child credit allows families with qualifying children to receive a credit of $1,000 per child against their Federal income tax. Unfortunately, families that earn less than $11,000 get no benefit from the refundable child credit. That means that a child is left out of the credit even if her parent works full time at minimum wage, which has not increased since 1997. And the child doesn't get the full benefit of the $1,000 credit until her parent earns close to $18,000, or even more if the child has siblings. And if her parents' income does not keep up with inflation, for any reason, the

value of the credit drops or even disappears.

We all know of the devastation wrought by Hurricane Katrina. It will be a long time before families on the Gulf Coast can rebuild their lives. Many of them have seen their homes destroyed, their jobs eliminated, their families separated, and their lives irrevocably changed. Unfortunately, the Federal response so far has been inadequate to get these families effectively back on their feet. We are now learning of thousands of evacuees getting kicked out of their hotel rooms because FEMA has stopped paying the bills.

We can do better for these families. Life was hard for many of them even before Katrina hit. Prior to the hurricane, there were over 2 million people living below poverty in the affected States. In some of the affected counties and parishes, more than 1 in 4 children lived below the poverty level.

In Louisiana, Mississippi, and Alabama, for example, more than 900,000 children under 17-years-old were so poor that they got no child tax credit or only a partial credit. These States had among the highest rates in the Nation of children too poor to get the full credit.

This bill will provide necessary assistance to many of these families. The bill eliminates the income threshold that excluded all children in families with less than $11,000 of income. With this bill, the children of low-income working parents affected by Hurricane Katrina will no longer be denied the child credit.

It's simple: if you work, your kids get a benefit. This bill provides a partial credit starting with the first dollar of a parent's income for families who lived in the areas affected by Hurricane Katrina. You work, your kids get a benefit. If you don't work, no benefit.

That's a commonsense way to support families with children, especially families that have experienced the huge cost—psychological and financial—of a natural disaster.

This bill is also narrowly tailored and fiscally responsible. It provides short-term support targeted at families affected by the hurricane, and its costs can easily be absorbed within the $97 billion already committed to hurricane relief.

I urge my colleagues to support this bill, which will enable hundreds of thousands of this country's most disadvantaged children to see an increase in their credit. Katrina offered a reminder of poverty in our own country. Let's not forget so quickly. We owe it to the American people to do something to provide a chance for our neediest children to rebuild their lives with dignity, hope, and opportunity.

By Mr. OBAMA:

S. 2259. A bill to establish an Office of Public Integrity in the Congress and a Congressional Ethics Enforcement Commission; to the Committee on Homeland Security and Governmental Affairs.

Mr. OBAMA. Mr. President, today, I am introducing new legislation to build on the excellent work my colleagues began with the Honest Leadership and Open Government Act.

That bill would close the revolving door between Capitol Hill and lobbying jobs. It would end all lobbyist-funded gifts, meals, and travel, and it would shine a bright light of monitoring and public disclosure on lobbyists' operations, secret conference committee negotiations and last-minute special-interest provisions.

These are important steps forward that should be approved by this Congress and signed into law. The first bill I am introducing now builds on these steps by focusing on enforcement. We can pass all the new ethics rules in the world, but if we don't establish a body that can monitor and enforce those rules, it'll be easy to break them.

My legislation will establish a nonpartisan, independent Congressional Ethics Enforcement Commission that would investigate ethics violations and report their findings to the public.

The idea of an independent Commission to conduct initial investigations is not new. It is modeled on successful efforts in a number of States including Kentucky, Florida, and Tennessee. Similar commissions in those States have a track record of working well and making the ethics enforcement process much more effective.

My commission would be staffed with former judges and former members of Congress, and it would allow any citizen to report a possible ethics violation by lawmakers, staff, or lobbyists. It would have the authority to conduct investigations, issue subpoenas, and provide public reports to the Senate Ethics Committee or Department of Justice so that any wrongdoing can be punished accordingly.

To prevent this Commission from being manipulated for partisan political purposes, the bill establishes stiff sanctions for the filing of frivolous complaints, and prohibits the filing of complaints three months before an election.

Although, the ultimate power to reprimand members would remain with the Ethics Committees in Congress and the Department of Justice, the new Congressional Ethics Enforcement Commission would make these bodies more effective by removing political pressure from the initial fact-finding phase of ethics investigations. In addition, the Commission's independent capacity to issue public findings would encourage the Ethics Committees to act.

I am proud that this legislation has support across the political spectrum, earning the endorsement of both Common Cause and Norm Ornstein of the American Enterprise Institute. Ornstein said this about my enforcement bill: ''This approach to ethics enforcement is just the kind of balanced and reasonable alternative we need. . . . It deserves strong bipartisan support.''

I strongly encourage my colleagues to join me in creating this Commission to restore credibility to the body on the enforcement of ethics.

I am also introducing legislation to build on the CLEAN UP Act (S. 2179) that I introduced last month.

The CLEAN UP Act was written to provide for greater transparency in the legislative process and in conference committees in particular. It has won the support of eight of my colleagues, and I hope the Transparency and Integrity in Earmarks Act that I am introducing today will gain their support, as well as the rest of my colleagues.

The Transparency and Integrity in Earmarks Act would require that information about all earmarks, including the name of the lawmaker requesting it and a justification of why they want it, be disclosed 72 hours before they are considered by the full Senate.

The bill would also place some common-sense limits on earmarks. Members would be prohibited from advocating for an earmark if they have a financial interest in the project or its recipient. Earmarks also could not be used to secure promises from lawmakers in exchange for a vote on a bill. Finally, earmark recipients would have to disclose the amount that they spent on lobbyists in order to get their project passed. These earmark reforms won't solve every abuse, but the idea is this: if you're proud enough about an earmark to issue a press release about it, then you should be able to defend it to the public.

Several of these ideas are contained in a bill introduced by Rep. David Obey. I am grateful for his leadership on this issue in the House.

I know this is not the only proposal on earmarks before the Senate. But I believe this combines the best ideas without creating procedural roadblocks to legitimate projects in our communities. This is a balanced approach that I believe a majority of the Senate can—and should—support. Thank you.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 370—HONORING THE SACRIFICE AND COURAGE OF THE 16 COAL MINERS KILLED IN VARIOUS MINE DISASTERS IN WEST VIRGINIA, AND RECOGNIZING THE RESCUE CREWS FOR THEIR OUTSTANDING EFFORTS IN THE AFTERMATH OF THE TRAGEDIES

Mr. BYRD (for himself, Mr. ROCKEFELLER, Mr. ENZI, and Mr. KENNEDY) submitted the following resolution; which was considered and agreed to:

S. RES. 370

Whereas coal generates more than half of domestic electricity, providing millions of Americans with energy for their homes and businesses;

Whereas West Virginia is the Nation's second largest coal producing State;

Whereas an average of 7,600 pounds of coal per person per year is used in the United States;

Whereas the United States has an estimated 275,000,000,000 tons of recoverable coal reserves representing about 95 percent of all fossil fuel reserves in the nation;

Whereas coal continues to be the economic engine for many communities;

Whereas coal miners are among the most productive of all American workers, producing 7 tons of coal per miner per day, which results in coal consistently being the most cost-effective choice for generating electricity in the United States;

Whereas during the last century over 100,000 coal miners have been killed in mining accidents in the Nation's coal mines;

Whereas the Nation is greatly indebted to coal miners for the difficult and dangerous work they perform to provide the fuel needed to operate the Nation's industries and to provide energy to homes and businesses;

Whereas 13 West Virginia miners were trapped 260 feet below the surface in the Sago mine for over 40 hours following an explosion on January 2, 2006;

Whereas Federal, State, and local rescue crews worked relentlessly in an attempt to save the miners;

Whereas many residents of Upshur County, West Virginia, and the surrounding areas came together at the Sago Baptist Church to support the miners' families;

Whereas 12 miners, Thomas Anderson, Alva Martin Bennett, Jim Bennett, Jerry Groves, George Hamner Jr., Terry Helms, David Lewis, Martin Toler, Fred Ware Jr., Jack Weaver, Jesse Jones, and Marshall Winans, lost their lives on January 3, 2006;

Whereas only one miner, Randal McCloy, was safely rescued;

Whereas 2 West Virginia miners were trapped by a fire in the Aracoma Alma Mine on January 19, 2006;

Whereas Don Israel Bragg and Ellery ''Elvis'' Hatfield lost their lives in the Aracoma Alma Mine;

Whereas 2 West Virginia miners lost their lives in separate incidents in Boone County on February 1, 2006; and

Whereas Edmund Vance perished in the Long Branch No. 18 Mine and Paul Moss perished at the Elk Run Black Castle mine:

Now, therefore, be it

Resolved, That the Senate—

(1) recognizes Thomas Anderson, Alva Martin Bennett, Jim Bennett, Jerry Groves, George Hamner Jr., Terry Helms, David Lewis, Martin Toler, Fred Ware Jr., Jack Weaver, Jesse Jones, and Marshall Winans for their sacrifice in the Sago, West Virginia, coal mine;

(2) recognizes Don Israel Bragg and Ellery ''Elvis'' Hatfield for their sacrifice in the Aracoma Alma, West Virginia coal mine;

(3) extends the deepest condolences of the Nation to the families of these men;

(4) recognizes Edmund Vance and Paul Moss for their sacrifice in the Boone County, West Virginia coal mines;

(5) recognizes Randal McCloy for his stamina and courage that enabled him to survive in severe conditions for over 40 hours;

(6) recognizes the rescue crews for their outstanding effort resulting in the safe rescue of Randal McCloy; and

(7) recognizes the many volunteers who provided support for the miners' families during the rescue operations.

SENATE CONCURRENT RESOLUTION 80—RELATING TO THE ENROLLMENT OF S. 1932

Mr. FRIST submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 80

Resolved by the Senate (the House of Representatives concurring), That the enrollment of the bill S. 1932 as presented to the President for his signature on February 8, 2006, is deemed the true enrollment of the bill reflecting the intent of the Congress in enacting the bill into law.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2739. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table.

SA 2740. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2741. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2742. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2743. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2744. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2739. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 364, insert before line 1, the following:

(4) LIMITATIONS ON ATTORNEY'S FEES AND APPLICATION OF MEDICAL CRITERIA.—

(A) ATTORNEY'S FEES.—

(i) DEFINITION.—In this subparagraph, the term ''reasonable fees and expenses of attorneys'' means fees and expenses that are based on prevailing market rates for the kind and quality of the services furnished, except that—

(I) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States Government; and

(II) attorney's fees shall not be awarded in excess of a reasonable fee, unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys, for the proceedings involved justifies a higher fee.

(ii) LIMITATION.—In any civil action described under paragraph (1)—

(I) the limitations on attorney's fees under section 104(e) shall apply; or

(II) a court may award reasonable fees and expenses of attorneys.

(B) MEDICAL CRITERIA.—In any civil action described under paragraph (1), the medical criteria under section 121(d) shall apply.

On page 364, line 1, strike ''(4)'' and insert ''(5)''.

On page 364, line 22, strike ''(5)'' and insert ''(6)''.

SA 2740. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 364, before line 1, insert the following:

(4) MEDICAL CRITERIA FOR CLAIMS.—The medical criteria under section 121(d) shall apply to any civil action described under paragraph (1).

On page 364, line 1, strike ''(4)'' and insert ''(5)''.

On page 364, line 22, strike ''(5)'' and insert ''(6)''.

SA 2741. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 364, insert before line 1, the following:

(4) LIMITATIONS ON ATTORNEY'S FEES.—

(A) LIMITATION.—In any civil action described under paragraph (1)—

(i) the limitations on attorney's fees under section 104(e) shall apply; or

(ii) a court may award reasonable fees and expenses of attorneys.

(B) DEFINITION.—In this paragraph, the term ''reasonable fees and expenses of attorneys'' means fees and expenses that are based on prevailing market rates for the kind and quality of the services furnished, except that—

(i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States Government; and

(ii) attorney's fees shall not be awarded in excess of a reasonable fee, unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys, for the proceedings involved justifies a higher fee.

On page 364, line 1, strike ''(4)'' and insert ''(5)''.

On page 364, line 22, strike ''(5)'' and insert ''(6)''.

SA 2742. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, line 22, strike ''monetary''.

SA 2743. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 386, line 6, strike all through page 393, line 3.

SA 2744. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 366, between lines 15 and 16, insert the following:

(c) APPLICATION OF THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT.—Employers and their insurers who pay compensation or medical benefits or who are potentially liable to their employees and other beneficiaries for compensation or medical benefits under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) shall be entitled to—

(1) a lien for compensation and medical benefits paid; or

(2) credit, recovery, or release, as such remedies are available under section 33 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 933), except that such employers and insurers may not bring actions for such remedies against third parties as is prohibited under subsections (b) and (h) of section 33 of that Act.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to hold an informational hearing February 8, 2006 at 9:30 a.m. on pending nominations. Board of Directors of the Tennessee Valley Authority; Board of Trustees of the Morris K. Udall National Environmental Policy Foundation

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Wednesday, February 8, 2006, at 10 a.m., in 215 Dirksen Senate Office Building, to hear testimony on ''Implementation of the New Medicare Drug Benefit''.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, February 8, 2006, at 9:30 a.m. to hold a hearing on Iraq Stabilization and Reconstruction.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, February 8, 2006, at 4:30 p.m. to hold a hearing on Nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. CORNYN. Mr. PRESIDENT, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, February 8, 2006, at 9:30 a.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on Indian Tribes and the Federal Election Campaign Act. Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, February 8, 2006, at 2 p.m., to conduct a hearing to examine procedures to bring greater transparency to the legislative process.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. CORNYN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 8, 2006 at 2:30 p.m. to hold a closed briefing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON CONSUMER AFFAIRS, PRODUCT SAFETY, AND INSURANCE

Mr. CORNYN. Mr. PRESIDENT, I ask unanimous consent that the Subcommittee on Product Safety, and Insurance be authorized to meet on Wednesday, February 8, 2006, at 2:30 p.m., on Protecting Consumers' Phone Records.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. SESSIONS. Mr. President, I ask unanimous consent that the following Judiciary Committee interns and clerks be granted the privilege of the floor for the remainder of debate on S. 852, the Fairness in Asbestos Injury Resolution Act of 2005: Adam Adler, Jessica Kane, Robert Newell, and Raj Parekh.

The PRESIDING OFFICER. Without objection, so ordered.

EXECUTIVE SESSION

NOMINATION DISCHARGED

Mr. FRIST. As in executive session, I ask unanimous consent that Calendar No. 424, Roland Arnall, be referred to the Committee on Foreign Relations; I further ask consent that the committee then be immediately discharged from further consideration of the nomination and the Senate proceed to its consideration; provided further that the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is, as follows:

DEPARTMENT OF STATE

Roland Arnall, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of the Netherlands.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

ENROLLMENT OF S. 1932

Mr. FRIST. I ask unanimous consent that the Senate now proceed to the consideration of S. Con. Res. 80, which was submitted earlier today, the resolution be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 80) was considered and agreed to, as follows:

S. CON. RES. 80

Resolved by the Senate (the House of Representatives concurring), That the enrollment of the bill S. 1932 as presented to the President for his signature on February 8, 2006, is deemed the true enrollment of the bill reflecting the intent of the Congress in enacting the bill into law.

HONORING COAL MINERS AND RESCUE CREWS IN WEST VIRGINIA

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 370, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 370) honoring the sacrifice and courage of the 16 coal miners killed in various mine disasters in West Virginia, and recognizing the rescue crews for their outstanding efforts in the aftermath of the tragedies.

There being no objection, the Senate proceeded to consider the resolution.

Mr. BYRD. Mr. President, today, together with Senator ROCKEFELLER and the West Virginia delegation in the House, I have submitted a resolution honoring the 16 coal miners who perished this year in the State of West Virginia. They are: Tom Anderson, Alva Bennett, Jim Bennett, Jerry Groves, George Hamner, Jr., Terry Helms, Jesse Jones, David Lewis, Martin Toler, Jr., Fred Ware, Jackie Weaver, and Marshall Winans who perished in the Sago Mine in Upshur County, WV.

They are Don Bragg and Ellery Hatfield who perished in the Aracoma Alma Mine in Logan County, WV.

They are Paul Moss and Edmund Vance who perished in separate mines in Boone County, WV.

While the names of these coal miners have become known to many of us, we must not forget that there are many more coal miners whose tragic deaths are not chronicled in the national media. They die quietly in their homes of black lung disease. They die anonymously in mine accidents across the Nation. Their families mourn, their families grieve their loss without national attention.

I pay tribute to all of those who have fallen in our Nation's mines and to their families who must bear their loss. A grateful Nation owes its eternal thanks.

Mr. ROCKEFELLER. Mr. President, I wish to associate myself with the remarks of my distinguished senior senator, Mr. BYRD, and rise to ask my colleagues to take up and adopt our resolution honoring miners in West Virginia and throughout this country who work hard in dangerous situations to provide energy this Nation needs.

The attention of the world was focused on small towns in my State of West Virginia in the first two months of 2006. When 12 miners were found to have died in the Sago Mine in Upshur County in early January, the hopes and prayers of a global television audience were dashed along with those living the tragedy in the Sago Baptist Church.

Americans and our friends around the world tuned in again when miners became trapped by a belt fire in the Alma Mine in Logan County later in January. I was sitting with the families of the trapped miners when they heard the news we were all dreading. It was a profoundly sad and moving moment, one I will never forget, and an experience which I cannot do justice to here.

When tragedy struck again at two mines in Boone County it was almost more than any of us could bear. After these accidents, the Governor of my State of West Virginia, Joe Manchin, who has been a stalwart throughout these trying times, called for a temporary stand-down in West Virginia mines to reinforce and reinvigorate mine safety procedures. I was pleased to see that the Mine Safety and Health Administration, MSHA, came into West Virginia in numbers to assist State officials, and later instituted a 1-hour safety refresher for all U.S. mines under its authority. In Pennsylvania, Governor Rendell emulated Governor Manchin in calling for renewed safety training for mines throughout the Commonwealth.

Mining, as we know, is an inherently dangerous profession, but it is a vital component in our Nation's economy. Without coal from Appalachia, the Illinois Basin, the Powder River Basin, and various other regions throughout the U.S., our economy shuts down. Coal provides more than half our electricity, and coal conversion technologies will soon allow America's most abundant mineral resource to provide transportation fuels and chemical feedstocks as well. If the United States of America is ever going to lessen its dependence on foreign sources of energy, you can be sure that the miners will lead the way. These are men and women who do a job most Americans understand little about, and until tragedy periodically reminds the Nation, most Americans probably do not even think about. Coal production is increasing across the country and around the world. Coal is on the rise, and safety has to be, too.

Mine safety has been very much in the thoughts of every West Virginian these first two months of 2006. In 2005, West Virginia lost miners also, as did Alabama, Ohio, Wyoming, Pennsylvania, and Kentucky. Mr. President, 2006 has already seen mine fatalities in Kentucky and Utah. As these tragedies show, and as MSHA's nationwide action and Governor Rendell's actions in Pennsylvania suggest, mine safety is a national issue and improving it must be a national priority.

Mr. FRIST. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 370) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 370

Whereas coal generates more than half of domestic electricity, providing millions of Americans with energy for their homes and businesses;

Whereas West Virginia is the Nation's second largest coal producing State;

Whereas an average of 7,600 pounds of coal per person per year is used in the United States;

Whereas the United States has an estimated 275,000,000,000 tons of recoverable coal reserves representing about 95 percent of all fossil fuel reserves in the nation;

Whereas coal continues to be the economic engine for many communities;

Whereas coal miners are among the most productive of all American workers, producing 7 tons of coal per miner per day, which results in coal consistently being the most cost-effective choice for generating electricity in the United States;

Whereas during the last century over 100,000 coal miners have been killed in mining accidents in the Nation's coal mines;

Whereas the Nation is greatly indebted to coal miners for the difficult and dangerous work they perform to provide the fuel needed to operate the Nation's industries and to provide energy to homes and businesses;

Whereas 13 West Virginia miners were trapped 260 feet below the surface in the Sago mine for over 40 hours following an explosion on January 2, 2006;

Whereas Federal, State, and local rescue crews worked relentlessly in an attempt to save the miners;

Whereas many residents of Upshur County, West Virginia, and the surrounding areas came together at the Sago Baptist Church to support the miners' families;

Whereas 12 miners, Thomas Anderson, Alva Martin Bennett, Jim Bennett, Jerry Groves, George Hamner Jr., Terry Helms, David Lewis, Martin Toler, Fred Ware Jr., Jack Weaver, Jesse Jones, and Marshall Winans, lost their lives on January 3, 2006;

Whereas only one miner, Randal McCloy, was safely rescued;

Whereas 2 West Virginia miners were trapped by a fire in the Aracoma Alma Mine on January 19, 2006;

Whereas Don Israel Bragg and Ellery ''Elvis'' Hatfield lost their lives in the Aracoma Alma Mine;

Whereas 2 West Virginia miners lost their lives in separate incidents in Boone County on February 1, 2006; and

Whereas Edmund Vance perished in the Long Branch No. 18 Mine and Paul Moss perished at the Elk Run Black Castle mine:

Now, therefore, be it

Resolved, That the Senate—

(1) recognizes Thomas Anderson, Alva Martin Bennett, Jim Bennett, Jerry Groves, George Hamner Jr., Terry Helms, David Lewis, Martin Toler, Fred Ware Jr., Jack Weaver, Jesse Jones, and Marshall Winans for their sacrifice in the Sago, West Virginia, coal mine;

(2) recognizes Don Israel Bragg and Ellery ''Elvis'' Hatfield for their sacrifice in the Aracoma Alma, West Virginia coal mine;

(3) extends the deepest condolences of the Nation to the families of these men;

(4) recognizes Edmund Vance and Paul Moss for their sacrifice in the Boone County, West Virginia coal mines;

(5) recognizes Randal McCloy for his stamina and courage that enabled him to survive in severe conditions for over 40 hours;

(6) recognizes the rescue crews for their outstanding effort resulting in the safe rescue of Randal McCloy; and

(7) recognizes the many volunteers who provided support for the miners' families during the rescue operations.

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I have been stating that we have been prepared to consider some of the additional nominations that are on the Executive Calendar and are available for consideration. There are a number of nominations being held up for one reason or another. But I am particularly concerned that a group of nominations is being held up for reasons unrelated to their qualifications or job responsibilities. We have several senior Department of Defense nominations and intelligence nominations that we need to consider.

We will begin the amendment process to the asbestos bill beginning tomorrow morning, and my intention is to see if we can schedule debate and votes on these nominations. If we are unable to do that, then I will file a cloture motion on the nomination, with that vote occurring Friday.

NOMINATION OF ERIC S. EDELMAN TO BE UNDER SECRETARY OF DEFENSE—MOTION TO PROCEED

Mr. FRIST. Mr. President, I ask unanimous consent that at 9:30 a.m. on Friday, the Senate proceed to executive session and an immediate vote on the confirmation of Calendar No. 309, Eric S. Edelman to be Under Secretary of Defense, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. FRIST. Mr. President, I understand that an objection would be put forward from the other side of the aisle.

Mr. President, I move that the Senate proceed to executive session for the consideration of Calendar No. 309.

The PRESIDING OFFICER. The clerk will report the nomination.

The assistant legislative clerk read the nomination of Eric S. Edelman, of Virginia, to be Under Secretary of Defense for Policy.

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Eric S. Edelman of Virginia to be Under Secretary of Defense for Policy.

Bill Frist, Mel Martinez, Jeff Sessions, John Thune, Arlen Specter, Larry E. Craig, David Vitter, Sam Brownback, Lisa Murkowski, Richard Shelby, Pat Roberts, Richard Burr, George Allen, Jim Talent, Judd Gregg, John Ensign.

LEGISLATIVE SESSION

Mr. FRIST. I ask unanimous consent that the Senate now resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR THURSDAY, FEBRUARY 9, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Thursday, February 9. I further ask that following the prayer and the pledge, the morning hour be deemed to have expired, the Journal of the proceedings be approved to date, the time for the two leaders be reserved, and the Senate then begin a period of morning business for 30 minutes, with the first 15 minutes under the control of the Democratic leader or his designee and the second 15 minutes under the control of the majority leader or his designee; further, that the Senate then resume consideration of S. 852, the asbestos bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, tomorrow the Senate will continue to debate S. 852, the asbestos bill. Amendments are in order, and I expect Members to come forward with their related amendments. We will be prepared to debate and vote in relation to the amendments. I hope we can make progress on the bill.

We have spent the last few days debating, which is important, but now is the time to work through the underlying issues in the bill before I expect votes to occur on Thursday. As I have stated repeatedly, Friday will be a working day, and we now have a cloture vote scheduled for Friday morning on a nomination.

I also hope that we can continue to move forward on the asbestos bill on Friday as well. We have 2 more days this week, and we need to make the most of that time. Senators should be prepared for busy days for the remainder of the week.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. In my capacity as Senator from South Carolina, I ask unanimous consent that the quorum call be dispensed with.

Without objection, it is so ordered.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in adjournment until 9:30 a.m. tomorrow morning.

Thereupon the Senate, at 7:53 p.m., adjourned until Thursday, February 9, 2006, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate February 8, 2006:

DEPARTMENT OF STATE

PATRICIA P. BRISTER, OF LOUISIANA, FOR THE RANK OF AMBASSADOR DURING HER TENURE OF SERVICE AS THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA ON THE COMMISSION ON THE STATUS OF WOMEN OF THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS.

THE JUDICIARY

SANDRA SEGAL IKUTA, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT, VICE JAMES R. BROWNING, RETIRED.

MICHAEL BRUNSON WALLACE, OF MISSISSIPPI, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT, VICE CHARLES W. PICKERING, SR., RETIRED.

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. ROBERT R. BLACKMAN, JR., 0000

IN THE COAST GUARD

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES COAST GUARD UNDER TITLE 14, U.S.C., SECTION 211:

To be lieutenant

MICHAEL W. ALBERT, 0000
DAVID J. ALDOUS, 0000
LEONARD H. ALLEN, 0000
DAVID M. ALVAREZ, 0000
SAMUEL L. ALVORD, 0000
DAVID F. AMBOS, 0000
JASON K. APPLEBERRY, 0000
SEGUNDO J. ARGUDO, 0000
REGINALD I. BAIRD, 0000
RYAN A. BARONE, 0000
SCOTT P. BARTON, 0000
ANNE M. BECKER, 0000
ROBERT W. BILBO, 0000
MICHAEL L. BOWMAN, 0000
LANCE J. BRANT, 0000
RICHARD J. BURKE, 0000
VICTOR G. BUSKIRK, 0000
ANDRES CAMARGO, 0000
DONALD B. CAMPBELL, 0000
JAMES D. CANNON, 0000
CHRISTY S. CASEY, 0000
JUSTIN M. CASSELL, 0000
JOHN T. CATANZARO, 0000
ROBERT S. CLARKE, 0000
PAUL J. COLEMAN, 0000
JEFFREY M. COLLINS, 0000
ROSS E. COMER, 0000
CARLOS M. CRESPO, 0000
PAUL J. CROOKSHANK, 0000
MARTIN J. DIETSCH, 0000
BRIAN J. DONAHUE, 0000
WILLIAM R. DUNBAR, 0000
BRYAN L. DUNLAP, 0000
CHARLES ENGBRING, 0000
TOM ENGBRING, 0000
JAY S. FAIR, 0000
PAUL A. FAWCETT, 0000
KRYSTYON N. FINCH, 0000
JASON F. FRANK, 0000
FRANK A. FUSCO, 0000
CARLOS F. GAVILANES, 0000
GREG S. GEDEMER, 0000
AARON G. GREEN, 0000
CATHARINE D. GROSS, 0000
ANTHONY D. GUILD, 0000
MARK A. HAAG, 0000
CHRISTOPHER E. HALEY, 0000
JOY E. HALL, 0000
ROBERT P. HILL, 0000
FRANK L. HINSON, 0000
GILES C. HOBACK III, 0000
MATTHEW M. HOBBIE, 0000
ROBERT E. HOLLINGER, 0000
TIMOTHY D. HOWARD, 0000
THOMAS P. HRYNYSHYN, 0000
DONALD K. ISOM, 0000
JACK W. JACKSON, 0000
THOMAS A. JACOBSON, 0000
WESTON R. JAMES, 0000
DOUGLAS A. JANNUSCH, 0000
JOHN W. KASER, 0000
RICHARD J. KAVANAUGH, 0000
TONYA G. KELLEY, 0000
RAYMOND S. KINGSLEY, 0000
ANDREW C. KIRKPATRICK, 0000
SHAWN A. LANSING, 0000
PATRICK J. LEE, 0000
JOSEPH J. LEONARD, 0000
JOHN R. LUFF, 0000
EZEKIEL J. LYONS, 0000
RICHARD A. MACH, 0000
STEVEN D. MAHANY, 0000
ROBERT J. MANNING, 0000
CHARLES MARINO, 0000
RONAYDEE M. MARQUEZ, 0000
TIMOTHY R. MARTIN, 0000
STEPHEN MATADOBRA, 0000
JAMES J. MAZEL, 0000
BRIAN K. MCCAUL, 0000
JAMES M. MCLAY, 0000
KERRI W. MERKLIN, 0000
ROBERT A. MOOMAW, 0000
DAVID J. MOORE, 0000
FERDINAND MORALES, 0000
MICHAEL J. MUNNERLYN, 0000
JOHN R. NIMS, 0000
JESSICA E. NOEL, 0000
BRYAN K. ODITT, 0000
DAVID M. OTANI, 0000
HECTOR M. PACHECO, 0000
CHARLES N. PARHAM, 0000
MICHAEL L. PARKER, 0000
JEFFREY C. PETERSON, 0000
JOSE L. RAMIREZ, 0000
CHRISTIAN P. RIGNEY, 0000
JUSTO E. RIVERA, 0000
DAVID J. ROBERTS, 0000
RICHARD D. RUSSELL, 0000
PAUL T. SANGER, 0000
BRENT R. SCHMADEKE, 0000
WILLIAM A. SCHRADE, 0000
JOHN R. SCOTT, 0000
HEATHER D. SKOWRON, 0000
SAMUEL L. SLAY, 0000
BRADLEY J. SMITH, 0000
JASON S. SMITH, 0000
LAWRENCE W. SOHL, 0000
LANE A. SOLAK, 0000
GABRIEL J. SOMMA, 0000
LANE G. STEFFENHAGEN, 0000
THOMAS M. STOKES, 0000
JOHN R. STRASBURG, 0000
RODERICK A. STROUD, 0000
JONATHAN E. SULLIVAN, 0000
CAROL M. SWINSON, 0000
JOHN K. TITCHEN, 0000
TERRY R. TRELFORD, 0000
SHAUN T. VACCARO, 0000
THOMAS C. VAUGHN, 0000
STEPHEN E. WEST, 0000
TODD C. WIGGEN, 0000
CHARLES WOJACZYK, 0000
MARCUS P. WONG, 0000
MAURICE S. YORK, 0000
STEVEN M. YOUDE, 0000
JACOB A. ZALEWSKI, 0000
PETER J. ZAUNER, 0000
PETER E. ZOHIMSKY, 0000

To be lieutenant junior grade

REGINA E. ADAMS, 0000
JEREME M. ALTENDORF, 0000
WALNER W. ALVAREZ, 0000
JENNIFER J. ANDREW, 0000
EDWARD S. APONTE, 0000
MICHAEL P. ATTANASIO, 0000
GEOFFREY M. BARELA, 0000
ELLEN P. BATT, 0000
JAMES R. BENDLE, 0000
JEFFREY S. BOGDANOVICH, 0000
THOMAS R. BOLIN, 0000
JEFFREY M. BOLLING, 0000
BARNABY W. BOSANQUET, 0000
DEVON S. BRENNAN, 0000
COLLIN R. BRONSON, 0000
MELANIE A. BURNHAM, 0000
MATTHEW A. CALVERT, 0000
MANUEL B. CAMARGO, 0000
JAMES J. CAMP, 0000
TAYLOR J. CARLISLE, 0000
LUIS O. CARMONA, 0000
CHRISTOPHER L. CARTER, 0000
TIMOTHY S. CASARES, 0000
XOCHITL L. CASTANEDA, 0000
ERIC W. CHANG, 0000
DAVID M. COBURN, 0000
HARLAN J. COPELAND, 0000
TREVOR C. COWAN, 0000
ROBERT H. CREIGH, 0000
MICHAEL CROWE, 0000
DORAIN M. DAILEY, 0000
WILLY J. DASAL, 0000
ALI W. DAVIS, 0000
KELVIN J. DAVIS, 0000
JOHN F. DEWEY, 0000
ADAM H. DREWS, 0000
GLEN R. ENZFELDER, 0000
BRYAN M. ESTELL, 0000
KERRY A. FELTNER, 0000
ALAN J. FITZGERALD, 0000
ROBERT F. FITZGERALD, 0000
DAVID L. FLANDERS, 0000
ANGELIQUE FLOOD, 0000
JASON S. FRANZ, 0000
BRETT A. FREELS, 0000
TRACY D. FUNCK, 0000
MATTHEW A. GABBIANELLI, 0000
OSCAR R. GALVEZ, 0000
LISA L. GARCEZ, 0000
JOSEPH S. GIAMMANCO, 0000
ERIN K. GILSON, 0000
CHRISTOPHER L. GROOMS, 0000
DANIELLE R. HARTLEY, 0000
JAMES R. HERRERA, 0000
JASON D. HETHERINGTON, 0000
NEAL D. HINKEL, 0000
CRIST M. HOLVECK, 0000
JASON A. HOPKINS, 0000
KENNETH C. JONES, 0000
THOMAS D. JONES, 0000
LUANN J. KEHLENBACH, 0000
STEVEN A. KOCH, 0000
MATTHEW R. KOLODICA, 0000
DUANE W. LEMMON, 0000
PRESTON O. LOGAN, 0000
JEFFREY D. LYNCH, 0000
JONATHAN M. MANGUM, 0000
EZRA L. MANUEL, 0000
ARTHUR P. MARTIN, 0000
MATTHEW K. MATSUOKA, 0000
DOREEN MCCARTHY, 0000
KEVIN J. MCDONALD, 0000
STACY L. MCNEER, 0000
JOHN M. MCWILLIAMS, 0000
NATHAN S. MENEFEE, 0000
MATTHEW J. MESKUN, 0000
ANTHONY R. MIGLIORINI, 0000
DOUGLAS J. MILLER, 0000
ROBERT S. MORRIS, 0000
MERRIDITH R. MORRISON, 0000
ERNESTO MUNIZTIRADO, 0000
WALTER L. OUZTS, 0000
JOHN G. PETERSON, 0000
TODD P. PORTER, 0000
BEAU G. POWERS, 0000
KEVIN J. RAPP, 0000
JOSEPH R. RAYMOND, 0000
JEFFREY H. RUBINI, 0000
MICHAEL K. SAFFOLD, 0000
TANYA C. SAUNDERS, 0000
KAREY J. SAYRE, 0000
RAY A. SLAPKUNAS, 0000
ADAM C. SPENCER, 0000
JON D. STEWART, 0000
MARY W. STEWART, 0000
CALVIN SUMMERS, 0000
NICHOLAS J. TABORI, 0000
DANNY M. TCHENG, 0000
MIGUEL E. TORREZ, 0000
OTIS C. TRAVERS, 0000
DOUGLAS M. TRENT, 0000
KRISTOFER A. TSAIRIS, 0000
CHRISTOPHER B. TUCKEY, 0000
MATTHEW D. VANDERBECK, 0000
KOU VANG, 0000
KRAIG L. WASHINGTON, 0000
MATTHEW G. WEBER, 0000
JUSTIN L. WESTMILLER, 0000
KEVIN S. WILKINSON, 0000
SHAY R. WILLIAMS, 0000
TIMOTHY J. WILLIAMS, 0000
CHRISTOPHER WOLFER, 0000
JOHN D. WOOD, 0000
BRETT R. WORKMAN, 0000
WARREN N. WRIGHT, 0000
BEN WROBLEWSKI, 0000
DAMIAN N. YEMMA, 0000
CHRISTOPHER J. YOUNG, 0000

CONFIRMATION

Executive nomination confirmed by the Senate Wednesday, February 8, 2006:

DEPARTMENT OF STATE

ROLAND ARNALL, OF CALIFORNIA, TO BE AMBASSADOR TO THE KINGDOM OF THE NETHERLANDS.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.