United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE *109th* CONGRESS, SECOND SESSION

Vol. 152 WASHINGTON, THURSDAY, FEBRUARY 9, 2006 *No. 15*

House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, February 14, 2006, at 2 p.m.

Senate

THURSDAY, FEBRUARY 9, 2006

The Senate met at 9:30 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.

Lord God, our eternal Father whose majesty fills the universe, we give thanks for Your enduring mercy and steadfast love. We are mindful that every sunrise is a gift and every day an opportunity to honor You in book, word, and deed.

Gracious Lord, we ask this morning for Your special blessing on our Nation's Senators, and those who so skillfully serve them here in our Nation's Capitol and in home districts. Grant them the wisdom, courage, discernment, and grace needed to nobly discharge their crucial duties.

Lord, may the radiant warmth of Your eternal providence shine upon this great Republic. May all citizens of this noble land know the width, length, and depth of Your life-transforming presence.

We pray this 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 MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, a little later this morning, after we conclude our 30 minutes of morning business, we will return to the consideration of S. 852, the asbestos legislation. When that bill is laid before us this morning, amendments will be in order. Chairman SPECTER will be ready to consider those amendments related to the underlying asbestos issue, and we expect rollcall votes during today's session.

We have had good debate up to this point, but it is finally time to begin working on the underlying issues of the asbestos bill. Therefore, we will be here ready and available into the evening to debate and vote on the amendments.

I remind everybody that last night I filed a cloture motion in relation to a Defense Department nomination on the Executive Calendar that has been held up. That vote will be tomorrow morning, and we hope we can get cloture and vote on the nomination early Friday. We have 2 days remaining this week, and Senators should have ample time to offer and debate amendments on the asbestos legislation.

RECOGNITION OF THE DEMOCRATIC LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

ASBESTOS LEGISLATION

Mr. REID. Mr. President, it is not often that you see a legislative plan with such bipartisan opposition. The asbestos bill before the Senate is an example of how you should not proceed on a piece of legislation. I have explained throughout the week, as have others, that the so-called FAIR Act is not fair. I have explained how this legislation will harm victims by trapping them in an administrative claims system that is irreparably defective and doomed to fail. It is a bill that is not only unfair to victims but to businesses, except for a few large corporations. Major industries oppose this, such as the insurance industry. It is terribly unfair to the American taxpayer, terribly unfair to the veterans.

The trust fund set up under this bill to pay for victims' claims is woefully underfunded. Expert after expert has opined that $140 billion will not be sufficient to satisfy expected claims, and it doesn't properly account for expected borrowing and administrative costs. Adding insult to injury, the mechanics of the trust fund claims system unacceptably abridge the rights of victims with unworkable startup and sunset provisions.

It is no surprise that the asbestos bill that has reached the Senate floor is in such poor shape when it is the product of such an unusual legislative process. Ordinarily, Senate deliberation on a bill is open and transparent. But consider all the ways this bill is shrouded in mystery.

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

First, we still do not know which companies will contribute to the asbestos trust fund and how much each company will contribute. Senator DURBIN asked for a list on the floor yesterday, and in response the distinguished manager of the bill, Senator SPECTER, said: Well, we didn't have to subpoena Government agencies. Well, they had to be private companies. Whom are they? He would not say. It is not clear that the list Chairman SPECTER obtained by subpoena even lists the contribution amounts. We don't know. For a bill such as this, not to know? Without this information, the Senate can have no confidence that the trust fund will raise $140 billion or, in fact, anything.

Second, the sponsors have promised a managers' amendment. Mr. President, as I said on the floor yesterday, I don't have the legislative experience of the distinguished President pro tempore, but I have a lot of experience—three decades of legislative experience. This is, by far, the worst piece of legislation with which I have ever had to deal. But think about this—and I want all Senators, all Democrats and all Republicans, to understand what is happening. Anyone who has a problem, they can go to Senator SPECTER and they will stick it in the managers' amendment. One of my colleagues had five concerns. Within a short period of time, it was all taken care of in the managers' amendment.

Of course, nobody can see the managers' amendment. It is composed of over 40 amendments. How could anyone vote for a piece of legislation such as that—a managers' amendment with 42 separate amendments? Now, these amendments were not put in, in a conference committee. People complain about that. But at least in a conference committee, you have people working together, sticking things in. Sometimes Democrats complain and sometimes Republicans complain—whoever is in the minority here: Well, we didn't get enough consultation; you cut us out of the process. But at least you had a group of Democrats and Republicans in the process. Here, you have one person making a decision as to what is going to be in the managers' amendment. There is no way to know what is in it. How could anyone say: OK. You have taken care of me, but I don't want to see the other 40 amendments—because with this legislation, similar to all legislation, you put something in one spot, and you have to take something out someplace else.

Well, another way this bill is shrouded in mystery is, yesterday, we received a statement of administration policy on this bill. Ordinarily, these documents contain several pages of detailed analyses of pending bills. The administration outlines its problems with the bill. This is standard procedure. It is a detailed analysis of the bill. Yesterday, the statement on this 400-page bill that some say should be $280 billion, not $140 billion, is 2 paragraphs. One of them is a short paragraph:

> 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.

Mr. President, what can we expect? What does this mean? What provisions do they not like? How are they going to work with Congress? This bill is not ready for Senate floor consideration.

The letter contains no list of which provisions raise concerns or what the concerns are, just an implicit promise that once the bill gets to conference, the White House will rewrite it to its satisfaction.

Finally, also in the mystery shroud, yesterday, we learned that the managers intend to evade a valid budget point of order by including language in the bill to prohibit more than $5 billion in payments each 10-year period, even though that would leave the program paying far less than $140 billion in claims. One of the complaints everybody has is that the trust fund will have their money stolen, in effect, with this legislation. The insurance industry, the businesses, and not the least of which are the claimants, the victims—they don't have enough money with $140 billion. Now they are going to be told that to avoid this point of order, they will limit how much money can be paid. If it is not enough, limit what the victims get. It is a terrible situation. This bill, if it weren't so serious, would be an example of how not to handle legislation, with a managers' amendment that contains more than 40 amendments, and the basis for the legislation is secret. Members of the Judiciary Committee—not someone in the Commerce Committee or the Appropriations Committee—nobody, not even members of the Judiciary Committee, are entitled, according to the manager of the bill, to see how they arrived at the $140 billion. He said that on the Senate floor.

I am not too sure the Judiciary Committee should have jurisdiction of this bill. I think maybe it should have been a joint referral to the Environment and Public Works Committee. I have not spoken to the chairman of that committee, Senator INHOFE. I have been chairman of that committee on two separate occasions. I will bet Senator INHOFE wonders why his committee hasn't had something to do with this. I have had some differences with the Senator from Oklahoma, but I have never, ever had a problem with him not telling me or anybody on the committee how they arrived at the numbers. We did over $300 billion at one time on a highway bill, and there were no secrets as to how the numbers got in there. There were computer printouts. Sometimes it took several hours for the printouts. But here we don't know where they came up with these numbers.

This is not the way to legislate. It demeans the Senate, demeans the legislative process. I recognize that people consider me partisan on a lot of occasions, and maybe they have a right to do that. I try not to do it, but sometimes things happen. But I want the record to be spread that this is not a partisan attack on this legislation. There are people who believe this legislation is unfair. I see my friend from Alabama, and he can speak for himself, as we all know, but I have understood—I have not talked to him personally, but I understand that he is concerned about the trust fund amounts that will be set up to pay the claims. They are going to be stripped of their money in this legislation.

The whole premise of this bill is flawed. It deprives Senators and the public of an opportunity to consider the bill on its merits. The Senate should operate in the spirit of transparency and candor, not secrecy. The proponents claim there is an absolute asbestos litigation crisis in this country and this crisis requires that we act on this deeply flawed legislation. There is no asbestos litigation crisis, Mr. President.

We have an asbestos disease crisis. The consumer advocacy organization Public Citizen stated:

> There is no logjam of asbestos cases in the courts. [Moreover], [t]he best obtainable statistics . . . do not support the oft-repeated contention that an avalanche of asbestos lawsuits is paralyzing state and federal courts.

Consider some of these facts. In Federal courts, which account for 20 percent of asbestos cases, new Federal filings for asbestos liability have been on the decline, both in recent years and compared to much higher levels at the start of the 1990s. Most recently, new Federal filings have declined from 9,111 in 1998 to 1,400, a drop of 84 percent, according to the U.S. Administrative Office of our courts.

Asbestos suits as a fraction of all product liability suits have fallen considerably, from two-thirds of all cases in 1990 now to 4.2 percent in 2004. The number of asbestos product liability trials in Federal courts is down sharply in recent years, from 271 in 1991 to zero in several recent years, according to the U.S. Department of Justice Bureau of Justice Statistics.

In State courts, among tort cases disposed of by trial in 2001, in the Nation's 75 largest counties—which together account for about 23 percent of the population—there were 31 asbestos trials, .4 percent of an estimated total of 7,948 cases. Among major categories of State cases, asbestos product liability cases going to trial had the shortest median period for disposition for 2001, the latest period for which data is available. While the disposition time for other cases was little changed since 1996, the disposition time for asbestos trials fell by 80 percent, from 50 months to 10 months.

Overall, the rate of growth for new asbestos claims has markedly slowed. In the mid-1980s, the number of claims for mesothelioma, other cancers, and

nonmalignant cases each was growing by 25 percent annually, but now the rate of growth is down by 76 percent for mesothelioma, down by 96 percent for other cancers, and down by nearly half for nonmalignant cases.

Even the largest number of asbestos claimants in a single year, 2002—about 95,000—amounts to a little more than one-half of 1 percent of new annual State and Federal cases.

Our system of justice is unique. State courts have seen the problems and they have done something about them. I have talked to Republican Senators and Democratic Senators. Texas has a system we should take a look at here. Illinois has a great system. What they have established is what they call a pleural registry. What they do there, if you have been around asbestos and you think you might get sick—because some of these periods of dormancy can be for years and years—you give your name and the statute of limitations is tolled. If nothing happens to you, no problem. If 10, 20, 30 years later something comes up, you can go into court. It has worked great in Illinois, where a lot of cases were being filed. It protects the most serious cases, the mesothelioma and asbestosis.

There is no litigation crisis. These facts contradict any assertion there is some type of asbestos litigation crisis overwhelming the courts.

In addition, the pleural registry and the system they have in Texas and other States—take, for example, US Gypsum. My brother worked for US Gypsum his whole professional life. They had a lot of problems with asbestos. Why? Because that is what they manufacture stuff with. With US Gypsum, they set up a program and settled all their cases. Right now they have settled all their cases for about $900 million. Other companies have done the same thing. They have gotten money together: ''Let's get rid of this litigation.'' So anyone talking about a crisis with litigation—the crisis is these big companies are trying to escape responsibility.

I read here on the floor the day before yesterday an example of four companies, hundred-year-old companies, that pay nothing in asbestos now. But one company, even though they paid not a penny for asbestos litigation, under this proposal will pay $19.5 million a year. They will go bankrupt and a 100-year-old American company is gone.

We do not need to pass this defective legislation. We should instead pass legislation to help the thousands of victims of asbestos exposure and the companies that have contributed to their injuries.

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 is now a time for morning business not to exceed 30 minutes, with Senators permitted to speak therein, the first 15 minutes under the control of the Democratic leader or his designee, the second 15 minutes under the control of the majority leader or his designee.

Who seeks recognition?

Mr. BENNETT. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

Mr. SESSIONS. I believe my colleagues on the other side are not going to use any of their morning business time that is remaining. A minute or less remains. I ask unanimous consent that I be able to commence my remarks at this time.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator is recognized in morning business.

NSA TERRORIST SURVEILLANCE PROGRAM

Mr. SESSIONS. Mr. President, last night I was in my office in the Russell Senate Office Building and we were evacuated to the parking deck, and following the excellent leadership of the Capitol Police, people responded professionally and well without any undue alarm and showed good discipline and good spirits.

I point that out to ask, have we forgotten there is an enemy out there who desires to attack us, desires to attack our Nation's Capitol, or any other spot in our country, desires to cause us harm, and that we are spending billions of dollars, that some of the best people in this country are working night and day, like our Capitol Police, in localities all over this country to protect us? From local sheriffs, police officers, State police officers, the FBI, the CIA, the Customs Service, the Immigration Service, to all the agencies that are involved in protecting us, they are out there working their hearts out, and sometimes I think we in this body have gotten too comfortable about this. We have been the subject of a declaration of war by al-Qaida. Bin Laden has declared war on the United States. He has asserted it is his right and, indeed, the duty of his followers to attack Americans and even civilian targets, men, women and children.

We have authorized the U.S. Government, the President, and the executive branch to exercise certain rights because it is war. It is not a criminal matter. If we capture our enemies, they are not entitled to a trial in the southern district of New York because they are prisoners of war. They are entitled to be held without trial as every prisoner of war since the beginning of the Republic and the rules of war have been instituted. They are held without trial. In the Hamdi case, the U.S. Supreme Court stated that even an American citizen engaged in the war against the United States can be held without trial as an enemy combatant against the United States because it is not a criminal matter. A state has one primary responsibility, and that is to maintain its existence against those forces that would destroy it.

I would ask if anyone thinks we would have any liberties at all if bin Laden ran this country. He would tell you what clothes to put on in the morning. We would have people not only not being free, they wouldn't be able to drive an automobile—women would not be—under his mentality.

This is a serious question, and we need to respond to the challenge to this country in an effective way consistent with our heritage of laws and liberties. There is no doubt about that.

Secretary Rumsfeld has pointed out recently something that is so obvious, but we should think about it. He said the military challenge today is to find, fix, and finish the enemy. He said there is no doubt if we target and develop a plan, we can finish them successfully. We have that military capability. There is no military in the world capable of destroying the military of this United States.

I ask you to remember what we heard after 9/11. What we heard was our intelligence is weak. What we heard was we did not have enough intelligence, that we did not have enough information to find the enemy; that they had sleeper cells in this country and those sleeper cells were activated by phone calls from Afghanistan and bin Ladin over here to encourage them to step forward to carry out the events that led to September 11. Isn't that what happened? And we had this spasm of self-flagellation about intelligence and how we operate our intelligence community. Our job unfortunately was based on the fact that there were failures and we could have done better, had we had interceptions of some of those 18 responsible for 9/11 prior to 9/11, that if we had been able to listen to those conversations, we could well possibly have taken steps to avoid that and 3,000 American citizens would have civil liberties today. Now they have none because they are no longer with us.

We have to ask those questions and go back and look at the history of our country and what is the legitimate power of the President and our forces in a time of war.

What do our intelligence leaders tell us about the capability of the National Security Agency as it has dealt with the ability to intercept international phone calls involving al-Qaida members? What do they tell us? What do all three of our top intelligence people

say? The National Intelligence Director John Negroponte testified last Thursday before the Intelligence Committee and he stated:

This was not about domestic surveillance. It was about dealing with the international terrorist threat in the most agile and effective way possible.

FBI Director Robert Mueller testified last Thursday as well, stating to the Senate Intelligence Committee:

We get a number of leads from the NSA from a number of programs, including the program that's under discussion today.

The FBI Director is saying we get a number of leads from this program under discussion today.

And I can say that leads from that program have been valuable in identifying would-be terrorists in the United States, individuals who were providing material support to terrorists.

Let me interject here. I was a Federal prosecutor for a long time. I dealt with a lot of drug gangs and some organized crime-type groups. They are pretty close-knit organizations. Sometimes you don't even know they exist. Then all of a sudden you have the ability to identify them and penetrate the organization and gain information against them, and all of a sudden you realize right in your own community there is a major drug-dealing gang or a major organized crime network. So one tip, one lead from an intercepted phone call, can identify a sleeper cell in any community in America. I kid you not. That is the way law enforcement works.

How do you get a warrant to surveil the sleeper cell of terrorists in the United States? Oftentimes it is this kind of intercept on a national security call from foreign sources here that causes us to have the information that leads to the identification of a group bent on destroying our country.

CIA Director Porter Goss testified to the Intelligence Committee:

I'm sorry to tell you—

And I hope the American people listen to this—

I'm sorry to tell you that the damage has been very severe to our capabilities to carry out our mission. . . . I use the words ''very severe'' intentionally. That is my belief and I think the evidence will show that.

He is talking about the revealing to the world our intelligence capabilities at NSA.

He goes on to say:

When I start talking about the disruption to our plans, things that we have under way that are being disrupted because of releases to the press or public discussion; when I talk about the risk to access, the sources or methods that are no longer viable or usable or less effective by a large degree; when I talk about the erosion of confidence in our working partners overseas, I'm stung to the quick when I get questions from my professional counterparts saying, ''Mr. Goss, can't you Americans keep a secret?''

How can we expect them to share intelligence with us if you pick it up in the newspapers? How can we have techniques of this kind and have them leaked to the press?

I would say it is time for us to reevaluate how we do business. It is time for us to realize that we are in a war and that we are entitled to conduct that war and to win that war. Our military and our intelligence agencies have been charged by us—indeed, they have been criticized by us for not being effective enough in this effort.

I will conclude. I see my colleague from Missouri is here, and he knows this issue very well. I would like to yield to him.

I will conclude with this thought: Please note, Americans, that our military and intelligence agencies have every right to intercept foreign phone calls between two foreign sources. That has never been in dispute. The question we have is whether the authorization of force and the inherent power of the President allows warrantless surveillance of an international call that is connected to the group we are at war with, al-Qaida, that calls into the United States. To say we can't do that will lead to this weird result.

We intercept an international phone call that has not been connected to the United States and we discover information that they are planning an attack on France, we can call France and tell them. If they have a plan that we discover that they are going to attack Canada, we can call them and warn them—or New Zealand or Mexico or any other of our allies and friends around the world. But if the call is into the United States from al-Qaida, we can't intercept that call, we can't use that capability to defend Americans.

I believe that is not logical. The American people don't agree with it. They support and expect our military to carry on these activities. I hope and I believe they will be continued.

Why do I believe they will be continued? Because despite the fact that we have told the world of this capability and severely damaged our capability, not one Member of this Congress that I know of has said we should stop it. If it is so evil and bad, why do they say it does not need to be stopped?

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I ask unanimous consent to speak as if in morning business for 8 minutes.

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

Mr. BOND. Mr. President, I certainly support the very powerful words of my colleague from Alabama. He has pointed out many of the compelling reasons for this program.

I rise today to discuss this vitally important program for protecting our national security, and I do so regrettably because this is an open session on the floor of the Senate. This program, of course, is known as the NSA terrorist surveillance program. I say I discuss it regrettably because it is to the detriment of our Nation that this program was leaked to the media and has now been discussed openly for months.

I submit to you that the year 2005, in intelligence and national security circles, will go down in history as the year of the leak. I will not repeat the full litany of those leaks, but we have all been continually reminded about the most damaging one.

Mr. SESSIONS. Mr. President, will the Senator yield for a question?

Mr. BOND. Yes.

Mr. SESSIONS. I would like to say how much I appreciate his leadership. I note that Senator BOND is a senior Member of this Senate and has served on the Intelligence Committee. He has a son serving in the Marine Corps in Iraq right now in harm's way defending this country. He is a brilliant lawyer, made the highest score on the constitutional law test—I happen to know this—when he was at the University of Virginia. I think the American people need to listen to what he says about this issue.

I guess that is my question. Otherwise, I yield the floor.

Mr. BOND. Mr. President, I say thank you to the Senator from Alabama.

Let me get back to the remarks.

For example, the allegation that the United States is running some secret prisons in Europe has caused European nations and other allies to question their cooperation with us on the war on terror for fear of international retribution; the barrage of books and articles disclosing alleged classified operations, like James Risen's book, ''State of War,'' where he takes every supposed leak he can find and churns it out for profit in a book; and the NSA terrorist surveillance program which tips off terrorists to our early warning program.

On February 2, CIA Director Goss testified to Congress and the Intelligence Committee in open session about the damage to our national security. I asked him if these leaks had a significant impact on our capabilities to carry out our mission. And to quote him:

I use the words ''very severe'' intentionally. That is my belief.

He went on to say that foreign leaders chide him that the United States cannot keep a secret and that we have lost the confidence of many in the world who were desiring to assist us in the global war on terror. Do those who leak classified information with reckless abandon realize they are potentially aiding and abetting the enemy by allowing the enemy advanced warning of how to avoid our defenses as we seek to prevent another 9/11?

Since so many have taken political advantage of the leak on the NSA terrorist surveillance program, the administration and those of us who agree with the concept of the program are now forced to speak openly to defend it to make sure Congress does not throw this vital program out with the bath water while reviewing it. Some say the program is illegal and even unconstitutional. How do they figure? The President has the inherent constitutional

authority, so held by the courts, to conduct ''warrantless'' surveillance when it is reasonable for the surveillance for foreign intelligence purposes. This is a constitutional principle which has been established for centuries. Go back to the writings of our Founding Fathers, and from our first President, George Washington, to our current, President George Bush. Presidents have intercepted communications to determine the plans and intentions of our enemies.

A steady stream of Federal court cases has confirmed this Presidential authority, as Attorney General Gonzales pointed out on Monday before the Senate Judiciary Committee: In the face of overwhelming evidence for the President's authority, opponents retort that the President must then be breaking the law by violating the 1978 Foreign Intelligence Surveillance Act, known as FISA. But—and this is important—Congress cannot extinguish the President's constitutional authority by passing a law.

We in this body cannot take away the powers the Constitution gives the President. If the law is read in such a way as to encroach upon his constitutional authority, then I question whether that part of the FISA act would be constitutional.

This is not the first time a President has faced the issue of exercising his inherent constitutional powers for foreign intelligence surveillance in view of legislation that could be interpreted as infringing on that authority.

In 1940, President Roosevelt wrote to Attorney General Robert Jackson that despite section 605 of the Communications Act of 1934, and in this instance despite a Supreme Court ruling upholding the prohibition on electronic surveillance, President Roosevelt said he believed he had the inherent constitutional authority to authorize the Attorney General to ''secure information by listening devices direct to the conversation or other communications of persons suspected of subversive activities against the government of the United States, including suspected spies.''

So does the President have carte blanche with respect to foreign intelligence surveillance? The answer is clearly no. Under the fourth amendment to the Constitution, the surveillance has to be ''reasonable,'' and it does not require a warrant. In the context of a war against al-Qaida and those who would do great harm by attacks on innocent American civilians within our country and with a constitutional resolution authorizing the use of ''all necessary and appropriate force'' to prevent attacks, who is the best to determine what is and isn't ''reasonable''?

When surveying communications in real time, who is best to make that determination? A judge or a lawyer or an intelligence analyst who has spent his or her professional life observing, listening, studying, and tracking the terrorist personalities which make up groups such as al-Qaida? To me the answer is obvious: the analyst.

Consider this: If someone listened to your voice on a telephone call, who would be the best person to assess it by the voice intonation and word usage, whether it is your voice on the other end or a lawyer or someone who knows you well? Of course, the answer is the person who knows you. And I submit that the Americans who know these terrorist personalities better than anyone else are the analysts who have spent endless days over the past 4 years studying them.

Again, do the analysts have carte blanche to eavesdrop on international communications coming into or out of the United States to known suspected terrorists? No. Their decisions are reviewed by supervisors, and the program is reviewed by the NSA inspector general, the NSA general counsel, the White House Counsel, and numerous lawyers at the Justice Department who are ready to blow the whistle if they see anybody stepping out of line. The Attorney General also reviews the program, and the President reauthorizes it every 45 days with the determination that al-Qaida continues to pose a significant threat.

Did the President keep the Congress in the dark? No, he didn't. He briefed the Congress in a manner consistent with the practice of Presidents over the past century. He briefed leaders of both parties in the House and Senate and the two leaders on each Intelligence Committee, Democrats and Republicans.

These leaders were elected by their constituents to represent them in Congress and elected or appointed by their parties to serve in these incredibly important positions, so if any one of them ever questioned the legality of this program, they had the responsibility to bring the matter to the leadership, discuss it with the administration, and if necessary to cut off funding for the program through congressional authority.

The reason the President briefed the Congress was to afford them the opportunity to do exactly that. Did anyone do that? No. There was a carefully couched letter written that simply expressed concern. There was no followup, no action taken, and no mention of it at all during subsequent program briefings, according to public statements by those in attendance.

Some Members of Congress may feel slighted because they were not briefed on the program. I am on the Senate Intelligence Committee. Do I feel slighted? Absolutely not. To the contrary, I recognize that the President has to keep these very important programs top secret, which the President is doing to protect my family, my constituents, and myself. That is his responsibility.

The bottom line is that I believe congressional oversight is a vital aspect of ensuring the proper execution of matters involving national security, and I believe there was adequate oversight. We are not talking about the U.S. Government listening to phone calls from me to you or from my constituents in Missouri to their relatives in or out of State. We are talking about our best intelligence officials having the ability to assess whether al-Qaida affiliates are communicating internationally where one end of the communication takes place inside the United States and the other end takes place outside the United States, maybe discussing another attack like 9/11 on America.

These are times to stand up in arms over our civil liberties. I will do so when I believe they are infringed upon. This is not one.

I thank my colleagues for their indulgence, and I yield the floor.

Mr. BENNETT. 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.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. 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 (Mr. CHAFEE). Under the previous order, the Senate will resume 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 for bodily injury caused by asbestos exposure, and for other purposes.

Mr. FRIST. With the authority of the majority of the Judiciary Committee, I withdraw the committee amendments, and I send a substitute amendment to the desk.

The PRESIDING OFFICER. The committee amendments are withdrawn.

AMENDMENT NO. 2746

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST], for Mr. SPECTER and Mr. LEAHY, proposes an amendment numbered 2746.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. DURBIN. I ask for the yeas and nays on the substitute amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SPECTER. 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.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 2747 TO AMENDMENT NO. 2746

Mr. SPECTER. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania, [Mr. SPECTER] proposes an amendment numbered 2747 to amendment No. 2746.

Mr. SPECTER. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

On the appropriate page, insert the following and number accordingly:

GUIDELINES.—In determining which defendant participants may receive inequity adjustments the administrator shall give preference in the following order:

(A) Defendant participants that have significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80 percent or more of their available primary insurance limits for asbestos claims remains available. (Note: I recognize that this may not be the most adequate indicator of insurance matching liabilities—however, it's a political reality that must be addressed).

(B) Defendant participants where, pursuant to the guidance set forth in section 404(a)(2)(E), 75% of its prior asbestos expenditures were caused by or arose from premise liability claims.

(C) Defendant participants who can demonstrate that their prior asbestos expenditures is inflated due to an unusually large, anomalous verdict and that such verdict has caused the defendant to be in a higher tier.

(D) Any other factor deemed reasonable by the administrator to have caused a serious inequity.

In determining whether a company has significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80% or more of their available primary insurance limits for asbestos claims remains available, the administrator shall inquire and duly consider:

(1) The defendant participant's expected future liability in the tort system and accordingly the adequacy of insurance available measured against future liability.

(2) Whether the insurance coverage is uncontested, or based on a final judgment or settlement.

Mr. SPECTER. Mr. President, there are a number of issues to be discussed, but the distinguished Senator from Utah has been awaiting recognition. I yield now to Senator BENNETT so he can make his comments. We managers will be here all day and can speak later and not tie up the Senate.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. I thank the Senator from Pennsylvania for his courtesy and pay tribute to him and the Judiciary Committee for their effort in dealing with this most vexatious problem.

When the asbestos problem burst into the American consciousness, everyone was concerned there would be a way to compensate those who are victims of this difficulty. Unfortunately, certain members of the trial bar developed what I would call a business plan that was based on two fundamental principles: No. 1, venue shopping; and No. 2, a deliberate pattern of overwhelming the legal system so the various cases could not be heard on their merits.

Those who adopted this business plan have been tremendously successful. They have driven 75 companies into bankruptcy. They have created enormous litigation all over the country. Unfortunately, the outcome in terms of the victims has not been what anyone would want, with the possible exception of those who were behind the creation of the business plan in the first place.

The net effect of what we have seen in the asbestos litigation is to take an American tragedy and turn it into an American disaster, with a relative pittance for the victims; an undeserved windfall for people who have no health problems; and an overwhelming bumper crop of cash for the trial lawyers who developed the plan in the first place.

There is a great uprising of demand that we do something about this. That demand is legitimate. The Congress should act. We do need a national solution, even though we have seen progress take place—not at the Federal level but at the State level. It is very interesting to watch what has been happening as various States have grappled with this challenge and done their best to deal with the two problems I have identified: the venue shopping and the strategy of overwhelming the system.

One breakthrough in this regard came from a Federal judge. Her name was Janis Jack. I am told she had something of a medical background. She was trained as a nurse. So when these cases came before her she instinctively realized there was something fundamentally wrong with the medical claims. Without going into the detail of what happened before Judge Jack, I quote the statements she made as she handed down her scathing decision:

These diagnoses were driven by neither health nor justice, they were manufactured for money. The court finds that filing and then persisting in the prosecution of silicosis claims, while recklessly disregarding the fact there is no reliable basis for believing that every plaintiff has silicosis, constitutes an unreasonable multiplication of the proceedings.

I pause here to say she is highlighting what I talked about before, that there was a conscious business plan to overwhelm the system. She calls it ''an unreasonable multiplication of the proceedings.''

Continuing the quote:

When factoring the obvious motivation, overwhelming the system to prevent examination of each individual claim, and to extract mass settlements, the behavior becomes vexatious, as well. Therefore, the court finds that the firm will be required to satisfy personally the excess costs, expenses, and attorney fees reasonably incurred because of such conduct.

I am not a lawyer, but I understand when a Federal judge uses the words ''vexatious'' it is probably not good for the people who are in her court listening to her. And she is requiring the law firm that brought the case to pay all of the costs of the case. That has sent a chill throughout the plaintiff's bar who thought they had a free ride with their business plan.

The other thing that has happened as various States have looked at this has been the setting up of inactive dockets, or deferral registries, two terms with which I was unfamiliar before I got into this. They make eminent good sense. All they do is say to those plaintiffs who, in fact, are not sick: We will let your claim stand, we will not dismiss it out of hand, but we will put it in an inactive docket or a deferral registry. In other words, your claim cannot be pursued until you get sick. Just because you have a doctor's certificate that says you might get sick does not mean you are entitled to damages.

Interestingly enough, the fallout from Judge Jack's ruling where she found that doctors had gone beyond medical practice in order to give these certifications that would allow people to come forward as if they were plaintiffs, means that some doctors are facing jail time and some lawyers are facing jail time as a result of the findings in Judge Jack's court.

The combination of a judge who finally says, You need to focus on whether people are ill, and State legislation that says, We will not allow the courts to be overwhelmed by the claims of those who are not ill, has begun to taper off the level of asbestos cases and has caused some people to say we have turned the corner; that the trust fund established in the bill before us is an idea whose time has gone; that it is not necessary to have a trust fund to deal with these issues. Others say: No, we have to have the trust fund. We have to have the bill before us.

One of the perplexing things to me, as I listened to people in the business community discuss this, has been to discuss how split the business community is, how there are so many companies that come to me passionate in their insistence this bill be passed, or they say there will be disaster going on uninterrupted into the unknown future.

Just as passionate are other companies who come to my office, sit down with me and say: This bill is the biggest disaster we have ever seen. You cannot allow it to happen. If this bill happens, we will go out of business.

That is not a minor gulf between the proponents and the opponents. I have tried to figure out why business men and women examining this as dispassionately as they can have come to

such diametrically opposite positions. I have found, for me, what is an explanation. I have prepared two charts that will demonstrate this. Both of these are based on assumptions. We must understand that this entire debate is based on assumptions. No one really knows.

There are those who say the $140 billion called for in the trust fund will be more than enough to take care of all of the claims. There are those who say it is nowhere near enough.

There are those who say the claims will go down as a result of the trust fund, and there are those who say the claims will increase as a result of the trust fund. No matter how you slice it, every argument everybody is making, including the ones I will make, is based on an assumption that is not provable. But I have done the very best I can to come up with sources that are reliable.

So here is why I think the business community is split. It has to do with where you fall on the trust fund chart, what tier you are in, and basically how much money you have to pay.

Here is the first list that comes up, and this is compiled by a consulting firm to the bankruptcy court that looked at asbestos claims. I have summarized in this column of the chart, if there is no trust fund, the estimated liabilities of the companies listed. That means, Armstrong World Industries, according to the consulting firm, if there is no trust fund, will face a liability of roughly $2 billion. Babcock & Wilcox will face a liability of roughly $2 billion—and so on all the way down—U.S. Gypsum, $4 billion. I will come back to U.S. Gypsum in a minute because it helps make my point. So this is the column that shows the liability of these 10 companies if the trust fund is not enacted.

Now, this is the column that shows what they will pay to the trust fund. In other words, their liability will go from this number to this number, if the trust fund is established. Here in this column is the difference. For these 10 companies, it is $20 billion.

If I were the CEO of any one of those companies, I would be very strongly for the trust fund. Now, I reject the idea this is being driven by K Street and lobbyists. This is a very logical business decision on the part of the CEOs of these companies, and I do not think any of them had anything to do with this allocation. It is the way the trust fund was structured. As they read the details, they said: This makes good sense for us. Let's be for it.

But out of this chart comes a fundamental question that I have at the bottom of the chart. If there is a $20 billion difference between their liabilities and their contributions, who will make up the difference?

So now let's go to the second chart.

On this chart is a list of companies with estimated outlays, if there is no trust fund, that will be substantially less than those on the first chart. Foster Wheeler—I understand this number may change. These are estimates. All of these numbers may change. But I have heard, just this morning: Hey, we are trying to recalculate that, Senator. We want you to be exactly accurate. It might be $79 million, but it may not. But it will be relatively low compared to the number on the next chart. So let's understand all of these.

But here is Foster Wheeler, Oglebay Norton. They will have no obligation—no obligation—if the trust fund does not pass. Why? Because they have insurance. They took precautions. They have insurance that will pay the claims. They will have no obligation. National Service Industries will have $11 million if the trust fund is not enacted, and so on.

Now, Oglebay Norton will owe the trust fund $495 million in order to be relieved of zero obligation if the trust fund does not pass. Who will make up the difference? It will be made up by companies like these, some of which earn so much lower numbers than the numbers that are here that this could very easily jeopardize their survival. Some of the companies on this chart might not survive if the trust fund is passed. You have no obligation, but you have to pay half a billion dollars over a 30-year period?

There are some companies here whose total revenue is $100 million a year, and their annual responsibility to the trust fund is $19 million. Twenty percent of their total revenues will be required, and they have no exposure or relatively no exposure. There is not a company here with exposure, no matter how high it may be, that would not be satisfied by 2 or 3 years' contribution to the trust fund, but they are going to have to make that contribution for 30 years.

The companies on the first chart will see their stocks go up dramatically as soon as this bill is passed, and I do not begrudge them that. I think that is wonderful. But the other companies that will make up the difference will not only see their stocks fall, they may disappear and see their employees put out of jobs, their employees put on the unemployment line.

I do not think there was anything sinister about the way in which the trust fund decisions were made. But I do not think it has been analyzed properly with respect to the real-world impact of those decisions. So, to me, that is why we have the split in the business community, with some companies saying this is a great idea, and other companies saying, with some irony, over our dead body, because they may be very much dealing with a dead body here.

All right. Does that argue that we should not have Federal legislation? No. The progress in the States, causing this level of litigation to level out and begin to turn down, is not even throughout the country. We need a national standard. Ohio has led the way. Ohio has bills that are causing the litigation to begin to dry up. We are seeing the pattern of venue shopping dry up. But we still do not have any action out of California or New York. And, if I may, I remember when the Governor of Utah was once asked: What is the greatest economic development agency you have in Utah? And he said: The California State Legislature.

I think we can wait a long time before the California State Legislature can be depended upon to deal with this issue. So we do need a national bill.

But the one thing everybody on either one of these charts wants is certainty.

Let's go back to the first chart and the example I was talking about with respect to U.S. Gypsum or USG. Within the last week or two, USG announced they were setting up a reserve for their asbestos liabilities. They said: We are setting up the reserve with $900 million in cash and $3 billion in contingent notes. Their stock went up 15 percent the next day because their investors said there is a degree of certainty.

Now, if you take that $3.9 billion figure they determined was the amount of their liability and you compare it to what the consultants said their liability was—$4 billion—you are very much in the ballpark with roughly the same figure. Now, the interesting thing about the contingent notes they said they would sign for the $3 billion is the contingency. The contingency was whether this bill passes. If this bill does not pass, they will then be on the hook for the $3 billion in contingent notes. If the bill does pass, they are out with only the $900 million. As we see, they are only required to pay, under the trust fund, $797 million. So as to the $900 million, they may even get a refund from that if this bill passes.

That demonstrates the value of certainty. They came up with certainty, one way or the other, and their stock went up 15 percent. We can give people certainty with the right kind of Federal bill that does not have the problems that this trust fund has.

So what do I search for in a bill? Well, the first one should be obvious from the presentation I have made: a restructuring of the liabilities in the trust fund. And if the trust fund were to go away, that would not bother me either, if we could have an understanding of how we could take the experience in the States and make it work on the Federal level.

Back to Judge Jack and her rulings and the actions of the various States, we discovered there really are only a few things that need to be done to tame this monster.

The first one is to stop the venue shopping. Well, if we pass a Federal bill, we can do that. The Judiciary Committee has worked hard in that direction, and I commend them for it.

No. 2, building on what Judge Jack discovered, we can have the right kind of medical certification. All she did was force these people to prove they were injured and the claims went away. I am not satisfied the medical certification in this bill is strong enough. I

would prefer to take the kind of medical certification we have at the State level, particularly Ohio, and say if we can write that into the Federal bill, then we are on our way toward realizing Judge Jack's goal in eliminating those who are not medically certified.

The third thing we can do is adopt the position that many of the State courts have adopted, which simply says: You can file your claim if you are not sick because you think you might be, but we are going to put that claim in an inactive docket, or a deferral registry—pick whichever term of art you prefer—and it will sit there unacted upon until you can come in and prove you are sick.

If we can do those three things—stop the venue shopping, get a legitimate medical certification, and set up inactive dockets—at the Federal level, the State experience says we can solve this problem. Whether there is a role in all of that for the trust fund, I am not sure.

I am enormously respectful of the senior Senator from Pennsylvania. He is a close, personal friend and has been the entire time I have been in the Senate. I commend him and the members of the Judiciary Committee for their efforts in working on this bill. But I do have a sense that in their focus on the disaster this has been throughout our history they have crafted a solution that, like the generals in the Army, may be the solution to the last war. They may have been fighting the last war instead of addressing what has currently happened.

So I understand the Senator from Texas has an amendment, which I intend to support. I understand the Senator from Arizona, Mr. KYL, has a provision that presumably will affect this difference between people on the two lists. I am interested in that. I am not sure it is the solution, but I want to move in this direction. I think we need a bill. I want to support a bill. As the bill currently stands, I think it is in need of the kinds of changes I have outlined.

Mr. DURBIN. Mr. President, will the Senator yield for a question?

Mr. BENNETT. I am happy to yield.

Mr. DURBIN. I would like to commend the Senator from Utah. He and I come from different parts of the political spectrum, and his life experience in business and otherwise is quite different from my own life experience. But I will tell you that I agree completely with your analysis. I think you have carefully looked at the impact of this pending bill on real-life companies, real-world companies, and there are clearly winners—and big winners—and losers—and big losers—in the course of creating this trust fund.

Without assigning any motive as to why some companies do so well and others do so poorly, I think what you have suggested as an alternative is the sensible middle ground. And the sensible middle ground, which I think will soon be offered by the Senator from Texas, is to look at successful efforts in States that have changed the whole environment on asbestos litigation.

I am looking to this amendment. I want to read it carefully before making any commitment on my part, but this seems to me to be the right move to make, to capitalize on the State efforts before we create a trust fund.

I would like to ask the Senator if he has any knowledge or personal experience with the creation of other trust funds in the past in an effort to solve problems like black lung, and even in the trust funds that were created by companies like Johns Manville, and whether the initial estimates of cost turned out to be accurate in the long run.

Mr. BENNETT. I thank the Senator for his kind words. We will continue to be on opposite sides of the spectrum, but we will continue to be good friends.

In response to his specific question: Yes, the GAO has done a study of Federal trust funds and has found that as a general rule, the creation of a trust fund creates roughly twice as many claims as was anticipated at the time of their creation. This doesn't automatically mean twice as much money. In some cases, it means substantially more than twice as much money. And in one case, it means the amount of money stayed the same because the amount proclaimed was less than projected.

The one thing we can draw from that experience is what I said at the beginning of my remarks. Virtually everything we are saying about this is a guess. Everything we are assuming is based on an extrapolation based on other assumptions. We cannot, with any certainty, say that the trust fund will be sufficient or that it will not be sufficient. The one thing that we can say with certainty is, this is how much you will have to pay if the trust fund is created. That, as I say, is the reason for the split in the business community. As people have done the numbers, some say: I am better off in the tort system. Others say: I will pay anything to get out of the tort system.

The trust fund needs to be manipulated, if we are going to keep the trust fund, to make sure that there is a greater degree of fairness on the part of those who are contributing to it.

This is taxation with a vengeance on the part of the Federal Government for many of these companies. And some companies are saying: We are willing to pay that tax rate. Others are saying: Under no circumstances.

It will be very interesting if a conversation is held with those companies fighting for the bill and the proposition is made, if you really want the bill, will you increase the amount of your contribution to the trust fund so that the amount for some of these other companies will go down? That will be an interesting conversation. I understand some people are thinking about having it. I would like to be present when it is had, to see where we go with this.

Mr. DURBIN. I thank the Senator.

Mr. BENNETT. I yield the floor.

The PRESIDING OFFICER. The minority leader.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ENSIGN). Without objection, it is so ordered.

The Senator from Texas.

AMENDMENT NO. 2748 TO AMENDMENT NO. 2746

Mr. CORNYN. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. CORNYN], for himself, Mr. COBURN, Mr. GRAHAM, Mr. THUNE, Mr. ENSIGN, Mr. INHOFE, Mr. MARTINEZ, Mr. CRAPO, Mr. BENNETT, Mr. SMITH, Mr. CRAIG, Mr. SUNUNU, Mr. DEMINT, Mr. THOMAS, and Mr. BUNNING, proposes an amendment numbered 2748 to amendment No. 2746.

Mr. CORNYN. I ask unanimous consent that reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. CORNYN. Mr. President, I rise to join my colleagues in a call for asbestos reform. No other issue more readily highlights the toll that excessive litigation has placed on our society and, even more poignantly, on the lives of those who are dying with asbestos-related disease who are left with inadequate legal recourse and compensation by virtue of the massive waive of litigation, primarily by those who are not sick and who suffer no impairment as a result of their exposure to asbestos. Make no mistake about it: Today we are not just talking about liability reform, we are talking about scandal reform.

The legislation before us represents a genuine effort—I dare say, a Herculean effort—by the chairman of the Judiciary Committee and the ranking member and others who have worked together with them to try to bring us to where we are today; that is, with a good-faith proposal to address this complex problem. No one has worked harder or driven the members of the Judiciary Committee harder than our chairman, Senator SPECTER. He has tried hard to reach consensus among so many disparate parties and on so many different complicated issues.

The question before us is whether a national trust fund of the magnitude contemplated is the appropriate method to ensure victims will be compensated fairly and efficiently and that the trust fund can reasonably expect to remain solvent and viable.

After countless hours of reviewing and studying the options and hours of working with my colleagues to achieve reform, I unfortunately conclude that in its current form and with its current significant weaknesses, it is not. Rather, I believe the likelihood is far greater that the trust fund will sooner, rather than later, prove unsustainable and return us to the same broken tort system, then leaving thousands of Americans in the wake of a failed Government program, wondering where to go and why they must now go back to court. This simply cannot be the outcome.

I offer an alternative solution, a simple solution that has been tested in States around the country and a solution that would target the key causes of the asbestos liability crisis. I am pleased to offer this amendment on behalf of 14 cosponsors: Senators COBURN, GRAHAM, THUNE, ENSIGN, INHOFE, MARTINEZ, CRAPO, BENNETT, SMITH, CRAIG, SUNUNU, DEMINT, THOMAS, and BUNNING. We are working closely with our colleagues on the Democratic side who are looking for an alternative solution. I do believe, before the close of business today, we will have bipartisan cosponsorship of this amendment.

We are looking for a solution that provides a simple but effective approach and one that establishes a national floor with respect to the medical criteria required to bring a claim into court, one which tolls the statute of limitation to ensure that victims get their day in court and virtually eliminates the likelihood of fraud in the medical screening industry, which has proven to be a corrupt cottage industry.

In short, that is basically what this amendment would do. It is about 50 pages, not 400 pages. It requires no complicated administrative scheme, no complex funding formulas that require a Ph.D. in economics to understand. There are no complex constitutional questions, no litigation that will arise over the constitutionality of the proposal, and no real cost to the American taxpayer or, for that matter, to the businesses that would otherwise have to contribute to this $140 billion trust fund. There is no question about favoring one constituency differently than another constituency. Most importantly, I am confident that our solution is a system more likely to ensure that those individuals who are truly sick from exposure to asbestos will receive fair and efficient adjudication of their claims against those who were actually responsible for their injuries.

This proposal is embraced by such a diverse group as the American Bar Association that studied it. You can imagine getting lawyers to agree, with their divergent interests, on what solution to this problem would likely work best and be the least disruptive to our civil justice system. They believe this is it. Indeed, our legislation would target directly the well-documented causes of the asbestos liability scandal plaguing our civil justice system.

The oft-quoted RAND Corporation, in its research, has discovered:

> Almost all the growth in the asbestos caseload can be attributed to the growth in the number of nonmalignant claims which includes claims from people with little or no functional impairment.

In other words, these are people who are not sick. Those are the main claimants today under the asbestos liability system. Their research reveals that up to 90 percent of the plaintiffs filing claims have no physical impairment, but they have clogged our courts and delayed justice for those who are sick with asbestos disease. These claims brought by unimpaired plaintiffs often are generated through mass screenings and supported by questionable medical evidence, backed by doctors who do not claim to have a doctor-patient relationship but who will screen thousands of x-rays and who, not surprisingly, more often than not, overwhelmingly find some evidence of asbestos-related disease. When those same x-rays are given a second opinion by someone without a vested interested in finding asbestos-related disease, only a minute fraction actually are confirmed. So this is a cottage industry of fraudulent claims which has further contributed to the broken system we have today.

Under the status quo, forum shopping is rampant. For example, between 1998 and 2000, five States captured 66 percent of the filings; 66 percent of the asbestos lawsuits were filed in just five States because of rampant forum shopping. They were the States of Texas—my State—Mississippi, New York, Ohio, and West Virginia. It is not surprising that each of these States has now enacted or is seriously considering enacting asbestos liability reform at the State level. The good news is, as the Senator from Utah, Mr. BENNETT, pointed out, these State reforms appear to be working. They are working because they rightfully focus on the causes. So, too, should a national solution. Doctors and medical providers take the Hippocratic oath which says: First, do no harm. We in the Congress, particularly in the Senate, have a Hippocratic responsibility to, first, do no harm in the legislation we pass.

Notwithstanding the Herculean efforts undertaken by the chairman and the Judiciary Committee, I believe we cannot honestly take that oath and represent to the American people that we have done no harm in the proposal currently before us. We need an alternative which we have offered with this amendment.

The past several years have witnessed encouraging signs from States known to have been havens of the worst of the asbestos litigation abuses. As I mentioned, States such as Texas, Mississippi, Ohio, Florida, and Georgia are taking action. During the time that we have debated in the Nation's Capitol what to do, the States have acted.

Some States have created special dockets for unimpaired claimants, allowing only those who are sick to proceed to trial. It makes sense. The modest venue reforms and limits on consolidation have been adopted, and at least 4 States, including, last year, Texas, have enacted objective medical criteria.

The Texas bill, in the context of asbestos-related claims, allows claimants who are actually impaired to pursue their claims in the judicial system and merely defers the claims of those who are exposed but not impaired. It does this by establishing medical criteria that a claimant must meet to demonstrate some impairment before proceeding with the lawsuit. The good news for these individuals who are not impaired and have been exposed, and for the system generally, is the vast majority of them never will get sick.

Under the perverse limitations required by the statute of limitations that require you to file a lawsuit or risk being forever barred under the current system, they must file now, thus contributing to the huge clog of our court system and the bankruptcies that have racked up seemingly one after another. These State efforts are, in fact, working.

While it is difficult to assess the nationwide impact in the short time they have been implemented, anecdotal evidence indicates there has been a real impact. For example, one Texas tort reform observer, in 2006, said this:

> We are still waiting on more definitive figures, but rough estimate at this point—filings of new claimants in Texas have dropped in excess of 50 percent since the State bill passed in July. Based on the terms of the act, the time has just run for claimants to file medicals to avoid the [multi district litigation in Federal Court]. The effect will be that at least 75 percent of pending claims will be dismissed or abated. Thousands of claims from unimpaired claimants have been rendered dormant and will not proceed.

Perhaps the most important point is the ones that justifiably should proceed because they have real manifestations of asbestos-related disease will have priority, will have their day in court, and will not be left with pennies on the dollar, which many are today because of the bankruptcies that have been created by this flood of litigation.

One example of the claims history of a company in Texas—we will call it ''company A'' because we don't want to necessarily point out or talk about a particular company, but company A, between 1980 and 1996, had 134,000 new claims. In 1987, they had 25,000. You can see the rest of the numbers. The height of their claims experience was in 2001, when they had 56,000 claims. In 2005, after this legislation passed in Texas imposing strict medical criteria, creating a dormant docket for those who

were exposed but not impaired, while letting those who are sick go to court, only 13,272 claimants came forward. There has been a 77-percent decline in new filings over the last 5 years. This is due largely to the legislation and fair enforcement of the law in States such as Florida, Mississippi, Ohio, Texas, Georgia, and Illinois.

Company B, in Mississippi, has experienced a 90-percent decrease in claims since their legislation was enacted. The point is, some might say why don't we leave this up to the States? Unfortunately, we have seen claims migrate to States that don't have similar reform legislation, thus mandating, in my opinion, a national solution. That is what this amendment proposes.

Company C reports a significant decrease in new litigation filings since September 1, 2005. This is in Texas. The mix of the claims is important because there have been zero, none, malignancy cases, and 10 mesothelioma claims—the most pernicious cancers that are caused by asbestos exposure. In terms of the other types of claims, they have dropped precipitously. So 34 new filings in 5 months, all malignancy cases, which can be adjudicated in court based upon their respective merits.

We will go through a couple more here. Company D, in 2003, experienced 32,444 filings. In 2004, that number dropped to 5,000—from 32,000 to 5,000, roughly. In 2005, it dropped to 2,415, with 6,791 dismissals.

As we can see, there have been significant declines in the number of claims, making way for people who truly are sick to have their day in court, while those who have been exposed but are unimpaired and not sick can preserve their claims for a later date, if and when they happen to get sick.

The national solution we have crafted is designed to ensure that those who truly are sick get their day in court, as I said. It establishes specific medical criteria to be used to distinguish claims between people who are physically impaired due to exposure to asbestos and the claims of people who are not experiencing any physical problems. This legislation will prioritize the claims of the truly sick through the use of reasonable, objective medical criteria. It requires physical impairment. It requires supporting documentation to verify that the claimant can demonstrate impairment based on reasonable and objective medical criteria. It requires that the diagnosing physician actually have a doctor-patient relationship with the claimant, avoiding the millions in this cottage industry doing fraudulent screenings, which has generated problems for the current system. It allows the claimant who acquires a nonmalignant condition to pursue a separate recovery if the person later develops an asbestos-related cancer.

I could go on, but I think it is clear from not only the simplicity of this approach, and due to the fact that it has broadly been embraced among organizations such as the ABA, which has both defense lawyers and plaintiff's lawyers and represents the legal profession generally, it is their considered judgment that this represents a reasonable and, in fact, a better solution to our current problem. It observes the ''Hippocratic oath'' that I submit should apply to legislation as much as it should to the practice of medicine, that it does no harm to the current system. In fact, it is narrowly focused on the causes of the problems that confront our system today.

The Federal trust fund may well be a fine solution to the current problem but only if structured appropriately and only if we can reasonably expect that it will proceed.

I am sorry to say that S. 852, as drafted, cannot, in my opinion, succeed. It would create an unsustainable Federal entitlement, with costs that would likely far exceed the $140 billion price tag presently contemplated. Enacting this legislation without significant modification would undermine recent State reforms and would create at least as many problems as it would solve.

I sincerely believe this alternative amendment my colleagues and I have offered today is the best hope we have of accomplishing the goal that I believe all of us operating in good faith share, and that is ensuring prompt payment for victims and allowing those exposed but not sick to have their day in court if and when they do become sick.

I invite all of my colleagues to join the 14 of us who are cosponsors to this amendment. I predict by the close of business today we will have a bipartisan amendment. We are continuing to reach out to our colleagues in the Senate, and I know this is a complex issue and many on the Judiciary Committee have spent years trying to get us to where we are today. Frankly, I applaud their efforts, as I have the leadership of our chairman. I believe, and the cosponsors of this amendment believe, this is the best approach; that is, to pass this amendment and send it to the House of Representatives so we can provide a simple and effective solution to the current asbestos scandal.

AMENDMENT NO. 2749 TO AMENDMENT NO. 2748

Mr. CORNYN. Mr. President, before I conclude, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Texas [Mr. CORNYN], for himself, Mr. COBURN, Mr. GRAHAM, Mr. ENSIGN, Mr. CRAPO, Mr. INHOFE, Mr. MARTINEZ, Mr. DEMINT, Mr. THUNE, Mr. BENNETT, Mr. SMITH, Mr. CRAIG, Mr. BUNNING, Mr. THOMAS, and Mr. SUNUNU, proposes an amendment numbered 2749 to Amendment No. 2748.

Mr. CORNYN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. DURBIN. Will the Senator yield for a question?

Mr. CORNYN. Yes.

Mr. DURBIN. Mr. President, I thank the Senator for bringing this important amendment to debate. I will ask him a question or two about his amendment.

I think the Senator is on the right track in noting that several States have made significant progress in dealing with the asbestos litigation. In some States, there has been an agreement between what are usually warring and opposing parties as to how the system can be improved. I wish to ask the Senator from Texas whether the approach he has suggested to the Senate today would preempt existing State laws and standards in this area?

Mr. CORNYN. I thank the Senator for his question. It is an important one. Our intention would not be to preempt local State laws but, rather, to create a national forum, in a way that would provide uniformity and would avoid the migration of claims from those States that have reform to those that do not, thus continuing the status quo.

Mr. DURBIN. One of the more controversial parts of the amendment relates to joint and several liability, which those of us who have practiced law know a little more about than those who have not. If a State already has joint and several liability in these cases, would your amendment preempt that State's joint and several liability standard?

Mr. CORNYN. Mr. President, I appreciate the question. This amendment calls for several liability, not joint liability. The Senator raises a good question and, frankly, one I want to make sure I do a little research on and confer with him, perhaps, so I can give him a more definitive answer.

Mr. DURBIN. Mr. President, I thank the Senator for allowing me to ask a question. I thank him also for offering the amendment. It is a valuable part of the debate. Parenthetically, I concur completely with the Senator from Texas in the fact that many States are doing very positive things to deal with this issue, and I think it would be wise for us to look to their leadership in some of these areas. Secondly, I think he feels as I do, that the underlying trust fund has some fundamental flaws.

I yield the floor.

Mr. CORNYN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, I wish to speak a little bit about the status of the points of order that have been discussed, at least in the media, relative to this bill, that arise from the Budget Act.

There are four potential issues here. One, we have not seen the final language, so many of these have not been resolved as to their applicability.

Talking about the one which has received a significant amount of attention, there is a reserve fund that was created in the last budget, the purpose of which was to allow this bill to come forward. The reserve fund has a series of conditions attached to it, and the effect of the reserve fund is that it sets up the ability of the budget chairman to release dollars—in this case an allocation—if those conditions have been met.

As Budget chairman, I find myself in what would be called a position of a referee or a fair arbiter on this issue. I have views on this bill. I don't happen to support the bill. Those views are not relevant to the decision I need to make as chairman of the Budget Committee relative to releasing a reserve fund.

The key issue on the reserve fund is whether at some point in the future taxpayers will become obligated for the claims which would be made under this asbestos claims bill.

How do I come to a conclusion as to whether taxpayers would be obligated in my role as a fair arbiter or referee? Basically, I turn to our professional, nonpartisan, fair whistle caller, sort of like the referee on the football field on an instant replay going up to the guys in the stands who just viewed the play and get their opinion. That group is the CBO, the Congressional Budget Office. They take a look at the bill, and they score whether the bill is fully paid for. If it is not fully paid for, then it is arguable, of course, the taxpayers may end up picking up some of the bill in the outyears, which would undermine the purposes of the reserve fund.

The initial response from CBO, which was sent to the chairman of the committee, Chairman SPECTER, essentially said they don't know. They estimate the potential income to the fund is about $140 billion. That is the number talked about around here. The potential administrative cost of the fund is about $10 billion, but they are not sure whether the claims will exceed $130 billion. If they exceed $130 billion, theoretically taxpayers might become liable; if not, the taxpayers would not become liable. So they essentially said they don't know. Since they are dealing with outyear numbers, it is, to some degree, guesswork.

We have not seen the final product, but the final product was delivered to CBO last night. They are now rescoring it. I don't know what they are going to say. They may come back and say, yes, it is clearly outside the revenues and, therefore, taxpayers may end up with it. They may come back and say, no, clearly it is not the final version. Or, again, they might say they really can't tell.

Again, as referee, I have to look at this information and make a decision. My inclination is that if there is no clear one-way-or-the-other call from CBO, that it either, A, is under, in which case clearly we would release, or B, it is over, in which case we clearly would not release. If they are, rather, of the opinion this is too far out and too difficult to call and are dealing in a range of $10 billion, which they were in their first letter, then it would probably be unfair—to stop this bill on that point of order—to the bill, to the manager, and to the people who believe they have a right to get a fair hearing on this bill. But that final decision has not been made.

There are three other points of order, however, that lie whether or not this point of order is made ripe. Those three other points of order are still potentially there. There has been representation that these points of order are technical. They are not. At least one of them certainly is not because it was put in place to address the issue of one Congress binding later Congresses to major programmatic activity.

We will address those as we go down the road. However, I did want to update people generally on where this specific point of order relative to the reserve fund lies because there has been a lot of representation in the press, as occasionally happens, that has been a little bit off target.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I had hoped to engage in a short colloquy with the Senator from Texas on his amendment, but I had to leave the floor for a moment or two. I want to make a couple of very brief points—and I will elaborate on them more extensively later—and that is the medical criteria bill does not do anything for the employees of companies which have gone bankrupt. There are some 77 of those, and more imminently, so that we have a large group of people suffering from mesothelioma and other deadly, serious diseases who will not be compensated.

Then we have the veterans who have had exposure to asbestos in a variety of ways, a lot through Government work, where they do not have anybody to sue. So a medical criteria bill will not help them.

Then we have basic consideration of the medical criteria bill that does not really take these cases out of the court system. It does not stop the suits from being filed. It does not stop the extensive discovery process, the depositions, the interrogatories, the medical examinations. When we deal with the question as to injury, it is subject to contest and subject to litigation. So the medical criteria bill is a diversion—I wouldn't call it a poison pill because I don't want to engage in any inflammatory language, but it does not do what the trust fund does, and that is provide a remedy for compensation for thousands of very seriously ill people.

While I am on the Senate floor, I want to take up one other point briefly while the Senator from Illinois is on the floor. He has made an argument—an extensive argument—about knowing who is going to put up the money.

When I pointed out yesterday that the lists were available to him to know who is putting up the money, that his staff, in fact, had looked at them, he then shifted his ground from not knowing who was putting up the money to the specious argument that they were secret from the public in general and that there is some effort to conceal something which, of course, is not the case.

Then on a mutation, he moves from that to a contention that these people who had to be subpoenaed have written the bill because somehow they have provided some information as to how much money is going to be put up, which goes into the bill.

I don't think I require any extensive reply to that. I think of my sister Shirley in Elizabeth, NJ, who likes the Senator from Illinois, as I do—sometimes—pointed out to me that she could see through those arguments. But not making the materials available beyond the Senator and the staff—and I can see they ought to be able to copy them—I will stand by that—so that Senator DURBIN doesn't have to look at them, his staff can look at them, copy them, and show them to Senator DURBIN, all within the range of confidentiality. But that doesn't mean there is some secret being kept from the American people, not as long as DICK DURBIN knows what they are; he will protect the American people. Frankly, so will ARLEN SPECTER protect the American people. But it doesn't mean these sinister forces have written the bill because the bill was written by the committee. Senator DURBIN is on the committee. He helped write the bill. He made amendments. I think some were even adopted. I won't swear to that. I know one was and then it was changed when we finally understood what it was. We adopted one in about 4 minutes one day—right?—and then we had to change it when we found out what it really was. We do that from time to time.

I have taken a look at the issue of confidentiality because I reserved that yesterday during the discussion. I find there are a couple of provisions that are very problematic. One is section 1905 of title 18 of the United States Code which makes it an offense—and I am not sure what, with the abbreviated version I have here, the penalties are, but it prohibits any officer or employee of the United States to divulge information—I will have this printed in the RECORD—''which information concerns or relates to trade secrets, processes, operations, style of work, or apparatus,'' et cetera.

It is hard to interpret it without doing some more research, but I think it may well cover this.

There is also a Senate rule, rule XXIX(5), which relates to prohibition against any Senator, officer, or employee of the Senate disclosing secret or confidential business proceedings of the Senate. It does not appear on its face to conclusively cover these kinds of records, but it may. It may be part of the records of the Senate. But I

think there is more than a colorable prohibition against disclosure on confidentiality. At least at this time, I wouldn't rule it out completely. I would like to have maximum disclosure, frankly, if it can be done consistent with the law and consistent with the rules of the Senate and consistent with fairness to the companies which provided the information.

Mr. President, I ask unanimous consent that this document entitled ''FAIR Act Transparency,'' which includes the references to which I just alluded, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. DURBIN. Mr. President, will the Senator yield for a question?

Mr. SPECTER. I do.

Mr. DURBIN. Mr. President, is the Senator prepared today to tell us who prepared this list, the entity he had to subpoena to get the information about how the trust fund will be funded?

Mr. SPECTER. I am prepared to have the Senator told because I don't have it at my fingertips. But I am prepared to have that information given to the Senator from Illinois. Yes.

I yield the floor.

EXHIBIT 1

FAIR ACT TRANSPARENCY

Funding is guaranteed. The $140 billion in defendant participant contributions to the Fund under the FAIR Act are guaranteed by the manufacturers and industry.

Certification. The fund cannot be deemed operational until the Fund Administrator publishes a list of defendant participants and their required payments in the Federal Register.

Senator Durbin's assertions that outside groups wrote the FAIR Act is flat wrong. S. 852 creates an allocation formula whereby contributions are based directly on a manufacturers ''prior asbestos expenditure'' in the tort system. This was a FORMULA created and drafted by SENATORS. Our Congressional subpoena was directed at the corporations to identify, by computing their ''prior asbestos expenditure'' what tiers of the funding formula they would fall into.

Process. I have met with many Senators individually including, at different times, Senator Cornyn (4/12/05) and Senator Feinstein (5/10/05) on the issue of transparency. The Judiciary Committee issued three subpoenas in an effort to learn more about the companies likely to pay into the Fund created by the FAIR Act. The subpoenas were dispatched between September 30 and December 1 to groups representing companies on both sides of this bill.

These transparency efforts led to the creation of a spreadsheet with the names and anticipated tier assignments of companies. The staff came up with their estimates based upon publicly available information included in SEC filings and data gathered through hundreds of phone calls. In light of this information, Judiciary Staff held at least two transparency briefings, the first of which occurred on October 7, 2005.

All Senators and their staff can view a list compiled now. This list is confidential because it includes confidential information from businesses.

Confidentiality. In issuing the subpoenas and making telephone calls, my office informed companies that the information obtained would be held confidential pursuant to Rule XXIX of the Standing Rules of the Senate and under 18 U.S.C. 1905. Rule XXIX (5) of the Standing Rules provides:

''[a]ny Senator, officer, or employee of the Senate who shall disclose the secret or confidential business or proceedings of the Senate, including the business and proceedings of the committees, subcommittees, and offices of the Senate, shall be liable, if a Senator, to suffer expulsion from the body; and if an officer or employee, to dismissal from the service of the Senate, and to punishment for contempt.''

Similarly, Section 1905 of Title 18 of the United States Code provides:

Whoever, being an officer or employee of the United States . . . divulges, discloses, or makes known in any manner . . . any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; . . . . shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

In light of the foregoing, the Senate Judiciary Committee reiterates what we have said from the beginning of this exercise: we are prepared to share the spreadsheet with any Senator or designated member of their staff. The staff may even make a copy of the spreadsheet so long as they sign an acknowledgement form indicating they understand the information is to remain confidential pursuant to Rule XXIX and 18 U.S.C. 1905.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the Senator from Pennsylvania, and I say with genuineness that I respect him more often than not. I go beyond ''sometimes'' which he said of me, and say I respect him more often than not. I respect his great work on this issue. This is not easy.

What the Senator is trying to do is nothing short of revolutionary. He wants to close down the court system of America for hundreds of thousands of individuals who otherwise would go to court, to a judge or a jury, and ask for fair compensation for their injuries.

The Senator from Pennsylvania has decided that system is wrong or inadequate or broken and has suggested that we are going to do away with the court system in America for these victims and create a brand new system.

That is a daunting task. I am not sure, given the 2 or 3 years that the Senator has put into it, that I could even come up with a suggestion that I would have confidence would work.

This is what we know about the trust fund and the system we are being asked to vote for in the Senate.

First, the cost of this is being estimated over a period of 50 years. Over 50 years, what are we likely to pay to those Americans who have been injured and died from asbestos exposure? If you will follow some of the best prophets and predictors in Washington, you will find them woefully inadequate to predict what is going to happen next year, let alone in 50 years.

So I have challenged the Senator from Pennsylvania and those in his corner, including my friend, the Senator from Vermont, Mr. LEAHY, to tell me where you came up with the figure of $140 billion. The response we have been given is: Why, that is what Senators have been talking about for a long time, $140 billion.

I think that falls short of the kind of certitude that we should have before we close down the court system of America to hundreds of thousands of injured people and their families.

The second question I asked yesterday, which we again explored today, is; Who is going to pay for this? Who is going to provide the $140 billion, if it is not the taxpayers, to pay the people who were injured?

I am afraid today the Senator from Pennsylvania continues along the same line of reasoning. Someone—an undisclosed company—which he has promised he will now tell me, some undisclosed private entity decided which businesses in America would pay into this trust fund and how much they would pay. A curious thing: I don't know who contacted this private group to create this information. It is certainly essential to this concept of a trust fund. But the group that created the information was so loathe to share it with the Congress which is considering this bill that the chairman of the committee had to subpoena the information from the company that created it for his bill which we are now considering.

It is a strange process. On the one side, the chairman of the committee would rely on this private company to determine who will pay into the trust fund and how much they will pay, and then having relied on them to write this bill to close down our court system for millions of Americans exposed to asbestos, he couldn't get the information from them unless he sent them a subpoena demanding it under his power of the Judiciary Committee. At some moment in time, they produced it. Then when it came in, this information, essential to know whether this trust fund will work, it turns out it was marked ''committee confidential.''

I have been around the Senate for a few years. I was on the Intelligence Committee. I know when things are marked classified and top secret and confidential, it is clear that they are secret. They are not to be shared with the public. But what is it about this bill and who is going to pay into it that is so classified and so confidential and so secret that the American people have no right to know? That is the question I asked yesterday. Because if we are going to say to millions of Americans and their families: Give up your day in court, what has been your constitutional and legal right for the 200-plus years America has been in existence; give it up, trust us, we will

create a trust fund that is going to be more fair and more generous, shouldn't we share with the American people the basic information that was used to create this alternative to a day in court?

No. The chairman comes before us today and tells us he thinks it is illegal, it may be illegal, it may even violate Senate rules to share this information.

I struggle with it because I think this gets to the heart of the matter. If we cannot justify the cost of this trust fund over 50 years, if we cannot say to the American people: ''Here is how it will be paid for,'' then I am afraid we are asking too much. We are asking them to walk away from their American-given right for redress in our courts for a trust fund that cannot be explained, a trust fund that was created by some private company that did not even want to share the information that led to its creation. That is not a confidence builder.

Despite my admiration for the chairman of the committee—and it is truly something I would say on this floor without reservation. He is a man I respect very much, in a variety of ways, for his service in the Senate. Despite that, this bill should not be passed. This bill, which will literally change the system of justice in America, should not be passed on such a flimsy foundation.

A moment ago, the Senator from New Hampshire, the chairman of the Budget Committee, came to the floor and made an interesting statement. He said he will rely on the Congressional Budget Office to determine whether this trust fund will work. But if the Congressional Budget Office comes back and says: We don't know, we can't tell you—maybe it will and maybe it will not—I think I heard the Senator from New Hampshire say that is good enough. If they say it will not work, OK. But if they are not sure, that is good enough.

Is it good enough? Is it good enough for the millions of Americans who are counting on us not to take away their rights as American citizens to go to court when a wage earner and his or her family have been exposed to asbestos, unwillingly, unknowingly exposed and now cannot breathe and has a limited amount of time left on this Earth and believes that the company that sold the asbestos product should be held responsible and accountable—is it good enough for us to say: No, we are not going to let you go to court any longer?

Is it fair for us to say to the housewife who—and this is a real case; I am not making this up—who literally had a husband who worked in the asbestos industry, brought home his work clothes, piled them up in the laundry room, and before she stuck them in the washer she shook his clothes, not knowing that she was breathing in asbestos fibers, and she contracted mesothelioma, the deadly lung disease from asbestos, simply by being exposed that much—is it wrong for us to say she should not hold a company such as W.R. Grace and Company responsible for the fact that for more than 70 years they refused to disclose the danger of this asbestos fiber to their workers and people who used their products?

I know how I feel about it. All we are asking is that that family have a chance to argue their point of view in a court and let a jury of that woman's neighbors and peers decide what is fair and what is just. That is what is at issue here; to close the courthouse door to her and her family and say, no, you can no longer go before the courts of America, the courts of your State, you have to go to a trust fund, a trust fund that may get around to considering your claim, may end up paying your claim—all of these possibilities.

I am also troubled by the fact that when you take a hard look at this trust fund of $140 billion over 50 years, you realize what is going to happen as soon as this bill passes. Should it pass, there will be a rush of people filing under the trust fund, asbestos victims. Why? Because the instant this bill is signed into law, anyone who has a claim pending in American courts is stopped. They cannot move forward. They cannot take their case any further. If they are not arguing their case in trial before a jury or a judge, they are finished; closed down and stopped. They could have the trial scheduled that they have been working for years to start next week, and they are finished the day this bill is signed.

What will they do—all that work, all that preparation, gathering all the medical records? They will start over. Sick people, dying people in America will start over, filing the paperwork for the new system. We expect a lot of them, if this bill passes, to rush in and say: Pay us, for goodness sakes. We have been working at this for years. Why wouldn't they do that?

As they do, they will swamp the system. This trust fund is not designed to collect all this money from all these corporations and insurance companies in a hurry. It collects it over a 30-year period of time. So at the outset, if the trust fund is going to actually pay the victims, they have to borrow money to do it.

We have had some calculations that if they borrow the money to pay the claims in a timely fashion, more than a third of the $140 billion trust fund will be spent on interest payments for borrowed money—more than a third: $52 billion will be spent over the life of this trust fund.

When the Senator from Pennsylvania addressed this issue the other day, he was brutally frank and candid. What would we do if we ran out of money? What would happen if $140 billion did not compensate all the asbestos victims we know are out there? I have to say over the course of the history of asbestos that we have underestimated the potential claimants time and time again. What happens if $140 billion does not work? The Senator from Pennsylvania came to the floor and said: We will adjust the payments to the victims; the medical criteria for eligibility. In layman's language, we will cut the victims' compensation.

When the Senator comes to the floor and suggests that an alternative from the Senator from Texas will leave some people in the lurch, it may not be as inclusive as the underlying bill, I hope he will recall his own words on the floor when he said if $140 billion is not enough, those same victims will be shortchanged and will receive less.

I am going to close at this moment and say, as I said at the outset, the Senator from Pennsylvania accepted a Herculean assignment to try to replace the court system in America. If you are going to do that for hundreds of thousands and maybe millions of Americans, it is a task that many Senators would never accept. I salute him for trying. But I say in all honesty that, as we stand here today, this will not work. This trust fund will fail.

It will not be the first time a legislative effort will fail. Many of our efforts do. We try our best, but we are human. Men and women try to create laws that will make America better. Sometimes they do and sometimes they don't. The Medicare prescription drug plan, Part D, is a good indication of something that doesn't work. It was passed 2 years ago by this Senate and the House, was signed by the President—2 years to get ready to get 40 million Medicare recipients into prescription drug coverage, which we all support, and we created a system which has been nothing short of a disaster, an unsalvageable fiasco. So our best efforts will leave some poor senior citizens without the drugs they need and many others completely confused and perplexed by this bureaucratic mess we created called the Medicare prescription drug plan, Part D.

I think we will learn our lesson quickly, and I hope we change that law. But think about this law. What if we get this law wrong? What if we say to thousands of American families with someone deathly ill in their home: You are finished in court. Walk away from all of your efforts for compensation. Trust us that we will create a new system that will be as just and even more fair than the court system in America.

If we are wrong on that one, if we make a mistake on that one, the human suffering and misery that will result goes far beyond what we have seen on the Medicare prescription drug plan, Part D.

I don't think it is worth the risk. I think we ought to look at this in more modest terms and honest terms and realize that a trust fund whose total amount we cannot justify, from sources that are still on a secret list that cannot be seen by the American public, is not the best way to go.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, when the Senator from Illinois talks about doing it in an honest way—we have done that. We have been honest.

When he talks about, if we make a mistake, there will be a lot of human suffering, there is a lot of human suffering right now. It would be hard to structure a substitute system which would have more human suffering than you have now. We are looking at a system which is totally debilitating and decimating, with the courts clogged and with thousands of people suffering from deadly diseases and not being compensated.

When the Senator from Illinois makes a reference to saluting me for trying, I appreciate salutes of any kind, but I am looking to the possibility of a salute for succeeding. I don't know how this debate is going to turn out or what is going to happen in the final vote. But I do know that for more than 3 decades, nobody has been able to bring a bill to the floor and nobody has been able to move past a determined effort by the minority to block this bill with a filibuster.

When that effort failed late in the afternoon on Tuesday, they wanted to withdraw the motion, and we defeated it very soundly.

The Senator from Illinois says I have undertaken a Herculean assignment. It is a Herculean problem. I wish Hercules was around to handle it. I would be glad to defer to Hercules were he here.

When the Senator from Illinois refers to cutting payments, that does not happen unless the Congress agrees. When the administrator evaluates the trust fund and finds that there may be insufficient funds to pay the claims, the administrator then reports to a committee of 20, selected by the leaders of the House and Senate, and then they make a recommendation to the Congress.

So it isn't a cut without having congressional action. As wise as we may think we are today, there will be Senators here into the indefinite future; we hope forever. They will have the wisdom, they will make a judgment, and they will have the determination as to what payments are going to be made. So it is not an automatic or easy cut in payments.

Bear in mind that the basic remedy is to go back to the tort system, to go back to court. So the claimants are no worse off under the tort system than they are today, if no plan is adopted.

The Senator from Illinois has repeatedly challenged the establishment of the trust fund of $140 billion. Yesterday, he referenced a letter which he sent to me to which he has not gotten an answer. I checked about the letter and I checked about what we did about the questions raised in the letter, and the answer was we had a briefing 2 days later. We answered the questions, not by written letter but by a more detailed statement from a briefing.

When the Senator talks about the $140 billion which was established, all the information was available in that briefing, and still is to the Senator from Illinois about projections based upon experience with asbestos.

When we talk about the Bates White report, that has been thoroughly refuted. They took into account people such as manicurists and taxi drivers who did not have an occupational exposure to asbestos.

The Congressional Budget Office came up with an analysis of Bates White, and left the Bates White report in ruins. We had a detailed hearing on that as we have had every time an issue has arisen.

The Congressional Budget Office then issued a supplemental report showing that Bates White was wrong and their initial figures were correct. On page 8 of the report submitted by the Congressional Budget Office, dated August 25, 2005, they have a chart where it supplements their analysis that there could be costs in the range of $120 billion to $150 billion, and then they come to a net conclusion of the projection at $132 billion. These are projections; they are not guesses; they are not speculations; but they are not mathematics, either. They are based upon the best information available and they are judgment calls.

In the letter from the Congressional Budget Office dated December 19, they included this statement after analyzing a great number of factors:

The final outcome cannot be predicted with great certainty.

I don't know what can be predicted with great certainty. I know for many years I was a district attorney prosecuting criminal cases and handled first-degree murder cases. The death penalty is imposed in America is if it is proved beyond a reasonable doubt. But on a level of great certainty, that is not an attainable level, and I would say almost in any field of human endeavor. I don't want to be too expansive in that assertion, but great certainty is not something you come by in the ordinary affairs of men and government.

Mr. DURBIN. Mr. President, will the Senator yield for a question?

Mr. SPECTER. Yes.

Mr. DURBIN. Through the Chair, I wish to ask the Senator if he would agree with the following: If we can't say beyond a reasonable doubt or great certainty, if we reach the point where $140 billion is inadequate, and it cannot compensate as we called for in this bill, is it not true at that point there are only three options? One option is to go back to the businesses that contributed to the trust fund and ask for more; the second is for the Government to assume the liability; and the third is to reduce the payments to the victims as called for in the existing legislation.

Is there another option I am missing?

Mr. SPECTER. Mr. President, the answer to the first question is no. The answer to the second question is yes. OK?

Mr. DURBIN. Would the senator be kind enough to give me a few more words? I know he has a lot.

Mr. SPECTER. I do not know if it is possible for this Senator to give a few words. I will try.

The answer is no, those are not the only options. The answer is yes, there is another option. The ''yes'' answer is to go back to the tort system. Senator BIDEN offered that amendment in July of 2003. I am on it because it seemed to me that claimants should not bear the risk of the failure of the trust fund, and in this bill you go back to the tort system. So the claimants are no worse off than they are now.

Mr. President, these letters may be part of the RECORD, but I want to be sure they are.

I ask unanimous consent that the letters from the Congressional Budget Office, dated August 25, 2005 and December 19, 2005, be printed in the RECORD.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 25, 2005.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 852, the Fairness in Asbestos Injury Resolution Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mike Waters (for federal costs), Barbara Edwards (for revenues), and Paige Piper/Bach (for the private-sector impact).

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

S. 852—Fairness in Asbestos Injury Resolution Act of 2005

Summary: S. 852 would establish the Asbestos Injury Claims Resolution Fund (the Asbestos Fund) to provide compensation to individuals whose health has been impaired by exposure to asbestos. Under the bill, the Administrator of a new Office of Asbestos Injury Claims Resolution (the Office) within the Department of Labor would administer the Asbestos Fund and manage the collection of federal assessments on certain companies that have made expenditures for asbestos injury litigation prior to enactment of this legislation. A separate Asbestos Insurers Commission would allocate other payment obligations among insurers with asbestos-related obligations in the United States. The Asbestos Fund also would absorb all private asbestos trust funds already existing at enactment. Under the bill, individuals affected by exposure to asbestos could no longer pursue awards for damages in any federal or state court and would submit claims to the Administrator, who would then evaluate such claims and award compensation according to criteria and amounts specified in the legislation.

CBO estimates that net receipts and expenditures of the Asbestos Fund would increase projected budget deficits over the 2006–2015 period by about $6.5 billion (excluding debt service costs).

We expect that sums paid into the fund would be treated in the budget as federal revenues and that amounts expended to pay claims and administer the fund would be considered new federal direct spending. During periods when surplus amounts would be collected by the fund, CBO assumes that

most of its assets would be invested in nongovernmental securities. The net cash flows associated with such investments would also be direct spending.

Over the 2006–2015 period, we estimate that payments to eligible claimants, start-up costs, investment transactions, and administrative expenses would total nearly $70 billion. Over the same 10-year period, we estimate that the fund would collect about $63 billion from firms and insurance companies with past asbestos liability and certain private asbestos trust funds.

Consequently, we expect the Administrator of the fund would need to exercise the borrowing authority authorized under the bill to meet the fund's obligations during this period. Assuming enactment of S. 852 by the end of calendar year 2005, CBO estimates that almost $8 billion would be borrowed during the first 10 years.

To evaluate the long-term financial viability of the fund, CBO projected cash flows over the life of the fund—assumed to be about 50 years—using a variety of assumptions about the number, type, and timing of future claims likely to be submitted to the fund, and alternative assumptions about future inflation and interest rates. The legislation is designed to produce collections totaling about $140 billion over the first 30 years. CBO expects that the value of valid claims likely to be submitted to the fund over the next 50 years could be between $120 billion and $150 billion, not including possible financing (debt-service) costs and administrative expenses. The maximum actual revenues collected under the bill would be around $140 billion, but could be significantly less. Consequently, the fund may have sufficient resources to pay all asbestos claims over the next 50 years, but depending on claim rates, borrowing, and other factors, its resources may be insufficient to pay all such claims.

A more precise forecast of the fund's performance over the next five decades is not possible because there is little basis for predicting the volume of claims, the number that would be approved, or the pace of such approvals. Epidemiological studies of the incidence of future asbestos-related disease and the claims approval experience of private trust funds set up by bankrupt firms can be used to indicate the range of experience of the federal asbestos trust fund might face, but those sources cannot reliably indicate the financial status of the fund over such a long time period.

CBO estimates that the fund would face more than half of all anticipated claims expenses in its first 10 years, while it would receive roughly constant collections from insurers and defendant firms over its first 30 years. This conclusion is consistent with other forecasts that we have reviewed. 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. Under the provisions of section 405, the fund would have to stop accepting new claims (a process known as ''sunset'') if its current and future resources become inadequate to fulfill all existing and anticipated obligations, including its debt obligations.

Pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting S. 852 would cause an increase in direct spending greater than $5 billion in at least one 10-year period from 2016 to 2055.

S. 852 contains two intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost of complying with those mandates would be insignificant and well below the threshold established in that act ($62 million in 2005, adjusted annually for inflation).

S. 852 would impose new private-sector mandates, as defined in UMRA, on certain individuals filing claims for compensation for injuries caused by exposure to asbestos; certain companies with prior expenditures related to asbestos personal injury claims; certain insurance companies; trusts established to provide compensation for asbestos claims; health insurers; and persons involved in manufacturing, processing, or selling certain products containing asbestos. Based on information from academic, industry, government, and other sources, CBO concludes that the aggregate direct cost to the private sector of complying with all of the mandates in the bill would well exceed the annual threshold established by UMRA ($123 million in 2005, adjusted annually for inflation).

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 852 over the 2006–2015 period is shown in Table 1. The effects of this legislation fall within budget functions 600 (income security) and 900 (interest). CBO estimates that the bill would have little net effect on the budget over the first five years but would add about $6.5 billion to deficits from 2011 through 2015. (The longterm budgetary impact of the bill is discussed in the section following the ''BASIS OF ESTIMATE'' section.)

Basis of Estimate: For this estimate, CBO assumes that S. 852 will be enacted by the end of calendar year 2005. Based on information from the Department of Labor, we expect that the Asbestos Fund could become fully operational during fiscal year 2007 and that certain pending exigent asbestos claims would be paid by the fund in 2006.

CBO expects that the fund's assessments on firms and insurers would be treated in the budget as revenues and that payments to satisfy claims would be considered direct federal spending. In addition, because the Administrator would be authorized to invest the fund's balances, certain cash flows associated with investments in nongovernmental financial instruments also would be reflected in the budget. Specifically, under the Administration's current procedures for budget presentation, government funds invested in nongovernmental financial instruments are recorded as expenses (outlays), and the redemption of such investments is recorded as a receipt (negative outlay). Under the bill, any noncash assets received from 4 existing private asbestos bankruptcy trust funds (such as the Manville Trust) would have no budgetary impact until they were liquidated by the Administrator. At that point, both the assets and any gains or dividends on those assets would be recorded on the budget as revenues.

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF S. 852

	By fiscal year, in billions of dollars									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING										
Claims and Administrative Expenditures of the Asbestos Fund:										
Estimated Budget Authority	8.7	21.9	11.1	5.3	5.3	5.3	5.0	4.9	4.7	4.6
Estimated Outlays	8.7	5.6	8.4	9.5	10.8	6.7	5.2	5.1	5.0	4.8
Investment Transactions of the Asbestos Fund:										
Estimated Budget Authority	0	1.1	0	0	-1.0	-0.2	0	0	0	0
Estimated Outlays	0	1.1	0	0	-1.0	-0.2	0	0	0	0
Total Direct Spending:										
Estimated Budget Authority	8.7	23.0	11.1	5.3	4.3	5.1	5.0	4.9	4.7	4.6
Estimated Outlays	8.7	6.7	8.4	9.5	9.8	6.5	5.2	5.1	5.0	4.8
CHANGES IN REVENUES										
Collected from Defendant Firms	2.9	2.9	2.9	2.9	2.9	2.9	2.9	2.9	2.9	2.9
Collected from Insurer Participants	1.3	4.1	5.0	5.0	5.0	1.1	1.1	1.1	1.1	1.1
Collected from Bankruptcy Trusts[1]	4.5	0	0.4	1.6	1.6	0	0	0	0	0
Total Estimated Revenues	8.7	7.0	8.4	9.5	9.6	4.0	4.0	4.0	4.0	4.0
CHANGES IN THE DEFICIT										
Estimated Net Increase or Decrease (-) in the Deficit from Changes in Revenues and Direct Spending	0	-0.3	0	0	0.3	2.5	1.2	1.1	0.9	0.8

[1] CBO estimates the total value of cash and financial assets of the asbestos bankruptcy trust funds would be $7.5 billion in 2006 and $8.1 billion when liquidated. The federal budget would record the cash value of those trust assets when they are liquidated by the Administrator to pay claims. CBO estimates that assets of asbestos bankruptcy trust funds would not be fully liquidated until 2010.

Note: Numbers in the table may not add up to totals because of rounding.

To estimate the cost of processing claims, CBO reviewed prior government experience with similar compensation funds and operations of privately run asbestos funds. We also discussed the potential costs of administering the fund with the Department of Labor. To estimate the number and types of claims the Asbestos Fund would receive and when they would be received, CBO reviewed a number of projections of asbestos injury claims that were prepared for different purposes by several private groups and individuals, including those developed by the Asbestos Study Group, Navigant Consulting, the National Association of Manufacturers, and Legal Analysis Systems during consideration of this bill and of similar legislation considered by the 108th Congress. In addition, we studied the history of claims paid and projections of those anticipated to be paid by the Manville Trust and considered the inaccuracy of past projections of future asbestos injury claims. Finally, to determine whether the Asbestos Fund could be expected to collect the amount of assessments from defendant companies and insurance companies that are anticipated in the legislation, CBO examined financial information for some of the public companies that would likely be contributors to the fund and the reserves held by insurance companies for asbestos claims.

Direct spending: To estimate the amount and timing of new direct spending under S.

852, CBO considered the cost of administering the Asbestos Fund and the length of time it would take following enactment for the fund to be fully operational and processing claims. We projected the number of claims that would be submitted to the fund over the 2006–2015 period, including those claims that have been filed or will be filed in federal or state courts or with existing trusts but not settled by the time the bill is enacted (these claims are known as pending claims). To estimate the cost of paying valid claims submitted to the fund, we considered the number of claims likely to be submitted by persons with malignant and nonmalignant medical conditions due to asbestos exposure. We also estimated the net disbursements and receipts associated with the fund's investment activity. Finally, we considered the borrowing that might be required in each year in order for the fund to pay claims.

Administration and Start-up of the Asbestos Fund. Based on the cost of operating existing government compensation funds, the operation of privately run asbestos trusts, and information from the Department of Labor, CBO estimates that administration of the Asbestos Fund would require a staff of over 700 employees for the 2006–2015 period, costing a total of nearly $1 billion over 10 years. Such administrative costs would be paid from the Asbestos Fund and would not require further appropriation action. For this estimate, CBO expects that the Office would start accepting claims in 2006, shortly after enactment. During the first three years of operation, CBO estimates that the Office would receive around 185,000 claims per year, but that this number would fall to an average of around 60,000 for the next seven years, once all currently pending claims are resolved by the fund.

Individuals seeking compensation from the Asbestos Fund would need to file a claim with the Office within the time specified by the legislation (five years from the date of enactment for pending claims or five years from the date of diagnosis for future claims). The Administrator would then have 90 days to present a proposed decision concerning the appropriate award according to the medical criteria and awards values specified in the legislation. If the claimant chooses to accept the award, the Administrator would issue a final decision, and the Asbestos Fund would pay the claimant over the next one to four years. A claimant could appeal a decision by the Administrator within 90 days of its issuance by requesting either a hearing or a review of the written record. In those cases, a decision on the appeal would be required within either 180 days or 90 days, respectively.

Under the bill, any claim pending on the date of enactment would be stayed, unless it were already before a court. Of the stayed claims, exigent claims (defined by S. 852 as those claims brought by a living claimant with either mesothelioma or less than one year to live, or by the spouse or child of a claimant who died after either filing of his or her claim or enactment of the bill) would receive the earliest attention by the Administrator. Within 60 days of receipt, the Administrator would be required to either approve or disapprove such a claim as exigent. The bill would require the Administrator to pay exigent claims within one year for cases of mesothelioma, and in no more than two years for all other exigent claims.

CBO expects that the fund would not be fully operational until at least a year following enactment of the legislation. Even after appointing an Administrator and Insurers Commission, this start-up period would be needed to promulgate detailed operating rules and procedures and to recruit, hire, and train personnel to process claims and manage the fund's operations. (The Energy Employees Occupational Illness Compensation Program—a similar federal fund serving a much smaller population—took slightly more than a year to become fully operational.) During this start-up period, the Administrator and the Insurers Commission would also need to collect financial information from thousands of firms and insurers that have made prior expenditures for asbestos injury claims to set appropriate assessment rates for those insurers and firms.

Payments to Claimants. To estimate the cost of paying compensation claims under the bill, CBO reviewed projections of asbestos injury claims that were presented to the Senate Committee on the Judiciary during its consideration of S. 852 and for similar legislation considered by the 108th Congress. Such projections were based on a combination of epidemiological data, projections of disease incidence for the affected population, historical experience of bankruptcy trusts, and projections of the number of injured that would apply for compensation given the bill's medical criteria and compensation award values.

S. 852 defines nine levels of medical impairment that persons exposed to asbestos have suffered and specifies a dollar amount of compensation that the fund would pay to individuals who demonstrate both adequate exposure to asbestos and specified medical conditions. Over time, those award values would be adjusted for inflation. For the lung cancer levels, the bill stipulates different awards, depending on whether a claimant, currently or in the past, does or does not smoke tobacco. (For example, claimants having lung cancer with asbestosis would qualify for compensation under level VIII; awards at this level would range from $600,000 to $1.1 million, depending on the claimant's history of tobacco use.)

To estimate the cost to the fund of compensating claimants, CBO considered four categories—future claims that would be made by individuals with malignant conditions, future claims that would be made by those with nonmalignant conditions, and claims pending on the date of enactment of the bill for both malignant and nonmalignant conditions. As detailed below, CBO used information from available projections and studies to estimate the number of claims in each category that would qualify for compensation under the medical conditions specified in the bill. Individuals who are eligible for an award would receive payments from the fund over a one- to four-year period. For this estimate, we assumed that payments for nonexigent claims would be spread equally over a four-year period. We assume that claims pending for mesothelioma at the time the bill is enacted would represent the exigent claims and would be paid in 2006.

Table 2 summarizes the number of claims and total award value for those claims that CBO projects for each category of claims under the legislation.

Pending claims. Individuals who have an outstanding claim with any firm filed in a court on the date of enactment of S. 852 would have five years to submit a claim for compensation from the fund. CBO estimates that, over the first five years that the fund is operational, more than 320,000 pending claims would receive an award from the fund.

There is no comprehensive information regarding the numbers and types of asbestos injury claims that individuals have filed in federal and state courts or with existing trusts under current law. Nor is there reliable information on the numbers and award values of such claims that are settled each year. In 2003, Navigant Consulting prepared an estimate of the number and type of asbestos injury claims then pending in federal and state courts. That information was collected to inform the consideration of legislation similar to S. 852 in the 108th Congress.

TABLE 2.—SUMMARY OF ESTIMATED ASBESTOS CLAIMS AND AWARD VALUES

	Initial 10-year period		Life of fund	
	Number of claims	Award Value of claims (in billions of dollars)	Number of claims	Award Value of claims (in billions of dollars)
Pending Claims for:				
Malignant Conditions	21,000	14	21,000	14
Nonmalignant Conditions	301,000	11	301,000	11
Total Pending Claims	322,000	25	322,000	25
Future Claims for:				
Malignant Conditions	42,000	34	78,000	74
Nonmalignant Conditions	620,000	16	1,184,000	32
Total Future Claims	662,000	51	1,262,000	106
Total for All Claims	984,000	76	1,585,000	132

For this estimate, CBO used the information collected by Navigant in 2003 and adjusted the data to reflect developments since then. Using projections about the number of claims expected to be filed in 2004 and 2005 and assumptions about the pace of settlements for asbestos injury cases, we concluded that the number of pending cases in 2006 is likely to be larger than estimated in 2003—about 7 percent larger.

For this estimate, CBO did not take into account the number of claims that are still technically pending with at least one company but have been inactive for several years. If the claimants' lawyers actively seek out those individuals to file a claim against the fund, the number of claimants seeking compensation from the fund in the first four years could be significantly higher. An award from the Asbestos Fund for such individuals would be reduced by the value of any other awards received for a given claim. CBO estimates that the average award from the fund over the 2006–2015 period for pending malignant claims would be about $650,000 and

that awards for such claims would total $14 billion. We estimate that awards for pending nonmalignant claims would average around $38,000; total awards for those claims would be $11 billion over the next 10 years.

Future claims for malignant conditions. CBO examined several projections of malignancies associated with asbestos exposure. While all of those projections included claimants with asbestos exposure and lung cancer but with no evidence of pleural disease or asbestosis, such claimants would receive no compensation under S. 852. CBO assumes that the total number of claims for malignant conditions that would be compensated by the fund would be near the average of the various projections we examined (excluding those lung cancer claimants who would not be eligible for compensation). Adjusting for the time that has elapsed since the performance of the studies that we examined, those studies varied from 65,000 to 100,000 claims for malignant diseases that would be compensated by the Asbestos Fund. This estimate assumes that there would be about 78,000 such claimants. We distributed those cases across the categories of malignant diseases specified in the bill based on the various projections and on the historical distributions of such claims received by the Manville Trust. On this basis, CBO estimates that the average award for malignant conditions over the next 10 years would be $800,000 and that the total value of awards for such conditions over that period would reach $34 billion.

Future claims for nonmalignant conditions. The different projections available to CBO of the number of nonmalignant cases and their distribution among the categories specified in the bill vary greatly. CBO expects that the ratio of nonmalignant claims to malignancies under the bill would be similar to the historical ratio of claims compensated by existing bankruptcy trusts. For example, since 1995, the Manville Trust has received an average of eight claims for nonmalignant conditions for every claim for a malignant condition. Based on those historical data and because nonmalignant claimants could receive larger awards under S. 852 than those provided by existing trust funds, CBO estimates that during the first 10 years after enactment, the fund would compensate, on average, 10 new claims for nonmalignant conditions for every new malignancy (including claimants exposed to asbestos with lung cancer who would not be eligible for compensation under the bill). CBO expects that this ratio would decrease over time because of reductions in the use of and exposure to asbestos. (Other analysts have estimated the ratio of claims for nonmalignant conditions to malignancies to be as low as 7:1 or as high as 17:1.) In total, CBO anticipates about 1.2 million future claims for nonmalignant conditions.

CBO estimates that around 85 percent of claims for nonmalignant conditions filed with the Asbestos Fund would be eligible for medical monitoring reimbursement (level I) from the fund. Such reimbursement, roughly $1,000, is the lowest rate of payment specified for nonmalignant conditions. This claims estimate is based on available research involving a sample of the exposed population with nonmalignant conditions and the history of claims filed with the Manville Trust. To evaluate the history of such claims, CBO reviewed the trust's estimate of how claims received under its 1995 trust distribution process (TDP) would have been compensated under the 2002 TDP. (The later TDP contains categories for nonmalignant conditions more similar to those under S. 852.) Overall, CBO estimates that, over the next 10 years, the average payment for nonmalignant conditions would be about $26,000 and total awards for such conditions would amount to $16 billion.

Investments of the Asbestos Fund. Section 222 would authorize the Administrator to invest amounts in the fund to ensure that there are sufficient sums to make payments to claimants. That section appears to imply that the fund's Administrator could invest surplus amounts in private securities. For this estimate, CBO assumes that the managers of the fund would keep 20 percent of the investments in Treasury securities and 80 percent in non-Treasury securities. The current budgetary treatment of federal investments in non-Treasury instruments is specified in the Office of Management and Budget's (OMB's) Circular A–11, which states that the purchases of such securities should be displayed as outlays and the sales of such securities and returns, such as dividends and interest payments, should be treated as offsetting receipts or collections.

CBO estimates that investing 80 percent of fund balances in private securities would result in net receipts of $200 million over the 2006–2015 period. The fund would make net investments in 2007, when its collections would exceed its expenditures. In subsequent years when expenditures would exceed collections, the difference would be made up by drawing down assets from the fund, starting with any assets received from other asbestos trust funds. Liquidated assets and earnings from private trust funds would be considered revenue in the federal budget, while the value of assets privately invested by the Administrator would be recorded as offsetting receipts upon liquidation.

For this estimate, CBO used its projections of the return on Treasury securities to predict investment earnings of the fund for both private securities and government securities. Although private securities may well yield higher gains over the long term, such investments carry much greater risk than government securities. The difference between projected returns on private securities and government bonds can be seen as the cost investors must be paid to bear the additional risk of holding private securities instead of government bonds. Thus, adjusted for the additional cost of risk associated with private securities, the net expected returns on private securities are the same as those on government securities.

Revenues. Receipts to the fund would come from three sources: defendant companies that have spent more than $1 million on asbestos injury litigation, insurance companies that have made more than $1 million in such payments, and existing private trust funds formed to settle asbestos claims. Over the life of the fund, defendant companies would be expected to contribute $90 billion, less any credits granted for the establishment of private bankruptcy trust funds set up after July 31, 2004 (known as bankruptcy trust credits); insurance companies would be called upon to contribute just over $46 billion, less bankruptcy trust credits. CBO is aware of one bankruptcy trust that would be eligible for such credits—the Halliburton Bankruptcy Trust. CBO estimates that the bankruptcy trust credits of defendant companies would total $2.4 billion over the 30-year period, or $80 million per year, with the credits being apportioned to all defendant companies based on their share of the total amounts of payments for the year. Insurers would have an estimated $1.5 billion in bankruptcy trust credits; those credits would go to the insurers who paid into trusts set up after July 31, 2004. All assets of existing asbestos trusts (about $7.5 billion) would be transferred to the fund.

Defendant companies. Section 202 would specify $90 billion, less any bankruptcy trust credits under section 222, as the amount to be collected from defendant companies. The minimum aggregate annual payment would be $3 billion, less any bankruptcy credits. CBO estimates that annual payments would total $2.9 billion over 30 years. For the purpose of determining each firm's contribution, each one is assigned to a tier based on its prior asbestos expenditures and whether it is in bankruptcy proceedings.

The actual amounts paid by firms might differ from that implied by their tier assignments because the bill would allow certain exemptions for small businesses and modifications of assessments, based on financial distress or inequity or based on whether a firm meets the criteria for being classified as a distributor. The bill also would allow the Administrator to increase the amount that defendants would pay if the total payments fall short of the minimum aggregate annual payment amount.

The defendants' contributions could decline over the 30-year period for two reasons. First, if more defendant companies exist and make payments than CBO estimates, the payments in the earlier years would exceed the minimum required payment. Because the aggregate payments cannot exceed $90 billion less bankruptcy credits (or a net of $87.6 billion), any excess amounts paid in earlier years would reduce the amounts needed to be paid in the future years. Second, the required total payments could decline in later years if the Administrator determines that full payment is not required, and each company's assessment would decline proportionately.

The amount the fund would collect from defendant companies depends on a number of unknown factors:

The number of subject companies and the tiers into which they would fall;

Which of those companies would be subject to exemption or modification of their contributions and whether some affiliated entities would elect to be treated separately or jointly;

The size and nature of the assets of firms in liquidation;

The number and characteristics of subject firms that may go into bankruptcy during the assessment period; and

How much funding is needed to satisfy claims and other expenses of the fund.

Some sources have indicated that as many as 8,400 firms may have paid sufficient prior asbestos claims to be covered by the legislation. CBO could not verify this figure. Based on information that CBO could obtain about firms that have incurred asbestos litigation expenses, we estimate that about 1,700 defendant firms would be required to make contributions to the fund under the bill. It was possible to determine the likely tiers for about 500 of those firms. The remaining firms were assigned equally to the two lowest tiers, based on the assumption that firms with unknown tier assignments were those with lower asbestos claims payments. No reduction in the number of firms was made for those exempt due to size. Similarly, CBO made no upward adjustment to account for defendant firms not identified.

Tier I firms are firms that have filed for bankruptcy. Revenues for tier I firms expected to emerge from bankruptcy were obtained, where possible, from public sources. No reliable information could be obtained about the possible contributions of tier I firms that are likely to liquidate. Firms that securities analysts expect to earn revenues in 2006 were assumed to make the required payments, and no reduction in contribution was made for firms that would receive hardship or inequity adjustments in their contributions or for consolidated payments made by affiliated groups.

Insurers. Section 212 would specify just over $46 billion, less any bankruptcy trust

credits, as the amount to be collected from insurers over a 28-year period. In the case of insurers, no allocation or formula for payments is specified in the legislation, although the legislation does specify how much in aggregate would be collected for each of the 28 years. The bill would create an Asbestos Insurers Commission to determine an allocation among the insurance companies. The bankruptcy trust credit would represent a dollar-for-dollar reduction in the amount of liability an insurer would pay under the bill for any contributions to bankruptcy trusts established after July 31, 2004. CBO estimates that the value of the bankruptcy trust credits would be $1.5 billion. Either the allocation determined by the Asbestos Insurers Commission or one agreed upon by the subject companies would determine how much each insurer would pay of the $46 billion total.

S. 852 would direct insurers to contribute an aggregate initial payment of no more than 50 percent of the first year's required $2.7 billion within 90 days after enactment. The bill would authorize the Administrator to calculate the initial payment obligations of insurers and handle other matters related to the collection of the funds. However, the initial payment amounts would not be considered final until the Insurers Commission has been formed, promulgated its allocation methodology, and issued its final determination of liability of the insurers. Based on the procedural steps specified in the bill, CBO expects that such determination would be made in fiscal year 2007.

The participating insurers would pay interest on any difference between their ultimate liability and the amount of the interim payment. Any insurers who paid more than their ultimate liability would receive interest on the excess amount. The bill specifies that the interest rate on any overpayments or underpayments would be the same rate. CBO estimates that the fund would be able to collect the initial payment from insurers by the end of fiscal year 2006 and that the demands on the fund for payments would prompt the Administrator to seek to collect the maximum allowed for the initial payment—50 percent of the first year obligation. CBO further assumes that the remaining 50 percent of the first year's payment would be collected in the second year with the associated interest and the second year's contribution.

Existing asbestos trust funds. Based on publicly available information, CBO determined that the existing private trust funds set up to compensate claimants currently contain about $7.5 billion in assets. Under the bill, those assets would be transferred to the new Asbestos Fund in the first year following enactment. Until that transfer occurs, we assume that claims paid by these funds would roughly equal investment income. The assets of existing trusts are invested in a variety of financial instruments, and only the cash and U.S. obligations in these trusts would be recorded in the federal budget as revenues of the government when transferred. The private securities in the trusts (together with any earnings) would be recorded as revenues only when converted to cash or U.S. obligations.

Based on the financial reports of the Manville Trust, CBO estimates that 56 percent of transferred trust assets (about $4.5 billion) would be recorded as revenues in 2006. For this estimate, we assume that the remainder of the assets would only be sold as needed to finance spending in later years. The proceeds of those sales would be recorded as revenues to the fund at that time.

Offsets and guaranteed payment surcharge. The bill would allow firms and insurers to reduce their individual assessments by the value of any asbestos claims paid after the enactment date of S. 852 and before 2007, when CBO expects the fund's full operations would start. It also would authorize certain payments by subject companies to guarantee collection of the mandated amounts. For the purpose of this estimate, CBO assumes that these provisions would have no net effect on annual payments by firms and insurers.

Offsets for exigent claims paid during start-up of the Fund. In the interim between enactment of S. 852 and the time when the fund would begin full operations, defendants and insurers may settle or face judgments on exigent asbestos claims that the fund is unable to process or pay. Firms and insurers could use those settlement amounts as a dollar-for-dollar offset against their assessments, reducing the payments required to be made to the fund.

Guaranteed payment surcharge and guaranteed payment account. The Administrator of the fund could impose on each defendant participant a surcharge to offset any shortfalls in the annual aggregate payment amounts. If the payments by defendant participants exceed the minimum aggregate annual payment of $3 billion, less bankruptcy trust credits, the excess amount, up to $300 million, would be set aside in the guaranteed payment account as a form of self-insurance by the fund, with any excess funds being carried forward to the next year. For this estimate, CBO assumed that the Administrator would assess a surcharge on all firms when necessary. If the funds in the guaranteed payment account are insufficient to ensure that the minimum annual payment is raised in any year, the Administrator of the fund would be able to levy a guaranteed payment surcharge on the defendant participants on a pro rata basis.

Secondary effects on other revenue sources. The payments made by defendants and insurers and the sums received by claimants could affect taxable income under the federal corporate and individual income tax systems. This cost estimate includes no effects of those transactions on federal income taxes paid by claimants or businesses. Those secondary effects are likely to be insignificant in any event.

Payments made into the fund would be tax-deductible and would thus reduce the corporate income tax liability of participating firms. But in the absence of this legislation, firms would have to pay asbestos damages set in the courts, which would also be tax-deductible. It is impossible to say with any confidence whether the amounts that would be paid out by defendant firms and insurers under this legislation would be higher or lower than what they would expend in its absence through the tort system. The best assumption under the circumstances is that the bill would have no significant effect on corporate taxable income or on the government's receipts from corporate income taxes.

Similarly, the tax treatment of payments received by claimants would be unchanged from what it is now—effectively excluded from taxable income and therefore having no effect on taxes paid by individuals. There might be some reduction in income tax receipts if a significantly larger proportion of payments goes to claimants rather than to their attorneys, who would pay tax on the income. But this would depend on whether more claimants think they can navigate the new system set up under the legislation without legal assistance than is the case under the existing one—a circumstance that cannot be known. CBO expects that any change in the allocation of awards between attorneys and claimants would be too small to significantly affect income tax receipts.

Budgetary impact of the Asbestos Fund after 2015: To assess the long-term financial viability of the Asbestos Fund, CBO considered several possible projections of the fund's cash flows beyond the normal 10-year estimate of the legislation's budgetary impact. When estimating such cash flows, the provisions of section 405 are critical. That section of the bill would sunset the fund's operations by directing the Administrator to reject new claims if the fund's resources (including borrowing authority) prove inadequate to pay additional obligations. Under S. 852, claimants could seek compensation in federal courts if the fund were to sunset. In determining whether or not to sunset, the Administrator would consider the unpaid costs of any approved claims and previous borrowing against future revenues. Section 405 also would require the Administrator to return remaining assets to certain nongovernmental trust funds—but only in the event of a sunset.

CBO estimates that total receipts to the Asbestos Trust Fund over its lifetime would amount to about $140 billion, including a small amount of interest earnings on its balances. We estimate that the fund would be presented with valid claims worth between $120 billion and $150 billion in addition to any financing (debt-service) costs and administrative expenses. Under the legislation, receipts to the fund would be fairly evenly distributed over its first 30 years. However, even if receipts exceed claims, CBO estimates that more than half of the fund's expenditures for claims would be paid in the first 10 years of its life. Such an imbalance between when the fund's anticipated claims payments would be made and when receipts would be collected would require the Administrator to borrow to pay claims. Under the bill, the borrowed amounts (including interest costs) would have to be repaid from the fund's own budgetary resources.

Depending upon the precise timing and value of claims presented to the fund as well as the exact revenue collected, investment returns, and interest rates, the fund might or might not have adequate resources to pay all valid claims. For example, if the value of valid claims totaled $130 billion, interest costs on the fund's borrowing might amount to $10 billion, and interest earned on investments could approach $2 billion, while administrative costs would add another $1 billion to $2 billion. If the value of such claims were significantly more than $130 billion, the fund's revenues might be inadequate to pay all claims.

Because of the uncertainty and sensitivity of the variables that affect the fund's balances, any long-term projection over five decades must be viewed with considerable caution. Operating the Asbestos Fund would be an entirely new governmental task, and CBO and other analysts have little basis for judging how the Administrator would implement the legislation. The discretion available to the Administrator and insurance commission with respect to the allocation of costs, provision of adjustments, and levying of surcharges makes the flows into and out of the fund hard to predict with much reliability. Furthermore, the projections that have been made in recent decades of the number of asbestos claims likely to be filed were, in hindsight, much too low, suggesting that there might be a significant risk of underestimating the number of future asbestos claims. In addition, receipts to the Asbestos Fund would depend on the continued viability of the firms required to pay into it, which is also uncertain.

The Asbestos Fund's operations are uncertain: Contributing to the uncertainty of the cost to resolve claims under the bill are some significant features of the claims process that would only be defined after enactment of the legislation. For instance, the bill

would require the Institute of Medicine of the National Academy of Sciences to conduct a study to examine the causal link between asbestos exposure and cancers other than lung cancer or mesothelioma. If that study were to determine no causal link between asbestos exposure and any of those cancers, the number of claims for such conditions (level VI under the bill) could decline significantly. The bill would also require the Agency for Toxic Substances and Disease Registry (ATSDR) to conduct a study to determine if any other contaminated sites pose dangers similar to those observed in Libby, Montana. Because claimants from Libby would receive higher minimum awards than other claimants and because the bill would mandate similar treatment for any sites so identified, the costs could rise depending upon which sites might be judged similar to Libby and on how many claimants would be affected. Also, this estimate does not take into account the impact of approving any exceptional medical claims, which are claims that do not fit into the defined criteria but which might still receive compensation depending upon the findings of specific panels of physicians. It is difficult to assess how many such claims might be filed and how liberally those panels might rule on the claims.

Past estimates of the number and value of Asbestos claims have been inaccurate: Forecasts of asbestos claims made over the past decade have failed to accurately predict the magnitude, scope, and evolution of asbestos claims. According to one witness that testified on similar legislation previously before the committee, ''in every instance where companies or trusts have attempted to project future asbestos claims, they have always seriously underestimated.'' Most estimates of future claims rely on a combination of epidemiological information and statistical estimation techniques using historical data. Such models contain a number of potential sources of error in forecasting.

In 1988, experts estimated that the number of future claims against the Manville Trust would range from 50,000 to 200,000. By January of 1991, the trust had already received more than 171,000 claims. Through the summer of 2005, the Manville Trust had received 690,000 claims. The most recent claims forecast performed for the trust estimated that the trust may receive up to 1.4 million additional claims.

CBO's estimates of the number and distribution of claims that would be compensated by the Asbestos Fund under S. 852 are based on forecasts similar to those that have been prepared for the Manville Trust. Therefore, it is possible that the number of claims that would be compensated under S. 852 could deviate in significant respects from our estimates in terms of cost, timing, or both.

Revenue collections are uncertain: The revenue stream that would be generated by the legislation is highly uncertain. Although the aggregate amount of the levy on defendant firms and insurers is fixed over the first 30 years, a number of factors described earlier make it difficult to project the annual receipts with much reliability.

First, identifying the defendant participants and where they would fall in the different payment tiers is difficult, if not impossible, without legislation requiring the information to be disclosed. (Tier placement directly affects the amount a defendant company would pay into the fund.) Many of the prior asbestos settlements were made outside of the court system and, as such, are not public record. This lack of information means that the number of defendant companies in each tier and the resulting payments could be either higher or lower than the numbers used in preparing this estimate.

If the number of defendants is significantly higher than assumed in this estimate and if claims remain at or about the level estimated, the likelihood of insufficient funding available to settle claims would be reduced. At the end of the first 10 years, if excess monies existed, the Administrator could decrease the payments required by the defendants by up to 10 percent.

Similar stepdowns in payments could also occur after 15, 20, and 25 years should funding exceed claims levels sufficiently to warrant such a reduction.

To determine the impact of a significantly higher number of defendant companies making payments, CBO estimated the revenues and the resulting effects on cash flow if there were an additional 650 companies in each of the two lowest tiers. This scenario would result in approximately 3,000 defendant companies paying into the fund and, assuming that the number of claims projected by CBO is correct, the fund would be able to pay all claims projected by CBO and there would be no early sunset due to lack of funds to pay claims.

Conversely, significantly fewer defendant participants who meet the criteria for payments under this bill would result in higher levies on the existing defendant participants to ensure the minimum aggregate annual payment of $3 billion less bankruptcy trust credits. This continuing drain on firms' resources could lead to more bankruptcies and even higher levies on the remaining firms.

Thirty years is a long time-span for a business. Even under ordinary conditions, economic circumstances lead many firms to liquidate over time. Normal attrition will be exacerbated by the costs of dealing with asbestos liability—either under the current system of litigation or under the legislation itself. The legislation's provisions for adjustments based on inequity or financial distress might mitigate business bankruptcies, but at the cost of even greater uncertainty in the value of the fund's future revenue stream. The legislation also would allow the Administrator to impose a surcharge to guarantee payment of amounts that some firms would be unable to pay. The success of this surcharge depends, in turn, on estimating the attrition among firms.

The bill proposes no absolute deadlines concerning the establishment of the Asbestos Insurers Commission. Some of the tasks involved in promulgating a methodology and producing final billings to the insurers are well defined and have specific time frames, while time frames for other activities are not clearly specified. CBO expects that appointing and confirming the five members and establishing the final allocation methodology for participating insurers would take at least 12 months. If the process were to take longer, it could delay the payments from insurers and possibly necessitate more borrowing than CBO has projected.

Federal liability if the trust fund's resources are inadequate to pay claims: So long as the fund's Administrator does not borrow from the U.S. Treasury beyond the means of the fund to repay such borrowing, the government's general funds would not be used to pay claims. Furthermore, section 406 states that the legislation would not obligate the federal government to pay any part of an award under the bill if amounts in the Asbestos Fund are inadequate.

Estimated long-term direct spending effects: Pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting S. 852 would cause an increase in direct spending greater than $5 billion in at least one 10-year period from 2016 to 2055.

Estimated impact on state, local, and tribal governments: S. 852 contains two intergovernmental mandates as defined in UMRA. First, it would preempt state laws relating to asbestos claims and prevent state courts from ruling on those cases. Second, the bill would require state governments to comply with requests for information from the Asbestos Insurers Commission. CBO estimates that any cost associated with this mandate would be insignificant and well below the threshold established in that act ($62 million in 2005, adjusted annually for inflation).

The bill would authorize $15 million from the Asbestos Trust Fund for state, local, and tribal governments to monitor and remedy naturally occurring asbestos. Any related costs to those governments would be incurred voluntarily as a condition of receiving federal aid.

Estimated impact on the private sector: S. 852 would impose new private-sector mandates, as defined in UMRA, on:

Certain individuals filing claims for compensation for injuries caused by exposure to asbestos;

Certain companies with prior expenditures related to asbestos personal injury claims;

Certain insurance companies; Trusts established to provide compensation for asbestos claims;

Health insurers; and

Persons involved in manufacturing, processing, or selling certain products containing asbestos.

Based on information from academic, industry, government, and other sources, CBO concludes that the aggregate direct cost to the private sector of complying with all of the mandates in the bill would well exceed the annual threshold established in UMRA ($123 million in 2005, adjusted annually for inflation) during the first five years those mandates would be in effect. CBO cannot determine the direction or magnitude of the net impact of the bill's mandates on claimants, defendant companies, or insurance companies over the long term.

Asbestos injury claims: The bill would prohibit an individual from bringing or maintaining a civil action alleging injury due to asbestos exposure. Currently, individuals can file asbestos injury claims against any number of defendants in state or federal court. Under S. 852, individuals would only be able to receive compensation for asbestos-related injury by filing a claim with the federal Asbestos Fund established by the bill. A claimant would be able to recover from the fund if that person could meet the bill's medical criteria, which are based on the severity of the asbestos-related disease. Claims pending as of the date of enactment would be stayed, except for certain pending civil actions.

Some individuals who would receive compensation under current law would not be qualified to receive compensation under the bill. Further, some individuals would receive more compensation for their asbestos injury claims under current law, while others would receive more if S. 852 is enacted. The direct cost of the mandate to claimants would be the difference between the total settlements and judgments that would be obtained under current law and the compensation that would be obtained by claimants under S. 852.

Based on information from academic, industry, and other sources, CBO assumes that claimants who would be deemed ineligible for compensation under the bill would be predominantly from the ''unimpaired'' category. Because comprehensive data relating to asbestos exposure, litigation, and compensation are not available, it is difficult to predict the number of claimants who would receive compensation and the amount of the settlements they would receive under current law. Unimpaired claimants historically receive multiple settlements of a few thousand dollars each from as many as half-a-

dozen defendants. According to several expert sources, settlements for unimpaired claimants may range in value from $3,000 to $50,000 per claimant. Also, according to several sources, a large proportion of claims currently pending could have their settlements precluded or delayed under the bill.

Further, experts predict that many individuals would probably receive less compensation in the first five years under S. 852 than under current law. Consequently, CBO expects that the direct cost to claimants of complying with this mandate could amount to hundreds of millions of dollars over the 2006–2010 period.

Assessments on defendant companies: Section 202 would impose a new mandate on defendant participant companies, defined in the bill as certain companies with prior expenditures related to asbestos personal injury claims. Such defendant companies would be required to pay an annual assessment to the Asbestos Fund totaling a minimum of $3 billion in each of the first five years, less any bankruptcy trust credits. Defendant participants would be required to pay over the life of the fund a total of not more than $90 billion, less any credits.

Section 204 would require the Administrator of the Asbestos Fund to impose a surcharge on each participant required to pay contributions into the fund to make up for any shortfalls in a given year due to nonpayment by some participants. The amount of surcharge to be paid would be determined by the Administrator. CBO expects that the Administrator would assess a surcharge on all firms sufficient to compensate for this loss and that the surcharge would be imposed differentially on defendant companies to reflect their different risks and to maintain their roughly equivalent contributions. However, CBO expects that there would be no surcharge on defendant companies during the first five years of the mandate.

The amount the fund would receive from defendant companies would depend on a number of factors, including the number of subject companies and the tiers into which they would fall. Based on data from industry and other sources, CBO estimates that the defendant companies would pay $2.9 billion per year into the fund over the 2006–2010 period. According to industry and academic sources, defendant companies in aggregate currently pay asbestos litigation and settlement costs on an annual basis close to the amounts that would be required by the bill in the next five years. Thus, CBO estimates that the incremental costs, if any, for those companies to comply with those mandates would not be significant over the first five years the mandates would be in effect.

Assessments on insurance companies: Section 212 would impose a mandate on insurers with asbestos-related obligations. The bill would require those insurance companies to contribute to the fund, and specifies that their contribution would satisfy their contractual obligation with the defendant companies to compensate claimants for injuries caused by asbestos. The bill does not, however, specify any allocation or formula for such payments to the fund. The amount of the contribution to the fund for individual insurance participants would be determined by the Asbestos Insurers Commission established under the bill.

The aggregate contributions to the fund of all participating insurers would average $2.7 billion in the first and second year and $5 billion in years three through five. Participating insurers would be required to pay over the life of the fund a total of $46 billion, less any bankruptcy trust credits. Based on information from industry sources, CBO estimates that insurers would pay a total of about $20.4 billion into the fund during fiscal years 2006 through 2010. According to industry information on asbestos liability costs, insurance companies in aggregate would have expected costs for asbestos claims under current law close to the amounts that would be required by the bill over the next five years. Thus, CBO estimates that the incremental costs for those insurance companies to comply with the mandates would not be significant over the 2006–2010 period.

Asbestos settlement trusts: Section 402 would require asbestos settlement trusts, established to provide compensation for asbestos claims, to transfer their assets to the Asbestos Fund no later than 90 days after the enactment of the bill. Such a requirement is an enforceable duty, and therefore, a mandate under UMRA. Based on information from the trusts and industry sources, CBO expects that such trusts would transfer approximately $7.5 billion in assets to the fund in 2006. The cost to the trusts of the mandate for the trusts in that year would be the value of the assets net of amounts that the trusts would otherwise pay for compensation and administrative costs in that year.

Health insurance: Section 409 would impose a private-sector mandate by prohibiting health insurers that offer a health plan from denying, terminating, or altering coverage of any claimant or beneficiary on account of participation in a medical monitoring program under this bill or as a result of any information discovered as a result of such monitoring. This mandate would have no direct cost because such a medical monitoring program does not exist under current law.

Ban on products containing asbestos: Section 501 would prohibit persons from manufacturing, processing, or distributing in commerce certain products containing asbestos. The bill would require the Administrator of the Environmental Protection Agency, not later than two years after the enactment of the bill, to promulgate final regulations prohibiting commerce in such products (with some exceptions). In addition, the bill would require persons who possess a product for the purpose of commerce that is subject to the prohibition, not later than three years after the enactment of the bill, to dispose of that product by means that meet federal, state, and local requirements. A number of products and processes still use asbestos, including brake pads and linings, roofing materials, ceiling tiles, garden materials containing vermiculite, and cement products. According to industry and government sources, products are readily available to replace products containing asbestos, and the disposal of such asbestos products would not be difficult. Therefore, CBO expects that the direct cost of complying with this mandate would not be large.

Estimate prepared by: Federal Spending: Mike Waters and Kim Cawley. Federal Revenues: Barbara Edwards. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis. G. Thomas Woodward, Assistant Director for Tax Analysis.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 19, 2005.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, the Congressional Budget Office (CBO) has studied the report prepared by Bates White, LLC, concerning S. 852, the Fairness in Asbestos Injury Resolution Act of 2005. In particular, you asked CBO to evaluate the Bates White projection of the claims against the proposed asbestos trust fund from individuals with lung and other cancers (identified in the legislation as disease levels VII and VI). In light of that evaluation, you also asked whether CBO would modify the conclusions reached in its August 25, 2005, cost estimate for S. 852.

CBO has discussed the Bates White report with its authors and officials of that firm. It has also met or spoken with a number of other experts with varying views on the asbestos legislation, including Judge Edward Becker, trial lawyers with extensive experience in asbestos litigation, and representatives of NERA Economic Consulting, the Asbestos Study Group, the AFL-CIO, and Legal Analysis Systems. As a result of that review and assessment process, CBO has reached the following conclusions:

The Bates White report contains no new information that would cause CBO to revise its cost estimate.

The Bates White report is not a cost estimate; its results are therefore not directly comparable with those of the CBO cost estimate. Bates White estimated the value of claims that could be eligible for compensation; CBO estimated the value of claims that would receive compensation. This distinction is important because many potential claimants would probably not file claims and not all of the claims filed would be approved.

Two elements of the Bates White analysis are particularly important, and contribute significantly to its estimate of potential costs. Bates White assumes that one eligibility requirement in the legislation (weighted work-years of occupational exposure) would not constrain potential claims; Bates White also estimates a prevalence of pleural abnormalities (an eligibility requirement for claimants with lung and other cancers) that is higher than other researchers believe is likely.

The Bates White report highlights some factors that pose potential risks to the financial viability of the asbestos trust fund that S. 852 would establish—including the possibility that the financial incentives created by the bill could lead to a substantial number of claimants with disease levels VII and VI. Those risks are real, but CBO believes that claims of the magnitude suggested by Bates White are unlikely to occur.

After further reviewing S. 852, studying the Bates White report, and consulting with a wide range of experts on asbestos legislation, CBO reaffirms the findings presented in its August cost estimate:

The proposed trust fund might or might not have adequate resources to pay all valid claims. 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. 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.

CBO projects that the proposed fund would be presented with valid claims worth between $120 billion and $150 billion, excluding certain potential costs or savings that CBO could not estimate; total costs would be higher because the fund must also cover administrative expenses and any financing costs. The revenues collected under the bill would be, at most, about $140 billion, but could be significantly less. If the value of valid claims was significantly more than $130 billion, the fund's revenues would probably be inadequate to pay all claims.

CBO could not estimate any costs or savings that might result from several features or consequences of the legislation. A number of those features could add to the cost of the legislation. In particular, CBO's estimate does not include potential claims by individuals with older, so-called dormant, asbestos

claims pending in the court system, who might seek additional compensation from the fund. It also does not encompass: possible claims by family members of workers who were exposed to asbestos; the costs of any exceptional medical claims that could be made under the bill; the potential costs for residents of other areas of the country who might be deemed eligible to receive the same special treatment given to the residents of Libby, Montana, under the legislation; and the impact on costs of allowing CT scans to serve as documentation of pleural abnormalities. On the other hand, CBO's estimate does not reflect the possibility that medical studies required by the legislation might preclude individuals with certain diseases from obtaining compensation from the fund.

A more detailed discussion of CBO's review of the Bates White report is enclosed. I hope this information is helpful to you.

If you wish further details on this analysis, we would be happy to provide them. The CBO staff contact is Mike Waters.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

ANALYSIS OF POTENTIAL CLAIMS UNDER S. 852, THE FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005

As requested by Senators SPECTER, LEAHY, and FEINSTEIN, the Congressional Budget Office (CBO) has analyzed the report prepared by Bates White, LLC, concerning S. 852, the Fairness in Asbestos Injury Resolution Act of 2005, regarding the potential cost of claims against the asbestos trust fund that would be established by that act. In its cost estimate for that legislation, dated August 25, 2005, CBO estimated that the value of valid claims against the fund would total between $120 billion and $150 billion. The Bates White report, which was issued on September 19, 2005, suggested that the cost of claims could be much greater.

CBO has discussed the Bates White report with its authors and officials of that firm. It has also met or spoken with a number of other experts with varying views on the asbestos legislation, including Judge Edward Becker, trial lawyers with extensive experience in asbestos litigation, and representatives of NERA Economic Consulting, the Asbestos Study Group, the AFL–CIO, and Legal Analysis Systems. As a result of that review and assessment process, CBO has reached the following conclusions:

The Bates White report contains no new information that would cause CBO to revise its cost estimate.

The Bates White report is not a cost estimate; its results are therefore not directly comparable with those of CBO's cost estimate. Bates White estimated the value of claims that could be eligible for compensation; CBO estimated the value of claims that would receive compensation. This distinction is important because many potential claimants would probably not file claims and not all of the claims filed would be approved.

Two elements of the Bates White analysis are particularly important, and contribute significantly to its estimate of potential costs. Bates White assumes that one eligibility requirement in the legislation (weighted work-years of occupational exposure) would not constrain potential claims; Bates White also estimates a prevalence of pleural abnormalities (an eligibility requirement for claimants with lung and other cancers) that is higher than other researchers believe is likely.

The Bates White report highlights some factors that pose potential risks to the financial viability of the asbestos trust fund that S. 852 would establish—including the possibility that the financial incentives created by the bill could lead to a substantial number of claimants with disease levels VII and VI. Those risks are real, but CBO believes that claims of the magnitude suggested by Bates White are unlikely to occur.

After a careful review of the Bates White report and further analysis of the legislation, CBO reaffirms the findings presented in its August cost estimate:

The proposed trust fund might or might not have adequate resources to pay all valid claims. 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. 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.

CBO projects that the proposed fund would be presented with valid claims worth between $120 billion and $150 billion, excluding certain potential costs or savings that CBO could not estimate; total costs would be higher because the fund must also cover administrative expenses and any financing costs. The revenues collected under the bill would be, at most, about $140 billion, but could be significantly less. If the value of valid claims was significantly more than $130 billion, the fund's revenues would probably be inadequate to pay all claims.

CBO could not estimate any costs or savings that might result from several features or consequences of the legislation. A number of those features could add to the cost of the legislation. In particular, CBO's estimate does not include potential claims by individuals with older, so-called dormant, asbestos claims pending in the court system, who might seek additional compensation from the fund. It also does not encompass: possible claims by family members of workers who were exposed to asbestos; the costs of any exceptional medical claims that could be made under the bill; the potential costs for residents of other areas of the country who might be deemed eligible to receive the same special treatment given to the residents of Libby, Montana, under the legislation; and the impact on costs of allowing CT scans to serve as documentation of pleural abnormalities. On the other hand, CBO's estimate does not reflect the possibility that medical studies required by the legislation might preclude individuals with certain diseases from obtaining compensation from the fund.

THE METHODOLOGY OF THE BATES WHITE REPORT

The Bates White analysis of S. 852 is based on an epidemiological analysis of the population employed in industries with some potential exposure to asbestos. To estimate how many claims could be presented to the fund under S. 852 by individuals with both malignant conditions and asbestos exposure, Bates White first estimated the size of the population working in industries and positions in which asbestos exposure was probable. Using estimates of the lifetime incidence for individuals of developing lung and other cancers that could be compensated under S. 852, the authors estimated how many people could make such claims under the bill by further estimating how many of those individuals would develop pleural abnormalities. Evidence of such abnormalities is one of the qualifying requirements for compensation for disease levels VII and VI under S. 852.

For one of the cost scenarios in the Bates White analysis, the authors reported that they estimated that the value of claims from all individuals that could seek compensation from the fund would sum to $300 billion over the next several decades. That figure does not include any costs or savings from most of the same features of the bill, mentioned above, that CBO could not quantify. Bates White also presented an alternative estimate that includes some of those costs, bringing the total value of potential claims to nearly $700 billion. Because the Bates White estimate of the value of claims that could be presented to the fund far exceeds the resources likely to be available to the fund, the authors concluded that the fund would have to be terminated without paying all valid claims.

The Bates White estimate includes a large number of potential claims against the asbestos trust fund from individuals suffering from lung and other cancers, many of which would not have been caused by exposure to asbestos. The report's authors believe that such claims are significantly under-represented in the experience to date in the tort system and existing asbestos trusts. Nevertheless, CBO remains convinced that the number of such claims that would be submitted to the trust fund and approved for payment under S. 852 would be far fewer than suggested by Bates White. In CBO's judgment, the historical experience of the Manville Trust and that trust's current projection of future claims against it are a more reliable basis for estimating the number of future valid claims that would be filed with the asbestos fund under S. 852.

COMPARING THE BATES WHITE REPORT ON S. 852 AND CBO'S COST ESTIMATE FOR THE BILL

The Bates White report and the CBO cost estimate cannot be directly compared because the estimates address different questions. CBO estimated the value of valid claims that would be presented to the fund's administrator. Bates White estimated the value of claims that could be presented to the administrator; its figures are not adjusted to indicate how many individuals actually would seek and receive compensation from the fund. If such adjustments were made, the Bates White cost analysis might be much more in line with other estimates of the likely cost for compensating claims for malignant conditions.

In attempting to answer different questions, the two analyses used different methodologies. CBO's estimate relies on the projections of claims from other analyses prepared with regard to S. 852 and similar legislation. Those projections are grounded, in part, on the historical experience of claims paid by the Manville Trust. That approach reflects the observation that the Manville Trust receives claims from nearly all of the individuals that have brought asbestos tort claims, and the expectation that it provides a reasonable model to use for projecting the number and types of future valid claims likely to be filed with the asbestos trust fund that would be established under S. 852—particularly claims for malignant conditions.

The Bates White analysis of S. 852 rejects the notion of using the experience of the Manville Trust to project the number of claims that could be made against the proposed fund, because the authors observe that not all individuals with malignant conditions that could make asbestos tort claims choose to do so. Bates White notes that engaging in tort litigation can be costly and burdensome, and that many individuals with potential asbestos tort claims choose not to make such claims. The authors expect that replacing the asbestos tort system with the administrative settlement process specified in S. 852 would encourage many of those individuals with malignant conditions and asbestos exposure to make claims against the federal asbestos fund. (Bates White also estimates fewer claims for nonmalignant conditions than CBO projects, but the financial

impact of that decrease is much smaller than the impact of its much larger estimate of the number of claims for malignant conditions.)

EVALUATION OF THE BATES WHITE APPROACH

During the Senate Judiciary Committee's November hearing on S. 852, several witnesses voiced concerns about the Bates White estimate of the number of individuals with lung and other cancers that could make claims for compensation under S. 852. CBO has discussed many of these issues with Bates White and others who have studied the legislation, and shares some of those concerns. They include:

Bates White may have overestimated the incidence of pleural abnormalities. Pleural abnormalities are one of the conditions that claimants with lung or other cancers must exhibit under S. 852 to qualify for compensation. Although there is broad agreement about the incidence of lung and other cancers in the asbestos exposed population, there does not appear to be a consensus about the extent of pleural abnormalities within that population. The Bates White report cites several studies as the basis for its estimate that about 10 percent of its exposed population of 27 million people could be expected to have pleural abnormalities. Among the more heavily exposed population of about 9 million, however, Bates White estimated that the incidence of abnormalities would be higher—around 24 percent.

NERA presented CBO with an evaluation of the studies cited by Bates White for its estimate of the incidence of pleural abnormalities. NERA concluded that the report overstated the incidence of pleural abnormalities by at least half. The incidence among the asbestos-exposed population appears to be in dispute because the sample population used in some studies that have measured it may not be representative of the population in question. In addition, some of the studies measured the incidence of pleural abnormalities based on their presence in only one lung, whereas eligibility under the bill would require the presence of such abnormalities in both lungs. CBO has not attempted to independently estimate the incidence of pleural abnormalities in the exposed population, but a proportion that differed significantly from that estimated by Bates White would change the results of that study substantially.

The Bates White study does not explicitly account for the work-years of occupational exposure specified by the bill. Under S. 852, claimants with lung or other cancers would be required to demonstrate that they experienced asbestos exposure for a specific number of years, weighted by the intensity of exposure and when it occurred. By not accounting for the bill's weighted work-year exposure criteria, Bates White has overestimated the number of individuals that could file a successful claim under S. 852. CBO believes that a significant percentage of potential claimants might be unable to demonstrate a sufficient number of work years of exposure to asbestos to qualify for compensation under the bill.

Meeting the bill's required weighted work-years of occupational exposure to asbestos is one of the key qualifying criteria—along with exhibiting pleural abnormalities—for an award under the legislation. The Bates White study did not directly account for this requirement. The authors told CBO that most individuals in the exposed population typically had long careers in the same occupation or industry and that the presence of pleural abnormalities was likely to indicate sufficient years of asbestos exposure to meet the bill's criteria.

However, pleural abnormalities can occur in individuals with fewer years of exposure than are required to qualify for disease levels VII and VI under the bill. Consequently, applying the work-year criteria could eliminate a significant number of claimants who might otherwise qualify.

The Bates White report attempts to estimate the number of individuals that could make successful claims under S. 852, but does not attempt to estimate how many individuals would seek to do so. There is general agreement that individuals exposed to asbestos that have developed mesothelioma and asbestosis have a high propensity (probably well above 70 percent) to file tort claims and apply to the Manville Trust for compensation. There appears to be much less agreement on the propensity of individuals that have been exposed to asbestos and have developed lung or other cancers to take such actions. That is, in part, because there is no consensus on how many individuals with lung or other cancers could demonstrate that asbestos exposure was a substantial contributing factor to their disease (the basis for estimating a claiming rate). Many researchers agree that claiming rates for such individuals today are much lower—certainly less than half, perhaps much less—than for people with mesothelioma or asbestosis. Applying a claiming rate of much less than 100 percent for the Bates White estimates of level VII and VI claims would substantially reduce the costs presented in the Bates White analysis.

Bates White estimates a much larger population exposed to asbestos than most other analyses. Bates White reported that its estimate considered a working population of about 27 million that was exposed to asbestos, a much larger number than many other studies have assumed. However, the authors noted that about 9 million of those people, who had medium-to-heavy exposure to asbestos, accounted for about 90 percent ($270 billion) of the potential claims. An asbestos-exposed population of around 9 million is similar to the estimates of other researchers, and CBO does not consider the size of the exposed population to be a significant issue with the report.

How the key participants in the process—the fund's administrator, claimants, and attorneys or others who assist claimants—behave would have a significant impact on the number of successful claims filed with the proposed asbestos trust fund. The authors of the Bates White report have suggested that the behavior of claimants and attorneys under S. 852 would differ greatly from their behavior under the current system. They expect that under the no-fault administrative process outlined in the legislation, many more claimants with asbestos exposure and lung or other cancers would pursue claims than have done so or filed with the Manville Trust. They anticipate this outcome because they expect that the cost of seeking an administrative claim from the fund would be much less than pursuing litigation, and that the rewards for claimants would be much greater than those obtained from the Manville Trust (though perhaps not as large as awards obtained in some tort settlements).

CBO reaches a different conclusion—that the system specified in S. 852 bears sufficient similarity to the operations of the Manville Trust that the latter's experience is a sound basis for projecting the number of most types of claims under the bill. CBO's estimate of the number of future claims for malignant conditions expected under S. 852 is very similar to the most recent claims projection prepared for the Manville Trust.

A number of factors make that analogy appropriate. For example, whether pursuing an asbestos tort claim under current law or an administrative settlement under the legislation, a claimant would need to demonstrate that asbestos exposure was a substantial contributing factor to his or her cancer. Thus, just as under the current system, claimants could not necessarily assume that the fund's administrator under S. 852 would approve all claims. This is particularly true for level VI claims, which would be individually evaluated by a medical panel. The Manville Trust also requires applicants to demonstrate a specific number of work-years of exposure to asbestos to qualify for an award. The number of work-years needed to qualify for an award from the Manville Trust is generally less than would be required under S. 852, so in that respect, the experience of the Manville Trust could imply more claims than the federal fund might actually face. Also, CBO believes that claimants to the proposed federal asbestos fund would face costs and procedural burdens similar to those that applicants to the Manville Trust face.

Although the financial incentives for some claimants might be greater under the bill than under the current tort system, the financial incentives for attorneys to assist claimants would be weaker. Attorneys play a significant role in identifying claimants and pursuing their claims under the current system, and would probably do so under S. 852. Most claimants would probably need help preparing a claim under S. 852, and the bill would cap attorneys' fees at 5 percent of individual awards made by the fund. By contrast, under the current tort system, attorneys typically receive fees of up to 40 percent of the amount awarded. Because attorneys or others who might assist claimants would play such a key role in the claims process, the bill's cap on fees makes it less likely that the legislation would lead to a substantial influx of claims that are not represented in the current system.

Some of the attorneys whom CBO consulted suggested that asbestos tort claims have recently shifted away from relatively straightforward settlements, and that asbestos cases today involve a significant time commitment and large up-front costs to prepare for litigation, factors that may deter some individuals from pursuing claims. If so, the number of potential claimants to the fund proposed under S. 852 might be underrepresented in the current tort environment. But because asbestos litigation has been under way for many years, CBO believes that the long historical experience of the Manville Trust is the best available indicator of claimants' behavior under the bill, even if the current tort environment differs somewhat.

Mr. SPECTER. Mr. President, before yielding the floor, let me say what a constructive role Senator COBURN has played in the Judiciary Committee. Senator COBURN has been in this body since 2004. He had been in the House of Representatives. He has brought his expertise as a medical doctor and he has made great contributions.

We address some very tough medical procedures. I have said this to him privately, what a contribution he has made, and there is no reason I shouldn't say it publicly.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I want to spend a few minutes talking about the bill.

There is one thing that is an absolute certainty: There are a ton of people in this country who have bad diseases from asbestos who aren't getting treatment and aren't getting cared for. That is what certainty is. You can bet on

that, that the problem is made worse because the trial bar is clogging the courts with cases of people who do not have diseases from asbestos, claiming they do. That is one of the reasons the courts want reform.

Having been on the Judiciary Committee during the process of this and voting this bill out of committee, even though I have significant reservations about this bill. Let me talk a couple of minutes about that.

It doesn't matter to me what the Congressional Budget Office says because their track record in estimating everything from the cost of Medicare to the benefits in capital gains taxes is usually 180 degrees off what actually happens. Having CBO's estimate about what is going to happen with this trust fund I don't think lends any credence or undermines it one way or the other. Because I think they do not know, and I don't think anybody can know.

There is a second problem in this bill; that is, the problem we face today is this bill will allow people who do not have injury from asbestos to receive hundreds of thousands of dollars for an asbestos claim when they do not have it. That deals with the medical criteria. It will allow smokers who have some exposure to asbestos who develop lung cancer—smoking is the No. 1 cause of lung cancer—who have no evidence of significant disease caused by asbestos causing their lung cancer to be compensated for a disease that they themselves were responsible for by smoking tobacco products.

The intended purpose of the FAIR Act is to compensate those who are truly sick from asbestos exposure, without destroying the companies and jobs and opportunities in the future. My worry with this bill is the defendants and the plaintiffs will end up back in the tort system in a very short period of time.

I am rising today to support Senator CORNYN's alternative, the Asbestos and Silica Claims Priorities Act. I am doing that because I think it addresses the real problem.

If you look at the abuse in the courts and if you look at what is wrong with this bill, it has to do with putting people in court who do not have disease from asbestos. The Cornyn Amendment has a very defined medical criteria which the courts will have to follow when making judgments about who is eligible to file a claim on this bill.

A major reason the FAIR Act won't have enough money—and the major reason people can attack the FAIR Act in terms of the amount of the trust fund—is because the medical criteria is going allow too many people to be in the process who do not have disease related to asbestos. There have not been significant changes in the medical criteria associated with this bill.

I tried to amend this in committee. I could not win. I have a significantly different level of knowledge on the committee than the rest of the members in terms of medical knowledge, having continued to be a practicing physician, and I know it is going to be very difficult to explain all those medical issues to Members of this body to try to get them changed. That is why I think Senator CORNYN's approach is a better alternative.

We have to create a fair system in the courts for allowing those who are truly sick from asbestos exposure to seek compensation from those who are truly responsible, rather than creating another Federal bureaucracy that is likely to fail.

More than 73 companies have already gone bankrupt, and many others have suffered a great deal of financial difficulty, not because many sick people have sought compensation for their injuries but because smart trial lawyers have learned to game the system and file phony claims. These aren't faceless companies with unlimited resources. And the people who are truly injured are not faceless people who didn't contribute something good to the companies they worked for. The businesses, by and large, are ready and willing to right the past wrongs. The question is, Should they be paying when nobody is injured? With the medical criteria in this bill today, a third of the claims, in my estimation, will be paid to people—$50 billion will be paid to people—who will file under the medical criteria, as written, who have no injury whatsoever from asbestos but yet these companies will be paying them for a perceived injury from asbestos.

Ninety percent of the claimants out there in the courts today who have filed claims that allege to have impairment from asbestos have no impairment. If you read the press stories about how the game has been played, how the B-Readers have falsely read, for payments from trial lawyer organizations, the chest x-rays, and the pulmonary function tests have been manipulated illegally to claim benefits from some of these companies, you can see we cannot have loose medical criteria and ever expect to have this trust fund survive.

The other thing to mention—it is not mentioned much—there is a background caseload in this country of mesothelioma, cancer of the lining of the lung, of about 800 people a year. If there had never been any asbestos, 800 people a year would develop mesothelioma.

At my age, and for most people somewhat younger who went to any public school where the ceiling tiles had asbestos components, we can qualify under this bill not because asbestos truly caused it. There is no causal effect in that low an exposure. There is no particle load count at all in terms of measuring exposure, which is what we know is important. A small amount of asbestos exposure is harmless, a large amount of asbestos exposure is terribly disease causing. When we don't look at load factors, we are going to have medical criteria that make people eligible who are truly not diseased from asbestos.

For example, there are 174,000 new cases each year in this country of lung cancer.

This is kind of a wordy chart. I don't think it is going to project well. But the important thing about that is they may have no true, actual asbestos exposure but could claim under this system asbestos exposure from environmental background exposure. Most of these people have lung cancer because they are smokers, and they are going to have lung impairment, and they are going to meet some of the requirements under the medical criteria but have no true asbestos exposure.

If you look at that, and take 10 percent of the cases based on lung cancers alone, you are talking $5 billion a year. Just lung cancer alone times 30 years, at $5 billion a year, is more than the trust fund has in it.

I will guarantee we will see an approach for compensation by anybody who has ever had any exposure or been around asbestos, and they will qualify to a certain extent more or less under this bill. What if it is 5 percent? You are still talking $78 billion. The numbers are massive.

If you are going to have a trust fund, you are going to have to have adequate medical criteria that truly reward those people and compensate those people who are truly injured. If you have good medical criteria, the trust fund system will work. If you do not have good medical criteria, if you have very loose medical criteria, the trust fund will fail. We will not have solved the problem.

Either we have to get away from a trust fund program and design medical criteria the courts will use, or we have to keep a trust fund program and tighten up the medical criteria in this bill.

The bill as written today, I believe, will fail. It will fail because it will be overwhelmed with claims against this trust fund by people who do not have asbestos-related true disease.

I will give a couple of examples. Nonmalignant level 2 under the fund allows individuals who have obstructive pulmonary disease—people with emphysema, people with chronic bronchitis—to receive compensation by the fund even when they do not have restrictive pulmonary diseases. That is what asbestos causes, a restrictive disease, not an obstructive disease. Under the criteria written in this bill, smokers who have had exposure to asbestos, who do not have a disease related to asbestos, will be compensated under this bill.

Consequently this fund allows a smoker—the No. 1 cause of obstructive airway disease, not asbestos, but smoking—asbestos causes restrictive lung disease—to receive compensation. That cannot work with the fund as we see it today.

This fund also will compensate people for cancers where there is no scientific evidence whatever that their cancers are caused by asbestos. For example, for colorectal cancer, there are 130,000 cases of colon cancer a year.

There are tons of scientific studies that show there is no connection between that and asbestos, but we have this in the bill. It is dependent on an IOM study, but it should not be in the bill. If new science sometime later shows some connection between colorectal cancer, stomach cancer, or esophageal, laryngeal, and pharyngeal cancer, we can put it back. We are putting it in, when there is no science whatsoever—and the small studies on laryngeal and pharyngeal cancer that show some connection were not modified for smoking and alcohol use, the No. 1 and No. 2 causes. So it is not good science.

Therefore, we have a large group. If you take lung cancers combined with all the other cancers and put them together and you say 10 percent of those who are coming through will try to go to the trust fund, you have $267 billion that will blow this thing wide open.

This trust fund, with the medical criteria it has today, will not work. That is why having a bill that has specific medical criteria in it will work.

Let me be clear why I support the Cornyn substitute. The Cornyn substitute does not shut anyone out of the courts. If you think you have asbestos exposure, and you want to sue, you can. But you will have to meet the medical criteria for it to be related to asbestos or silicosis. There is no unreasonable requirement; there is just upfront medical criteria that must be met to have application and that requirement must apply.

It does not mean you cannot have your day in court. You can. You have to demonstrate your disease matches the medical criteria which are recognized medical criteria associated with asbestos disease.

The other thing that is good about this bill is if you have had asbestos exposure and have no disease now, this does not cut you off from the future. If you develop disease that is truly related to asbestos, you will be able to have your day in court years—30, 40 years—down the road if, in fact, you develop impairment related to asbestos within this medical criteria that the medical community and the scientific community recognize is accurate.

Under this substitute, as compared to the present bill, physicians will have to comply with strict scientifically sound requirements. There is no room for doctors and x-ray B readers to fudge the data under the Cornyn substitute. The substitute makes sense. The trust fund concept will work if we have good medical criteria. We do not, so it is not going to work.

The answer is to keep people in the court system but define the medical criteria where they can win when they truly have a disease that is caused by asbestos, and they lose when they do not have a disease caused by asbestos.

The science is not that hard. But we cannot take care of the trial lawyers and take care of all the executives who want this problem solved the way they want it. They want an answer now. The answer is, use what this country has used in the past: the judgment of courts based on sound criteria that cannot be manipulated. Then we will get this problem solved and the people who are suffering today, who cannot get into court because of false claims—hundreds of thousands of them by people who do not have asbestos-related illness—the people who are injured will get compensated.

I thank Senator CORNYN for, first, his courage to offer a substitute. He is on the Judiciary Committee. We have a great chairman. He has done a lot of hard work on this. He has brought a bipartisan bill to the Senate. The bill will fail. It takes a great deal of courage on Senator CORNYN's part to offer a commonsense alternative to this. It is my hope that the many Members in this Senate will look at the trust fund with the medical criteria as set out today, and reject it as it is written. Either modify this bill or take the Cornyn substitute and put it in its stead.

This is an issue we will spend a lot of time on. I know people are considering points of order against the legislation. In fairness to the Senate and also the public, if that is going to happen, they ought to do it so we do not continue to spend time. Part of the process around here is to make things not happen so you can have a political advantage. If people are going to offer a point of order, they ought to offer it. Let's go on to the next thing on the agenda for the American people. If they are not going to offer it, let's have a real debate, file cloture, get a vote on this bill and move on.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAHAM). 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. Without objection, it is so ordered.

POSTAL ACCOUNTABILITY AND ENHANCEMENT ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 164, S. 662.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 662) to reform the postal laws of the United States.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Homeland Security and Governmental Affairs, with an amendment.

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 662

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 ''Postal Accountability and Enhancement Act''.

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

[Sec. 1. Short title; table of contents.
[TITLE I—DEFINITIONS; POSTAL SERVICES
[Sec. 101. Definitions.
[Sec. 102. Postal services.
[TITLE II—MODERN RATE REGULATION
[Sec. 201. Provisions relating to market-dominant products.
[Sec. 202. Provisions relating to competitive products.
[Sec. 203. Provisions relating to experimental and new products.
[Sec. 204. Reporting requirements and related provisions.
[Sec. 205. Complaints; appellate review and enforcement.
[Sec. 206. Clerical amendment.
[TITLE III—MODERN SERVICE STANDARDS
[Sec. 301. Establishment of modern service standards.
[Sec. 302. Postal service plan.
[TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION
[Sec. 401. Postal Service Competitive Products Fund.
[Sec. 402. Assumed Federal income tax on competitive products income.
[Sec. 403. Unfair competition prohibited.
[Sec. 404. Suits by and against the Postal Service.
[Sec. 405. International postal arrangements.
[TITLE V—GENERAL PROVISIONS
[Sec. 501. Qualification and term requirements for Governors.
[Sec. 502. Obligations.
[Sec. 503. Private carriage of letters.
[Sec. 504. Rulemaking authority.
[Sec. 505. Noninterference with collective bargaining agreements.
[Sec. 506. Bonus authority.
[TITLE VI—ENHANCED REGULATORY COMMISSION
[Sec. 601. Reorganization and modification of certain provisions relating to the Postal Regulatory Commission.
]Sec. 602. Authority for Postal Regulatory Commission to issue subpoenas.
[Sec. 603. Appropriations for the Postal Regulatory Commission.
[Sec. 604. Redesignation of the Postal Rate Commission.
[Sec. 605. Financial transparency.
[TITLE VII—EVALUATIONS
[Sec. 701. Assessments of ratemaking, classification, and other provisions.
[Sec. 702. Report on universal postal service and the postal monopoly.
[Sec. 703. Study on equal application of laws to competitive products.
[Sec. 704. Report on postal workplace safety and workplace-related injuries.
[Sec. 705. Study on recycled paper.
[TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING
[Sec. 801. Short title.
[Sec. 802. Civil Service Retirement System.
[Sec. 803. Health insurance.
[Sec. 804. Repeal of disposition of savings provision.
[Sec. 805. Effective dates.
[TITLE IX—COMPENSATION FOR WORK INJURIES
[Sec. 901. Temporary disability; continuation of pay.

[Sec. 902. Disability retirement for postal employees.

[TITLE X—MISCELLANEOUS

[Sec. 1001. Employment of postal police officers.
[Sec. 1002. Expanded contracting authority.
[Sec. 1003. Report on the United States Postal Inspection Service and the Office of the Inspector General of the United States Postal Service.
[Sec. 1004. Sense of Congress regarding Postal Service purchasing reform.

[TITLE I—DEFINITIONS; POSTAL SERVICES

[SEC. 101. DEFINITIONS.

[Section 102 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following:

[''(5) 'postal service' refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other functions ancillary thereto;

[''(6) 'product' means a postal service with a distinct cost or market characteristic for which a rate or rates are applied;

[''(7) 'rates', as used with respect to products, includes fees for postal services;

[''(8) 'market-dominant product' or 'product in the market-dominant category of mail' means a product subject to subchapter I of chapter 36; and

[''(9) 'competitive product' or 'product in the competitive category of mail' means a product subject to subchapter II of chapter 36; and

[''(10) 'year', as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.''.

[SEC. 102. POSTAL SERVICES.

[(a) IN GENERAL.—Section 404 of title 39, United States Code, is amended—

[(1) in subsection (a), by striking paragraph (6) and by redesignating paragraphs (7) through (9) as paragraphs (6) through (8), respectively; and

[(2) by adding at the end the following:

[''(c) Except as provided in section 411, nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services.''.

[(b) CONFORMING AMENDMENTS.—(1) Section 1402(b)(1)(B)(ii) of the Victims of Crime Act of 1984 (98 Stat. 2170; 42 U.S.C. 10601(b)(1)(B)(ii)) is amended by striking ''404(a)(8)'' and inserting ''404(a)(7)''.

[(2) Section 2003(b)(1) of title 39, United States Code, is amended by striking ''and nonpostal''.

[TITLE II—MODERN RATE REGULATION

[SEC. 201. PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS.

[(a) IN GENERAL.—Chapter 36 of title 39, United States Code, is amended by striking sections 3621 and 3622 and inserting the following:

["§ 3621. Applicability; definitions

[''(a) APPLICABILITY.—This subchapter shall apply with respect to—

[''(1) first-class mail letters and sealed parcels;

[''(2) first-class mail cards;

[''(3) periodicals;

[''(4) standard mail;

[''(5) single-piece parcel post;

[''(6) media mail;

[''(7) bound printed matter;

[''(8) library mail;

[''(9) special services; and

[''(10) single-piece international mail,

[subject to any changes the Postal Regulatory Commission may make under section 3642.

[''(b) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

["§ 3622. Modern rate regulation

[''(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

[''(b) OBJECTIVES.—Such system shall be designed to achieve the following objectives:

[''(1) To reduce the administrative burden and increase the transparency of the ratemaking process while affording reasonable opportunities for interested parties to participate in that process.

[''(2) To create predictability and stability in rates.

[''(3) To maximize incentives to reduce costs and increase efficiency.

[''(4) To enhance mail security and deter terrorism by promoting secure, sender-identified mail.

[''(5) To allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent mail and encourage increased mail volume during nonpeak periods.

[''(6) To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.

[''(7) To allocate the total institutional costs of the Postal Service equitably between market-dominant and competitive products.

[''(c) FACTORS.—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

[''(1) the establishment and maintenance of a fair and equitable schedule for rates and classification system;

[''(2) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;

[''(3) the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail service plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

[''(4) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

[''(5) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

[''(6) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

[''(7) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

[''(8) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

[''(9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

[''(10) the desirability of special classifications from the point of view of both the user and of the Postal Service;

[''(11) the educational, cultural, scientific, and informational value to the recipient of mail matter;

[''(12) the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable, universal postal service; and

[''(13) the policies of this title as well as such other factors as the Commission determines appropriate.

[''(d) REQUIREMENTS.—

[''(1) IN GENERAL.—The system for regulating rates and classes for market-dominant products shall—

[''(A) require the Postal Regulatory Commission to set annual limitations on the percentage changes in rates based on the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation over the 12-month period preceding the date the Postal Service proposes to increase rates;

[''(B) establish a schedule whereby rates, when necessary and appropriate, would change at regular intervals by predictable amounts;

[''(C) not later than 45 days before the implementation of any adjustment in rates under this section—

[''(i) require the Postal Service to provide public notice of the adjustment;

[''(ii) provide an opportunity for review by the Postal Regulatory Commission;

[''(iii) provide for the Postal Regulatory Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under subparagraph (A); and

[''(iv) require the Postal Service to respond to the notice provided under clause (iii) and describe the actions to be taken to comply with the limitation under subparagraph (A); and

[''(D) notwithstanding any limitation set under subparagraphs (A) and (C), establish procedures whereby rates may be adjusted on an expedited basis due to unexpected and extraordinary circumstances.

[''(2) LIMITATIONS.—

[''(A) CLASSES OF MAIL.—The annual limitations under paragraph (1)(A) shall apply to a class of mail, as defined in the Domestic Mail Classification Schedule as in effect on the date of enactment of the Postal Accountability and Enhancement Act.

[''(B) ROUNDING OF RATES AND FEES.—Nothing in this subsection shall preclude the Postal Service from rounding rates and fees to the nearest whole integer, if the effect of such rounding does not cause the overall rate increase for any class to exceed the Consumer Price Index for All Urban Consumers.

[''(e) WORKSHARE DISCOUNTS.—

[''(1) DEFINITION.—In this subsection, the term 'workshare discount' refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

[''(2) REGULATIONS.—As part of the regulations established under subsection (a), the Postal Regulatory Commission shall establish rules for workshare discounts that ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless—

[''(A) the discount is—

[''(i) associated with a new postal service, a change to an existing postal service, or with a new workshare initiative related to an existing postal service; and

[''(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service and the portion of the discount in excess of the cost that the

Postal Service avoids as a result of the workshare activity will be phased out over a limited period of time;

[''(B) a reduction in the discount would—

[''(i) lead to a loss of volume in the affected category or subclass of mail and reduce the aggregate contribution to the institutional costs of the Postal Service from the category or subclass subject to the discount below what it otherwise would have been if the discount had not been reduced to costs avoided;

[''(ii) result in a further increase in the rates paid by mailers not able to take advantage of the discount; or

[''(iii) impede the efficient operation of the Postal Service;

[''(C) the amount of the discount above costs avoided—

[''(i) is necessary to mitigate rate shock; and

[''(ii) will be phased out over time; or

[''(D) the discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, scientific, or informational value.

[''(3) REPORT.—Whenever the Postal Service establishes or maintains a workshare discount, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report that—

[''(A) explains the Postal Service's reasons for establishing or maintaining the rate;

[''(B) sets forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate; and

[''(C) certifies that the discount will not adversely affect rates or services provided to users of postal services who do not take advantage of the discount rate.

[''(f) TRANSITION RULE.—Until regulations under this section first take effect, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of enactment of this section.''.

[(b) REPEALED SECTIONS.—Sections 3623, 3624, 3625, and 3628 of title 39, United States Code, are repealed.

[(c) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect after the amendment made by section 601, but before the amendment made by section 202) is amended by striking the heading for subchapter II and inserting the following:

[''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS''.

[SEC. 202. PROVISIONS RELATING TO COMPETITIVE PRODUCTS.

[Chapter 36 of title 39, United States Code, is amended by inserting after section 3629 the following:

[''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

[''§ 3631. Applicability; definitions and updates

[''(a) APPLICABILITY.—This subchapter shall apply with respect to—

[''(1) priority mail;

[''(2) expedited mail;

[''(3) bulk parcel post;

[''(4) bulk international mail; and

[''(5) mailgrams;

[subject to subsection (d) and any changes the Postal Regulatory Commission may make under section 3642.

[''(b) DEFINITION.—For purposes of this subchapter, the term 'costs attributable', as used with respect to a product, means the direct and indirect postal costs attributable to such product.

[''(c) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

[''(d) LIMITATION.—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply with respect to any product then currently in the market-dominant category of mail.

[''§ 3632. Action of the Governors

[''(a) AUTHORITY TO ESTABLISH RATES AND CLASSES.—The Governors, with the written concurrence of a majority of all of the Governors then holding office, shall establish rates and classes for products in the competitive category of mail in accordance with the requirements of this subchapter and regulations promulgated under section 3633.

[''(b) PROCEDURES.—

[''(1) IN GENERAL.—Rates and classes shall be established in writing, complete with a statement of explanation and justification, and the date as of which each such rate or class takes effect.

[''(2) PUBLIC NOTICE; REVIEW; AND COMPLIANCE.—Not later than 30 days before the date of implementation of any adjustment in rates under this section—

[''(A) the Governors shall provide public notice of the adjustment and an opportunity for review by the Postal Regulatory Commission;

[''(B) the Postal Regulatory Commission shall notify the Governors of any noncompliance of the adjustment with section 3633; and

[''(C) the Governors shall respond to the notice provided under subparagraph (B) and describe the actions to be taken to comply with section 3633.

[''(c) TRANSITION RULE.—Until regulations under section 3633 first take effect, rates and classes for competitive products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were as last in effect before the date of enactment of this section.

[''§ 3633. Provisions applicable to rates for competitive products

[''(a) IN GENERAL.—The Postal Regulatory Commission shall, within 180 days after the date of enactment of this section, promulgate (and may from time to time thereafter revise) regulations to—

[''(1) prohibit the subsidization of competitive products by market-dominant products;

[''(2) ensure that each competitive product covers its costs attributable; and

[''(3) ensure that all competitive products collectively cover their share of the institutional costs of the Postal Service.

[''(b) REVIEW OF MINIMUM CONTRIBUTION.—Five years after the date of enactment of this section, and every 5 years thereafter, the Postal Regulatory Commission shall conduct a review to determine whether the institutional costs contribution requirement under subsection (a)(3) should be retained in its current form, modified, or eliminated. In making its determination, the Commission shall consider all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products.''.

[SEC. 203. PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS.

[Subchapter III of chapter 36 of title 39, United States Code, is amended to read as follows:

[''SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

[''§ 3641. Market tests of experimental products

[''(a) AUTHORITY.—

[''(1) IN GENERAL.—The Postal Service may conduct market tests of experimental products in accordance with this section.

[''(2) PROVISIONS WAIVED.—A product shall not, while it is being tested under this section, be subject to the requirements of sections 3622, 3633, or 3642, or regulations promulgated under those sections.

[''(b) CONDITIONS.—A product may not be tested under this section unless it satisfies each of the following:

[''(1) SIGNIFICANTLY DIFFERENT PRODUCT.—The product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test.

[''(2) MARKET DISRUPTION.—The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns (as defined under subsection (h)).

[''(3) CORRECT CATEGORIZATION.—The Postal Service identifies the product, for the purpose of a test under this section, as either market-dominant or competitive, consistent with the criteria under section 3642(b)(1). Costs and revenues attributable to a product identified as competitive shall be included in any determination under section 3633(3)(relating to provisions applicable to competitive products collectively). Any test that solely affects products currently classified as competitive, or which provides services ancillary to only competitive products, shall be presumed to be in the competitive product category without regard to whether a similar ancillary product exists for market-dominant products.

[''(c) NOTICE.—

[''(1) IN GENERAL.—At least 30 days before initiating a market test under this section, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register a notice—

[''(A) setting out the basis for the Postal Service's determination that the market test is covered by this section; and

[''(B) describing the nature and scope of the market test.

[''(2) SAFEGUARDS.—For a competitive experimental product, the provisions of section 504(g) shall be available with respect to any information required to be filed under paragraph (1) to the same extent and in the same manner as in the case of any matter described in section 504(g)(1). Nothing in paragraph (1) shall be considered to permit or require the publication of any information as to which confidential treatment is accorded under the preceding sentence (subject to the same exception as set forth in section 504(g)(3)).

[''(d) DURATION.—

[''(1) IN GENERAL.—A market test of a product under this section may be conducted over a period of not to exceed 24 months.

[''(2) EXTENSION AUTHORITY.—If necessary in order to determine the feasibility or desirability of a product being tested under this section, the Postal Regulatory Commission may, upon written application of the Postal Service (filed not later than 60 days before the date as of which the testing of such product would otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.

[''(e) DOLLAR-AMOUNT LIMITATION.—

[''(1) IN GENERAL.—A product may only be tested under this section if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $10,000,000 in any year, subject to paragraph (2) and subsection (g).

[''(2) EXEMPTION AUTHORITY.—The Postal Regulatory Commission may, upon written application of the Postal Service, exempt the market test from the limit in paragraph (1)

if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $50,000,000 in any year, subject to subsection (g). In reviewing an application under this paragraph, the Postal Regulatory Commission shall approve such application if it determines that—

[''(A) the product is likely to benefit the public and meet an expected demand;

[''(B) the product is likely to contribute to the financial stability of the Postal Service; and

[''(C) the product is not likely to result in unfair or otherwise inappropriate competition.

[''(f) CANCELLATION.—If the Postal Regulatory Commission at any time determines that a market test under this section fails to meet 1 or more of the requirements of this section, it may order the cancellation of the test involved or take such other action as it considers appropriate. A determination under this subsection shall be made in accordance with such procedures as the Commission shall by regulation prescribe.

[''(g) ADJUSTMENT FOR INFLATION.—For purposes of each year following the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a), each dollar amount contained in this section shall be adjusted by the change in the Consumer Price Index for such year (as determined under regulations of the Commission).

[''(h) DEFINITION OF A SMALL BUSINESS CONCERN.—The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns shall, for purposes of this section, be established by the Postal Regulatory Commission in conformance with the requirements of section 3 of the Small Business Act.

[''(i) EFFECTIVE DATE.—Market tests under this subchapter may be conducted in any year beginning with the first year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a).

[''§ 3642. New products and transfers of products between the market-dominant and competitive categories of mail

[''(a) IN GENERAL.—Upon request of the Postal Service or users of the mails, or upon its own initiative, the Postal Regulatory Commission may change the list of market-dominant products under section 3621 and the list of competitive products under section 3631 by adding new products to the lists, removing products from the lists, or transferring products between the lists.

[''(b) CRITERIA.—All determinations by the Postal Regulatory Commission under subsection (a) shall be made in accordance with the following criteria:

[''(1) The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing substantial business to other firms offering similar products. The competitive category of products shall consist of all other products.

[''(2) EXCLUSION OF PRODUCTS COVERED BY POSTAL MONOPOLY.—A product covered by the postal monopoly shall not be subject to transfer under this section from the market-dominant category of mail. For purposes of the preceding sentence, the term 'product covered by the postal monopoly' means any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(e)(1).

[''(3) ADDITIONAL CONSIDERATIONS.—In making any decision under this section, due regard shall be given to—

[''(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

[''(B) the views of those who use the product involved on the appropriateness of the proposed action; and

[''(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

[''(c) TRANSFERS OF SUBCLASSES AND OTHER SUBORDINATE UNITS ALLOWABLE.—Nothing in this title shall be considered to prevent transfers under this section from being made by reason of the fact that they would involve only some (but not all) of the subclasses or other subordinate units of the class of mail or type of postal service involved (without regard to satisfaction of minimum quantity requirements standing alone).

[''(d) NOTIFICATION AND PUBLICATION REQUIREMENTS.—

[''(1) NOTIFICATION REQUIREMENT.—The Postal Service shall, whenever it requests to add a product or transfer a product to a different category, file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for its determination that the product satisfies the criteria under subsection (b) and, in the case of a request to add a product or transfer a product to the competitive category of mail, that the product meets the regulations promulgated by the Postal Regulatory Commission under section 3633. [The provisions of section 504(g) shall be available with respect to any information required to be filed.

[''(2) PUBLICATION REQUIREMENT.—The Postal Regulatory Commission shall, whenever it changes the list of products in the market-dominant or competitive category of mail, prescribe new lists of products. The revised lists shall indicate how and when any previous lists (including the lists under sections 3621 and 3631) are superseded, and shall be published in the Federal Register.

[''(e) PROHIBITION.—Except as provided in section 3641, no product that involves the physical delivery of letters, printed matter, or packages may be offered by the Postal Service unless it has been assigned to the market-dominant or competitive category of mail (as appropriate) either—

[''(1) under this subchapter; or

[''(2) by or under any other provision of law.''.

[SEC. 204. REPORTING REQUIREMENTS AND RELATED PROVISIONS.

[(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by subsection (b)) is amended—

[(1) by striking the heading for subchapter IV and inserting the following:

[''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW''; and

[(2) by striking the heading for subchapter V and inserting the following:

[''SUBCHAPTER VI—GENERAL''.

[(b) REPORTS AND COMPLIANCE.—Chapter 36 of title 39, United States Code, is amended by inserting after subchapter III the following:

[''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

[''§ 3651. Annual reports by the Commission

[''(a) IN GENERAL.—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title, including the extent to which regulations are achieving the objectives under sections 3622, 3633, and 3691.

[''(b) INFORMATION FROM POSTAL SERVICE.—The Postal Service shall provide the Postal Regulatory Commission with such information as may, in the judgment of the Commission, be necessary in order for the Commission to prepare its reports under this section.

[''§ 3652. Annual reports to the Commission

[''(a) COSTS, REVENUES, RATES, AND SERVICE.—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex to the report as the Commission may require under subsection (e))—

[''(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

[''(2) which shall, for each market-dominant product provided in such year, provide—

[''(A) product information, including mail volumes; and

[''(B) measures of the service afforded by the Postal Service in connection with such product, including—

[''(i) the level of service (described in terms of speed of delivery and reliability) provided; and

[''(ii) the degree of customer satisfaction with the service provided.

[Before submitting a report under this subsection (including any annex to the report and the information required under subsection (b)), the Postal Service shall have the information contained in such report (and annex) audited by the Inspector General. The results of any such audit shall be submitted along with the report to which it pertains.

[''(b) INFORMATION RELATING TO WORKSHARE DISCOUNTS.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

[''(1) The per-item cost avoided by the Postal Service by virtue of such discount.

[''(2) The percentage of such per-item cost avoided that the per-item workshare discount represents.

[''(3) The per-item contribution made to institutional costs.

[''(c) SERVICE AGREEMENTS AND MARKET TESTS.—In carrying out subsections (a) and (b) with respect to service agreements and experimental products offered through market tests under section 3641 in a year, the Postal Service—

[''(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

[''(2) shall report such data as the Postal Regulatory Commission requires.

[''(d) SUPPORTING MATTER.—The Postal Regulatory Commission shall have access, in accordance with such regulations as the Commission shall prescribe, to the working papers and any other supporting matter of the Postal Service and the Inspector General in connection with any information submitted under this section.

[''(e) CONTENT AND FORM OF REPORTS.—

[''(1) IN GENERAL.—The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating to the report) to be provided by the Postal Service under this section. In carrying out this subsection, the Commission shall give due consideration to—

[''(A) providing the public with timely, adequate information to assess the lawfulness of rates charged;

[''(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and

[''(C) protecting the confidentiality of commercially sensitive information.

[''(2) REVISED REQUIREMENTS.—The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this subsection whenever it shall appear that—

[''(A) the attribution of costs or revenues to products has become significantly inaccurate or can be significantly improved;

[''(B) the quality of service data has become significantly inaccurate or can be significantly improved; or

[''(C) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

[''(f) CONFIDENTIAL INFORMATION.—

[''(1) IN GENERAL.—If the Postal Service determines that any document or portion of a document, or other matter, which it provides to the Postal Regulatory Commission in a nonpublic annex under this section or under subsection (d) contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefor.

[''(2) TREATMENT.—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

[''(g) OTHER REPORTS.—The Postal Service shall submit to the Postal Regulatory Commission, together with any other submission that the Postal Service is required to make under this section in a year, copies of its then most recent—

[''(1) comprehensive statement under section 2401(e);

[''(2) strategic plan under section 2802;

[''(3) performance plan under section 2803; and

[''(4) program performance reports under section 2804.

[''§ 3653. Annual determination of compliance

[''(a) OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3652 for any year, the Postal Regulatory Commission shall promptly provide an opportunity for comment on such reports by users of the mails, affected parties, and an officer of the Commission who shall be required to represent the interests of the general public.

[''(b) DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3652 with respect to a year, the Postal Regulatory Commission shall make a written determination as to—

[''(1) whether any rates or fees in effect during such year (for products individually or collectively) were not in compliance with applicable provisions of this chapter (or regulations promulgated thereunder); or

[''(2) whether any service standards in effect during such year were not met.

If, with respect to a year, no instance of noncompliance is found under this subsection to have occurred in such year, the written determination shall be to that effect.

[''(c) IF ANY NONCOMPLIANCE IS FOUND.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take any appropriate remedial action authorized by section 3662(c).

[''(d) REBUTTABLE PRESUMPTION.—A timely written determination described in the last sentence of subsection (b) shall, for purposes of any proceeding under section 3662, create a rebuttable presumption of compliance by the Postal Service (with regard to the matters described under paragraphs (1) and (2) of subsection (b)) during the year to which such determination relates.''.

[SEC. 205. COMPLAINTS; APPELLATE REVIEW AND ENFORCEMENT.

[Chapter 36 of title 39, United States Code, is amended by striking sections 3662 and 3663 and inserting the following:

[''§ 3662. Rate and service complaints

[''(a) IN GENERAL.—Any person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of chapter 1, 4, or 6, or this chapter (or regulations promulgated under any of those chapters) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

[''(b) PROMPT RESPONSE REQUIRED.—

[''(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a), either—

[''(A) begin proceedings on such complaint; [or

[''(B) issue an order dismissing the complaint (together with a statement of the reasons therefor).

[''(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

[''(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds the complaint to be justified, it shall order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance including ordering unlawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, and requiring the Postal Service to make up for revenue shortfalls in competitive products.

[''(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid out of the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

[''§ 3663. Appellate review

[''A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

[''§ 3664. Enforcement of orders

[''The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain the Postal Service from violating, any order issued by the Postal Regulatory Commission.''.

[SEC. 206. CLERICAL AMENDMENT.

[Chapter 36 of title 39, United States Code, is amended by striking the heading and analysis for such chapter and inserting the following:

[''CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

[''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS

[''Sec.
[''3621. Applicability; definitions.
[''3622. Modern rate regulation.
[''[3623. Repealed.]
[''[3624. Repealed.]
[''[3625. Repealed.]
[''3626. Reduced Rates.
[''3627. Adjusting free rates.
[''[3628. Repealed.]
[''3629. Reduced rates for voter registration purposes.

[''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

[''3631. Applicability; definitions and updates.
[''3632. Action of the Governors.
[''3633. Provisions applicable to rates for competitive products.
[''3634. Assumed Federal income tax on competitive products.

[''SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

[''3641. Market tests of experimental products.
[''3642. New products and transfers of products between the market-dominant and competitive categories of mail.

[''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

[''3651. Annual reports by the Commission.
[''3652. Annual reports to the Commission.
[''3653. Annual determination of compliance.

[''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW

[''3661. Postal Services.
[''3662. Rate and service complaints.
[''3663. Appellate review.
[''3664. Enforcement of orders.

[''SUBCHAPTER VI—GENERAL

[''3681. Reimbursement.
[''3682. Size and weight limits.
[''3683. Uniform rates for books; films, other materials.
[''3684. Limitations.
[''3685. Filing of information relating to periodical publications.
[''3686. Bonus authority.

[''SUBCHAPTER VII—MODERN SERVICE STANDARDS

[''3691. Establishment of modern service standards.''.

[TITLE III—MODERN SERVICE STANDARDS

[SEC. 301. ESTABLISHMENT OF MODERN SERVICE STANDARDS.

[Chapter 36 of title 39, United States Code, as amended by this Act, is further amended by adding at the end the following:

[''SUBCHAPTER VII—MODERN SERVICE STANDARDS

[''§ 3691. Establishment of modern service standards

[''(a) AUTHORITY GENERALLY.—Not later than 12 months after the date of enactment of this section, the Postal Service shall, in consultation with the Postal Regulatory Commission, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with the Postal Service's universal service obligation as defined in sections 101 (a) and (b) and 403.

[''(b) OBJECTIVES.—Such standards shall be designed to achieve the following objectives:

[''(1) To enhance the value of postal services to both senders and recipients.

[''(2) To preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.

[''(3) To reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

[''(4) To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.

[''(c) FACTORS.—In establishing or revising such standards, the Postal Service shall take into account—

[''(1) the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;

[''(2) the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail;

[''(3) the needs of Postal Service customers, including those with physical impairments;

[''(4) mail volume and revenues projected for future years;

[''(5) the projected growth in the number of addresses the Postal Service will be required to serve in future years;

[''(6) the current and projected future cost of serving Postal Service customers;

[''(7) the effect of changes in technology, demographics, and population distribution on the efficient and reliable operation of the postal delivery system; and

[''(8) the policies of this title and such other factors as the Commission determines appropriate.

[''(d) REVIEW.—The regulations promulgated pursuant to this section (and any revisions thereto) shall be subject to review upon complaint under sections 3662 and 3663.

[SEC. 302. POSTAL SERVICE PLAN.

[(a) IN GENERAL.—Within 6 months after the establishment of the service standards under section 3691 of title 39, United States Code, as added by this Act, the Postal Service shall, in consultation with the Postal Regulatory Commission, develop and submit to Congress a plan for meeting those standards.

[(b) CONTENTS.—The plan under this section shall—

[(1) establish performance goals;

[(2) describe any changes to the Postal Service's processing, transportation, delivery, and retail networks necessary to allow the Postal Service to meet the performance goals;

[(3) describe any changes to planning and performance management documents previously submitted to Congress to reflect new performance goals; and

[(4) contain the matters relating to postal facilities provided under subsection (c).

[(c) POSTAL FACILITIES.—

[(1) FINDINGS.—Congress finds that—

[(A) the Postal Service has more than 400 logistics facilities, separate from its post office network;

[(B) as noted by the President's Commission on the United States Postal Service, the Postal Service has more facilities than it needs and the streamlining of this distribution network can pave the way for the potential consolidation of sorting facilities and the elimination of excess costs;

[(C) the Postal Service has always revised its distribution network to meet changing conditions and is best suited to address its operational needs; and

[(D) Congress strongly encourages the Postal Service to—

[(i) expeditiously move forward in its streamlining efforts; and

[(ii) keep unions, management associations, and local elected officials informed as an essential part of this effort and abide by any procedural requirements contained in the national bargaining agreements.

[(2) IN GENERAL.—The Postal Service plan shall include a description of—

[(A) the long-term vision of the Postal Service for rationalizing its infrastructure and workforce; and

[(B) how the Postal Service intends to implement that vision.

[(3) CONTENT OF FACILITIES PLAN.—The plan under this subsection shall include—

[(A) a strategy for how the Postal Service intends to rationalize the postal facilities network and remove excess processing capacity and space from the network, including estimated timeframes, criteria, and processes to be used for making changes to the facilities network, and the process for engaging policy makers and the public in related decisions;

[(B) a discussion of what impact any facility changes may have on the postal workforce and whether the Postal Service has sufficient flexibility to make needed workforce changes; and

[(C) an identification of anticipated costs, cost savings, and other benefits associated with the infrastructure rationalization alternatives discussed in the plan.

[(4) ANNUAL REPORTS.—

[(A) IN GENERAL.—Not later than 90 days after the end of each fiscal year, the Postal Service shall prepare and submit a report to Congress on how postal decisions have impacted or will impact rationalization plans.

[(B) CONTENTS.—Each report under this paragraph shall include—

[(i) an account of actions taken during the preceding fiscal year to improve the efficiency and effectiveness of its processing, transportation, and distribution networks while preserving the timely delivery of postal services, including overall estimated costs and cost savings;

[(ii) an account of actions taken to identify any excess capacity within its processing, transportation, and distribution networks and implement savings through realignment or consolidation of facilities including overall estimated costs and cost savings;

[(iii) an estimate of how postal decisions related to mail changes, security, automation initiatives, worksharing, information technology systems, excess capacity, consolidating and closing facilities, and other areas will impact rationalization plans;

[(iv) identification of any statutory or regulatory obstacles that prevented or will prevent or hinder the Postal Service from taking action to realign or consolidate facilities; and

[(v) such additional topics and recommendations as the Postal Service considers appropriate.

[(d) ALTERNATE RETAIL OPTIONS.—The Postal Service plan shall include plans to expand and market retail access to postal services, in addition to post offices, including—

[(1) vending machines;

[(2) the Internet;

[(3) Postal Service employees on delivery routes;

[(4) retail facilities in which overhead costs are shared with private businesses and other government agencies; or

[(5) any other nonpost office access channel providing market retail access to postal services.

[(e) REEMPLOYMENT ASSISTANCE AND RETIREMENT BENEFITS.—The Postal Service plan shall include—

[(1) a plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation of any of its functions or the closing and consolidation of any of its facilities; and

[(2) a plan, developed in consultation with the Office of Personnel Management, to offer early retirement benefits.

[(f) INSPECTOR GENERAL REPORT.—

[(1) IN GENERAL.—Before submitting the plan under subsection (a) and each annual report under subsection (c) to Congress, the Postal Service shall submit the plan and each annual report to the Inspector General of the United States Postal Service in a timely manner to carry out this subsection.

[(2) REPORT.—The Inspector General shall prepare a report describing the extent to which the Postal Service plan and each annual report under subsection (c)—

[(A) are consistent with the continuing obligations of the Postal Service under title 39, United States Code;

[(B) provide for the Postal Service to meet the service standards established under section 3691 of title 39, United States Code; and

[(C) allow progress toward improving overall efficiency and effectiveness consistent with the need to maintain universal postal service at affordable rates.

[(g) CONTINUED AUTHORITY.—Nothing in this section shall be construed to prohibit the Postal Service from implementing any change to its processing, transportation, delivery, and retail networks under any authority granted to the Postal Service for those purposes.

[TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

[SEC. 401. POSTAL SERVICE COMPETITIVE PRODUCTS FUND.

[(a) PROVISIONS RELATING TO POSTAL SERVICE COMPETITIVE PRODUCTS FUND AND RELATED MATTERS.—

[(1) IN GENERAL.—Chapter 20 of title 39, United States Code, is amended by adding at the end the following:

[''§ 2011. Provisions relating to competitive products

[''(a)(1) In this subsection, the term 'costs attributable' has the meaning given such term by section 3631.

[''(2) There is established in the Treasury of the United States a revolving fund, to be called the Postal Service Competitive Products Fund, which shall be available to the Postal Service without fiscal year limitation for the payment of—

[''(A) costs attributable to competitive products; and

[''(B) all other costs incurred by the Postal Service, to the extent allocable to competitive products.

[''(b) There shall be deposited in the Competitive Products Fund, subject to withdrawal by the Postal Service—

[''(1) revenues from competitive products;

[''(2) amounts received from obligations issued by Postal Service under subsection (e);

[''(3) interest and dividends earned on investments of the Competitive Products Fund; and

[''(4) any other receipts of the Postal Service (including from the sale of assets), to the extent allocable to competitive products.

[''(c) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, the Postal Service may request the investment of such amounts as the Postal Service determines advisable by the Secretary of the Treasury in obligations of, or obligations guaranteed by, the Government of the United States, and, with the approval of the Secretary, in such other obligations or securities as the Postal Service determines appropriate.

[''(d) With the approval of the Secretary of the Treasury, the Postal Service may deposit moneys of the Competitive Products Fund in any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Postal Service and the Secretary may mutually agree.

[''(e)(1)(A) Subject to the limitations specified in section 2005(a), the Postal Service is authorized to borrow money and to issue and sell such obligations as the Postal Service determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund.

[''(B) Subject to paragraph (5), any borrowings by the Postal Service under subparagraph (A) shall be supported and serviced by—

[''(i) the revenues and receipts from competitive products and the assets related to the provision of competitive products (as determined under subsection (h)); or

[''(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e).

[''(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with any trustee under any agreement entered into in connection with the issuance of such obligations with respect to—

[''(A) the establishment of reserve, sinking, and other funds;

[''(B) application and use of revenues and receipts of the Competitive Products Fund;

[''(C) stipulations concerning the subsequent issuance of obligations or the execution of leases or lease purchases relating to properties of the Postal Service; and

[''(D) such other matters as the Postal Service, considers necessary or desirable to enhance the marketability of such obligations.

[''(3) Obligations issued by the Postal Service under this subsection—

[''(A) shall be in such forms and denominations;

[''(B) shall be sold at such times and in such amounts;

[''(C) shall mature at such time or times;

[''(D) shall be sold at such prices;

[''(E) shall bear such rates of interest;

[''(F) may be redeemable before maturity in such manner, at such times, and at such redemption premiums;

[''(G) may be entitled to such relative priorities of claim on the assets of the Postal Service with respect to principal and interest payments; and

[''(H) shall be subject to such other terms and conditions,

[as the Postal Service determines.

[''(4) Obligations issued by the Postal Service under this subsection—

[''(A) shall be negotiable or nonnegotiable and bearer or registered instruments, as specified therein and in any indenture or covenant relating thereto;

[''(B) shall contain a recital that such obligations are issued under this subsection, and such recital shall be conclusive evidence of the regularity of the issuance and sale of such obligations and of their validity;

[''(C) shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the Government of the United States, and the Secretary of the Treasury or any other officer or agency having authority over or control of any such fiduciary, trust, or public funds, may at any time sell any of the obligations of the Postal Service acquired under this section;

[''(D) shall not be exempt either as to principal or interest from any taxation now or hereafter imposed by any State or local taxing authority; and

[''(E) except as provided in section 2006(c), shall not be obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the Government of the United States, and the obligations shall so plainly state.

[''(5)(A) Subject to subparagraph (B), the Postal Service shall make payments of principal, or interest, or both on obligations issued under this subsection from—

[''(i) revenues and receipts from competitive products and assets related to the provision of competitive products (as determined under subsection (h)); or

[''(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available, including the audited statements required by section 2008(e).

[''(B) Based on the audited financial statements for the most recently completed fiscal year, the total assets of the Competitive Products Fund may not be less than the amount determined by multiplying—

[''(i) the quotient resulting from the total revenue of the Competitive Products Fund divided by the total revenue of the Postal Service; and

[''(ii) the total assets of the Postal Service.

[''(f) The receipts and disbursements of the Competitive Products Fund shall be accorded the same budgetary treatment as is accorded to receipts and disbursements of the Postal Service Fund under section 2009a.

[''(g) A judgment (or settlement of a claim) against the Postal Service or the Government of the United States shall be paid out of the Competitive Products Fund to the extent that the judgment or claim arises out of activities of the Postal Service in the provision of competitive products.

[''(h)(1)(A) The Secretary of the Treasury, in consultation with the Postal Service and an independent, certified public accounting firm and other advisors as the Secretary considers appropriate, shall develop recommendations regarding—

[''(i) the accounting practices and principles that should be followed by the Postal Service with the objectives of—

[''(I) identifying and valuing the assets and liabilities of the Postal Service associated with providing competitive products, including the capital and operating costs incurred by the Postal Service in providing such competitive products; and

[''(II) subject to subsection (e)(5), preventing the subsidization of such products by market-dominant products; and

[''(ii) the substantive and procedural rules that should be followed in determining the assumed Federal income tax on competitive products income of the Postal Service for any year (within the meaning of section 3634).

[''(B) Not earlier than 6 months after the date of enactment of this section, and not later than 12 months after such date, the Secretary of the Treasury shall submit the recommendations under subparagraph (A) to the Postal Regulatory Commission.

[''(2)(A) Upon receiving the recommendations of the Secretary of the Treasury under paragraph (1), the Commission shall give interested parties, including the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public, an opportunity to present their views on those recommendations through submission of written data, views, or arguments with or without opportunity for oral presentation, or in such other manner as the Commission considers appropriate.

[''(B)(i) After due consideration of the views and other information received under subparagraph (A), the Commission shall by rule—

[''(I) provide for the establishment and application of the accounting practices and principles which shall be followed by the Postal Service;

[''(II) provide for the establishment and application of the substantive and procedural rules described under paragraph (1)(A)(ii); and

[''(III) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

[''(ii) Final rules under this subparagraph shall be issued not later than 12 months after the date on which recommendations are submitted under paragraph (1) (or by such later date on which the Commission and the Postal Service may agree). The Commission may revise such rules.

[''(C)(i) Reports described under subparagraph (B)(i)(III) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

[''(ii) The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service information under subparagraph (B)(i)(III) whenever it shall appear that—

[''(I) the quality of the information furnished in those reports has become significantly inaccurate or can be significantly improved; or

[''(II) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

[''(D) A copy of each report described under subparagraph (B)(i)(III) shall be submitted by the Postal Service to the Secretary of the Treasury and the Inspector General of the United States Postal Service.

[''(i)(1) The Postal Service shall submit an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund. The report shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses.

[''(2) A copy of the most recent report submitted under paragraph (1) shall be included in the annual report submitted by the Postal Regulatory Commission under section 3652(g).''.

[(2) CLERICAL AMENDMENT.—The table of sections for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:

[''2011. Provisions relating to competitive products.''.

[(b) TECHNICAL AND CONFORMING AMENDMENTS.—

[(1) DEFINITION.—Section 2001 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

[''(2) COMPETITIVE PRODUCTS FUND.—The term 'Competitive Products Fund' means the Postal Service Competitive Products Fund established by section 2011; and''.

[(2) CAPITAL OF THE POSTAL SERVICE.—Section 2002(b) of title 39, United States Code, is amended by striking ''Fund,'' and inserting ''Fund and the balance in the Competitive Products Fund,''.

[(3) POSTAL SERVICE FUND.—

[(A) PURPOSES FOR WHICH AVAILABLE.—Section 2003(a) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available).''.

[(B) DEPOSITS.—Section 2003(b) of title 39, United States Code, is amended by striking ''There'' and inserting ''Except as otherwise provided in section 2011, there''.

[(4) RELATIONSHIP BETWEEN THE TREASURY AND THE POSTAL SERVICE.—Section 2006 of title 39, United States Code, is amended—

[(A) in subsection (a), in the first sentence, by inserting ''or 2011'' after ''section 2005'';

[(B) in subsection (b)—

[(i) in the first sentence, by inserting ''under section 2005'' before ''in such amounts''; and

[(ii) in the second sentence, by inserting ''under section 2005'' before ''in excess of such amount.''; and

[(C) in subsection (c), by inserting ''or 2011(e)(4)(E)'' after ''section 2005(d)(5)''.

[SEC. 402. ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS INCOME.

[Subchapter II of chapter 36 of title 39, United States Code, as amended by section 202, is amended by adding at the end the following:

[''§ 3634. Assumed Federal income tax on competitive products income

[''(a) DEFINITIONS.—For purposes of this section—

[''(1) the term 'assumed Federal income tax on competitive products income' means the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 on the Postal Service's assumed taxable income from competitive products for the year; and

[''(2) the term 'assumed taxable income from competitive products', with respect to a year, refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—

[''(A) the only activities of such corporation were the activities of the Postal Service allocable under section 2011(h) to competitive products; and

[''(B) the only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.

[''(b) COMPUTATION AND TRANSFER REQUIREMENTS.—The Postal Service shall, for each year beginning with the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a)—

[''(1) compute its assumed Federal income tax on competitive products income for such year; and

[''(2) transfer from the Competitive Products Fund to the Postal Service Fund the amount of that assumed tax.

[''(c) DEADLINE FOR TRANSFERS.—Any transfer required to be made under this section for a year shall be due on or before the January 15th next occurring after the close of such year.''.

[SEC. 403. UNFAIR COMPETITION PROHIBITED.

[(a) SPECIFIC LIMITATIONS.—Chapter 4 of title 39, United States Code, is amended by adding after section 404 the following:

[''§ 404a. Specific limitations

[''(a) Except as specifically authorized by law, the Postal Service may not—

[''(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;

[''(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or

[''(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any postal service that uses or is based in whole or in part on such information, without the consent of the person providing that information, unless substantially the same information is obtained (or obtainable) from an independent source or is otherwise obtained (or obtainable).

[''(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

[''(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.''.

[(b) CONFORMING AMENDMENTS.—

[(1) GENERAL POWERS.—Section 401 of title 39, United States Code, is amended by striking ''The'' and inserting ''Subject to the provisions of section 404a, the''.

[(2) SPECIFIC POWERS.—Section 404(a) of title 39, United States Code, is amended by striking ''Without'' and inserting ''Subject to the provisions of section 404a, but otherwise without''.

[(c) CLERICAL AMENDMENT.—The analysis for chapter 4 of title 39, United States Code, is amended by inserting after the item relating to section 404 the following:

[''404a. Specific limitations.''.

[SEC. 404. SUITS BY AND AGAINST THE POSTAL SERVICE.

[(a) IN GENERAL.—Section 409 of title 39, United States Code, is amended by striking subsections (d) and (e) and inserting the following:

[''(d)(1) For purposes of the provisions of law cited in paragraphs (2)(A) and (2)(B), respectively, the Postal Service—

[''(A) shall be considered to be a 'person', as used in the provisions of law involved; and

[''(B) shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service.

[''(2) This subsection applies with respect to—

[''(A) the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946' (15 U.S.C. 1051 and following)); and

[''(B) the provisions of section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair or deceptive acts or practices.

[''(e)(1) To the extent that the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, engages in conduct with respect to any product which is not reserved to the United States under section 1696 of title 18, the Postal Service or other Federal agency (as the case may be)—

[''(A) shall not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof; and

[''(B) shall be considered to be a person (as defined in subsection (a) of the first section of the Clayton Act) for purposes of—

[''(i) the antitrust laws (as defined in such subsection); and

[''(ii) section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

[For purposes of the preceding sentence, any private carriage of mail allowable by virtue of section 601 shall not be considered a service reserved to the United States under section 1696 of title 18.

[''(2) No damages, interest on damages, costs or attorney's fees may be recovered, and no criminal liability may be imposed, under the antitrust laws (as so defined) from any officer or employee of the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, acting in an official capacity.

[''(3) This subsection shall not apply with respect to conduct occurring before the date of enactment of this subsection.

[''(f) To the extent that the Postal Service engages in conduct with respect to the provision of competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.

[''(g)(1) Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with 1 of the nationally recognized model building codes and with other applicable nationally recognized codes. To the extent practicable, model building codes should meet the voluntary consensus criteria established for codes and standards as required in the National Technology Transfer and Advancement Act of 1995 as defined in Office of Management and Budget Circular A1190. For purposes of life safety, the Postal Service shall continue to comply with the most current edition of the Life Safety Code of the National Fire Protection Association (NFPA 101).

[''(2) Each building constructed or altered by the Postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.

[''(3) For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—

[''(A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;

[''(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

[''(C) permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—

[''(i) a copy of such schedule before construction of the building is begun; and

[''(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

[Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding

sentence, nor shall anything in this subsection require the Postal Service or any of its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

[''(4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.

[''(5) In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.

[''(6) For purposes of this subsection, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

[''(h)(1) Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising, in whole or in part, under any of the following:

[''(A) Subsection (d) or (e) of this section.

[''(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

[''(C) Section 3663 (relating to appellate review).

[The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph.

[''(2) In any circumstance not covered by paragraph (1), the Department of Justice shall, under section 411, furnish the Postal Service such legal representation as it may require, except that, with the prior consent of the Attorney General, the Postal Service may, in any such circumstance, employ attorneys by contract or otherwise to conduct litigation brought by or against the Postal Service or its officers or employees in matters affecting the Postal Service.

[''(3)(A) In any action, suit, or proceeding in a court of the United States arising in whole or in part under any of the provisions of law referred to in subparagraph (B) or (C) of paragraph (1), and to which the Commission is not otherwise a party, the Commission shall be permitted to appear as a party on its own motion and as of right.

[''(B) The Department of Justice shall, under such terms and conditions as the Commission and the Attorney General shall consider appropriate, furnish the Commission such legal representation as it may require in connection with any such action, suit, or proceeding, except that, with the prior consent of the Attorney General, the Commission may employ attorneys by contract or otherwise for that purpose.

[''(i) A judgment against the Government of the United States arising out of activities of the Postal Service shall be paid by the Postal Service out of any funds available to the Postal Service, subject to the restriction specified in section 2011(g).''.

[(b) TECHNICAL AMENDMENT.—Section 409(a) of title 39, United States Code, is amended by striking ''Except as provided in section 3628 of this title,'' and inserting ''Except as otherwise provided in this title,''.

[SEC. 405. INTERNATIONAL POSTAL ARRANGEMENTS.

[(a) IN GENERAL.—Section 407 of title 39, United States Code, is amended to read as follows:

[''§ 407. International postal arrangements

[''(a) It is the policy of the United States—

[''(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

[''(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

[''(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services; and

[''(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

[''(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and shall have the power to conclude postal treaties and conventions, except that the Secretary may not conclude any postal treaty or convention if such treaty or convention would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal services, or any other person.

[''(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

[''(A) shall coordinate with other agencies as appropriate, and in particular, should consider the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

[''(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

[''(C) shall maintain continuing liaison with the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives;

[''(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

[''(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

[''(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

[''(c) Before concluding any postal treaty or convention that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

[''(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services as it deems appropriate, except that—

[''(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be binding under international law; and

[''(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

[''(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

[''(2) In exercising the authority under subsection (b) to conclude new postal treaties and conventions related to international postal services and to renegotiate such treaties and conventions, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

[''(3) The provisions of this subsection shall take effect 6 months after the date of enactment of this subsection or such earlier date as the Customs Service may determine in writing.''.

[(b) EFFECTIVE DATE.—Notwithstanding any provision of the amendment made by subsection (a), the authority of the United States Postal Service to establish the rates of postage or other charges on mail matter conveyed between the United States and other countries shall remain available to the Postal Service until—

[(1) with respect to market-dominant products, the date as of which the regulations promulgated under section 3622 of title 39, United States Code (as amended by section 201(a)) take effect; and

[(2) with respect to competitive products, the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

[TITLE V—GENERAL PROVISIONS

[SEC. 501. QUALIFICATION AND TERM REQUIREMENTS FOR GOVERNORS.

[(a) QUALIFICATIONS.—

[(1) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking ''(a)'' and inserting ''(a)(1)'' and by striking

the fourth sentence and inserting the following: ''The Governors shall represent the public interest generally, and shall be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. Experience in the fields of law and accounting shall be considered in making appointments of Governors. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.''.

[(2) APPLICABILITY.—The amendment made by paragraph (1) shall not affect the appointment or tenure of any person serving as a Governor of the United States Postal Service under an appointment made before the date of enactment of this Act however, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment. The requirement set forth in the fourth sentence of section 202(a)(1) of title 39, United States Code (as amended by subsection (a)) shall be met beginning not later than 9 years after the date of enactment of this Act.

[(b) CONSULTATION REQUIREMENT.—Section 202(a) of title 39, United States Code, is amended by adding at the end the following:

[''(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, the President should consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate.''.

[(c) 5-YEAR TERMS.—

[(1) IN GENERAL.—Section 202(b) of title 39, United States code, is amended in the first sentence by striking ''9 years'' and inserting ''5 years''.

[(2) APPLICABILITY.—

[(A) CONTINUATION BY INCUMBENTS.—The amendment made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act and such person may continue to serve the remainder of the applicable term.

[(B) VACANCY BY INCUMBENT BEFORE 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served less than 5 years of that term, the resulting vacancy in office shall be treated as a vacancy in a 5-year term.

[(C) VACANCY BY INCUMBENT AFTER 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served 5 years or more of that term, that term shall be deemed to have been a 5-year term beginning on its commencement date for purposes of determining vacancies in office. Any appointment to the vacant office shall be for a 5-year term beginning at the end of the original 9-year term determined without regard to the deeming under the preceding sentence. Nothing in this subparagraph shall be construed to affect any action or authority of any Governor or the Board of Governors during any portion of a 9-year term deemed to be 5-year term under this subparagraph.

[(d) TERM LIMITATION.—

[(1) IN GENERAL.—Section 202(b) of title 39, United States Code, is amended—

[(A) by inserting ''(1)'' after ''(b)''; and

[(B) by adding at the end the following:

[''(2) No person may serve more than 3 terms as a Governor.''.

[(2) APPLICABILITY.—The amendments made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act with respect to the term which that person is serving on that date. Such person may continue to serve the remainder of the applicable term, after which the amendments made by paragraph (1) shall apply.

[SEC. 502. OBLIGATIONS.

[(a) PURPOSES FOR WHICH OBLIGATIONS MAY BE ISSUED.—The first sentence of section 2005(a)(1) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title, other than any of the purposes for which the corresponding authority is available to the Postal Service under section 2011.''.

[(b) INCREASE RELATING TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS.—Section 2005(a)(1) of title 39, United States Code, is amended by striking the third sentence.

[(c) AMOUNTS WHICH MAY BE PLEDGED.—

[(1) OBLIGATIONS TO WHICH PROVISIONS APPLY.—The first sentence of section 2005(b) of title 39, United States Code, is amended by striking ''such obligations,'' and inserting ''obligations issued by the Postal Service under this section,''.

[(2) ASSETS, REVENUES, AND RECEIPTS TO WHICH PROVISIONS APPLY.—Subsection (b) of section 2005 of title 39, United States Code, is amended by striking ''(b)'' and inserting ''(b)(1)'', and by adding at the end the following:

[''(2) Notwithstanding any other provision of this section—

[''(A) the authority to pledge assets of the Postal Service under this subsection shall be available only to the extent that such assets are not related to the provision of competitive products (as determined under section 2011(h) or, for purposes of any period before accounting practices and principles under section 2011(h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)); and

[''(B) any authority under this subsection relating to the pledging or other use of revenues or receipts of the Postal Service shall be available only to the extent that they are not revenues or receipts of the Competitive Products Fund.''.

[SEC. 503. PRIVATE CARRIAGE OF LETTERS.

[(a) IN GENERAL.—Section 601 of title 39, United States Code, is amended by striking subsection (b) and inserting the following:

[''(b) A letter may also be carried out of the mails when—

[''(1) the amount paid for the private carriage of the letter is at least the amount equal to 6 times the rate then currently charged for the 1st ounce of a single-piece first class letter;

[''(2) the letter weighs at least 12½ ounces; or

[''(3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that permit private carriage by suspension of the operation of this section (as then in effect).

[''(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.''.

[(b) EFFECTIVE DATE.—This section shall take effect on the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

[SEC. 504. RULEMAKING AUTHORITY.

[Paragraph (2) of section 401 of title 39, United States Code, is amended to read as follows:

[''(2) to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title;''.

[SEC. 505. NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.

[(a) LABOR DISPUTES.—Section 1207 of title 39, United States Code, is amended to read as follows:

[''§ 1207. Labor disputes

[''(a) If there is a collective-bargaining agreement in effect, no party to such agreement shall terminate or modify such agreement unless the party desiring such termination or modification serves written notice upon the other party to the agreement of the proposed termination or modification not less than 90 days prior to the expiration date thereof, or not less than 90 days prior to the time it is proposed to make such termination or modification. The party serving such notice shall notify the Federal Mediation and Conciliation Service of the existence of a dispute within 45 days after such notice, if no agreement has been reached by that time.

[''(b) If the parties fail to reach agreement or to adopt a procedure providing for a binding resolution of a dispute by the expiration date of the agreement in effect, or the date of the proposed termination or modification, the Director of the Federal Mediation and Conciliation Service shall within 10 days appoint a mediator of nationwide reputation and professional stature, and who is also a member of the National Academy of Arbitrators. The parties shall cooperate with the mediator in an effort to reach an agreement and shall meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, shall direct.

[''(c)(1) If no agreement is reached within 60 days after the expiration or termination of the agreement or the date on which the agreement became subject to modification under subsection (a) of this section, or if the parties decide upon arbitration but do not agree upon the procedures therefore, an arbitration board shall be established consisting of 3 members, 1 of whom shall be selected by the Postal Service, 1 by the bargaining representative of the employees, and the third by the 2 thus selected. If either of the parties fails to select a member, or if the members chosen by the parties fail to agree on the third person within 5 days after their first meeting, the selection shall be made from a list of names provided by the Director. This list shall consist of not less then 9 names of arbitrators of nationwide reputation and professional nature, who are also members of the National Academy of Arbitrators, and whom the Director has determined are available and willing to serve.

[''(2) The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel or by other representative as they may elect. Decisions of the arbitration board shall be conclusive and binding upon the parties. The arbitration board shall render its decision within 45 days after its appointment.

[''(3) Costs of the arbitration board and mediation shall be shared equally by the Postal Service and the bargaining representative.

[''(d) In the case of a bargaining unit whose recognized collective-bargaining representative does not have an agreement with the Postal Service, if the parties fail to reach the agreement within 90 days after the commencement of collective bargaining, a mediator shall be appointed in accordance with the terms in subsection (b) of this section, unless the parties have previously

agreed to another procedure for a binding resolution of their differences. If the parties fail to reach agreement within 180 days after the commencement of collective bargaining, and if they have not agreed to another procedure for binding resolution, an arbitration board shall be established to provide conclusive and binding arbitration in accordance with the terms of subsection (c) of this section.''.

[(b) NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.—Except as otherwise provided by the amendment made by subsection (a), nothing in this Act shall restrict, expand, or otherwise affect any of the rights, privileges, or benefits of either employees of or labor organizations representing employees of the United States Postal Service under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations within the United States Postal Service, or any collective bargaining agreement.

[(c) FREE MAILING PRIVILEGES CONTINUE UNCHANGED.—Nothing in this Act or any amendment made by this Act shall affect any free mailing privileges accorded under section 3217 or sections 3403 through 3406 of title 39, United States Code.

[SEC. 506. BONUS AUTHORITY.

[Chapter 36 of title 39, United States Code, is amended by inserting after section 3685 the following:

[''§ 3686. Bonus authority

[''(a) IN GENERAL.—The Postal Service may establish 1 or more programs to provide bonuses or other rewards to officers and employees of the Postal Service in senior executive or equivalent positions to achieve the objectives of this chapter.

[''(b) LIMITATION ON TOTAL COMPENSATION.—

[''(1) IN GENERAL.—Under any such program, the Postal Service may award a bonus or other reward in excess of the limitation set forth in the last sentence of section 1003(a), if such program has been approved under paragraph (2). Any such award or bonus may not cause the total compensation of such officer or employee to exceed the total annual compensation payable to the Vice President under section 104 of title 3 as of the end of the calendar year in which the bonus or award is paid.

[''(2) APPROVAL PROCESS.—If the Postal Service wishes to have the authority, under any program described in subsection (a), to award bonuses or other rewards in excess of the limitation set forth in the last sentence of section 1003(a)—

[''(A) the Postal Service shall make an appropriate request to the Board of Governors of the Postal Service in such form and manner as the Board requires; and

[''(B) the Board of Governors shall approve any such request if the Board certifies, for the annual appraisal period involved, that the performance appraisal system for affected officers and employees of the Postal Service (as designed and applied) makes meaningful distinctions based on relative performance.

[''(3) REVOCATION AUTHORITY.—If the Board of Governors of the Postal Service finds that a performance appraisal system previously approved under paragraph (2)(B) does not (as designed and applied) make meaningful distinctions based on relative performance, the Board may revoke or suspend the authority of the Postal Service to continue a program approved under paragraph (2) until such time as appropriate corrective measures have, in the judgment of the Board, been taken.

[''(c) REPORTING REQUIREMENT RELATING TO BONUSES OR OTHER REWARDS.—Included in its comprehensive statement under section 2401(e) for any period shall be—

[''(1) the name of each person receiving a bonus or other reward during such period which would not have been allowable but for the provisions of subsection (b);

[''(2) the amount of the bonus or other reward; and

[''(3) the amount by which the limitation referred to in subsection (b)(1) was exceeded as a result of such bonus or other reward.''.

[TITLE VI—ENHANCED REGULATORY COMMISSION

[SEC. 601. REORGANIZATION AND MODIFICATION OF CERTAIN PROVISIONS RELATING TO THE POSTAL REGULATORY COMMISSION.

[(a) TRANSFER AND REDESIGNATION.—Title 39, United States Code, is amended—

[(1) by inserting after chapter 4 the following:

[''CHAPTER 5—POSTAL REGULATORY COMMISSION

[''Sec.
[''501. Establishment.
[''502. Commissioners.
[''503. Rules; regulations; procedures.
[''504. Administration.
[''505. Officer of the Postal Regulatory Commission representing the general public.

[''§ 501. Establishment

[''The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.

[''§ 502. Commissioners

[''(a) The Postal Regulatory Commission is composed of 5 Commissioners, appointed by the President, by and with the advice and consent of the Senate. The Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration, and may be removed by the President only for cause. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability and Enhancement Act. Not more than 3 of the Commissioners may be adherents of the same political party.

[''(b) No Commissioner shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.

[''(c) A Commissioner may continue to serve after the expiration of his term until his successor has qualified, except that a Commissioner may not so continue to serve for more than 1 year after the date upon which his term otherwise would expire under subsection (f).

[''(d) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

[''(e) The Commissioners shall by majority vote designate a Vice Chairman of the Commission. The Vice Chairman shall act as Chairman of the Commission in the absence of the Chairman.

[''(f) The Commissioners shall serve for terms of 6 years.'';

[(2) by striking, in subchapter I of chapter 36 (as in effect before the amendment made by section 201(c)), the heading for such subchapter I and all that follows through section 3602;

[(3) by redesignating sections 3603 and 3604 as sections 503 and 504, respectively, and transferring such sections to the end of chapter 5 (as inserted by paragraph (1)); and

[(4) by adding after such section 504 the following:

[''§ 505. Officer of the Postal Regulatory Commission representing the general public

[''The Postal Regulatory Commission shall designate an officer of the Postal Regulatory Commission in all public proceedings who shall represent the interests of the general public.''.

[(b) APPLICABILITY.—The amendment made by subsection (a)(1) shall not affect the appointment or tenure of any person serving as a Commissioner on the Postal Regulatory Commission (as so redesignated by section 604) under an appointment made before the date of enactment of this Act or any nomination made before that date, but, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.

[(c) CLERICAL AMENDMENT.—The analysis for part I of title 39, United States Code, is amended by inserting after the item relating to chapter 4 the following:

[''5. Postal Regulatory Commission 501''

[SEC. 602. AUTHORITY FOR POSTAL REGULATORY COMMISSION TO ISSUE SUBPOENAS.

[Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding at the end the following:

[''(f)(1) Any Commissioner of the Postal Regulatory Commission, any administrative law judge appointed by the Commission under section 3105 of title 5, and any employee of the Commission designated by the Commission may administer oaths, examine witnesses, take depositions, and receive evidence.

[''(2) The Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge appointed by the Commission under section 3105 of title 5 may, with respect to any proceeding conducted by the Commission under this title or to obtain information to be used to prepare a report under this title—

[''(A) issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and

[''(B) order the taking of depositions and responses to written interrogatories by a covered person.

[The written concurrence of a majority of the Commissioners then holding office shall, with respect to each subpoena under subparagraph (A), be required in advance of its issuance.

[''(3) In the case of contumacy or failure to obey a subpoena issued under this subsection, upon application by the Commission, the district court of the United States for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

[''(4) For purposes of this subsection, the term 'covered person' means an officer, employee, agent, or contractor of the Postal Service.

[''(g)(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission under a subpoena issued under subsection (f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

[''(2) Except as provided in paragraph (3), no officer or employee of the Commission may, with respect to any information as to which the Commission has been notified under paragraph (1)—

[''(A) use such information for purposes other than the purposes for which it is supplied; or

[''(B) permit anyone who is not an officer or employee of the Commission to have access to any such information.

[''(3)(A) Paragraph (2) shall not prohibit the Commission from publicly disclosing relevant information in furtherance of its duties under this title, provided that the Commission has adopted regulations under section 553 of title 5, that establish a procedure for according appropriate confidentiality to information identified by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service under paragraph (1), the Commission shall balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

[''(B) Paragraph (2) shall not prevent the Commission from requiring production of information in the course of any discovery procedure established in connection with a proceeding under this title. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for information furnished to any party.''.

[SEC. 603. APPROPRIATIONS FOR THE POSTAL REGULATORY COMMISSION.

[(a) AUTHORIZATION OF APPROPRIATIONS.—Subsection (d) of section 504 of title 39, United States Code (as so redesignated by section 601) is amended to read as follows:

[''(d) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Postal Regulatory Commission. In requesting an appropriation under this subsection for a fiscal year, the Commission shall prepare and submit to the Congress under section 2009 a budget of the Commission's expenses, including expenses for facilities, supplies, compensation, and employee benefits.''.

[(b) BUDGET PROGRAM.—

[(1) IN GENERAL.—The next to last sentence of section 2009 of title 39, United States Code, is amended to read as follows: ''The budget program shall also include separate statements of the amounts which (1) the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401, (2) the Office of Inspector General of the United States Postal Service requests to be appropriated, out of the Postal Service Fund, under section 8G(f) of the Inspector General Act of 1978, and (3) the Postal Regulatory Commission requests to be appropriated, out of the Postal Service Fund, under section 504(d) of this title.''.

[(2) CONFORMING AMENDMENT.—Section 2003(e)(1) of title 39, United States Code, is amended by striking the first sentence and inserting the following: ''The Fund shall be available for the payment of (A) all expenses incurred by the Postal Service in carrying out its functions as provided by law, subject to the same limitation as set forth in the parenthetical matter under subsection (a); (B) all expenses of the Postal Regulatory Commission, subject to the availability of amounts appropriated under section 504(d); and (C) all expenses of the Office of Inspector General, subject to the availability of amounts appropriated under section 8G(f) of the Inspector General Act of 1978.''.

[(c) EFFECTIVE DATE.—

[(1) IN GENERAL.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 2002.

[(2) SAVINGS PROVISION.—The provisions of title 39, United States Code, that are amended by this section shall, for purposes of any fiscal year before the first fiscal year to which the amendments made by this section apply, continue to apply in the same way as if this section had never been enacted.

[SEC. 604. REDESIGNATION OF THE POSTAL RATE COMMISSION.

[(a) AMENDMENTS TO TITLE 39, UNITED STATES CODE.—Title 39, United States Code, is amended in sections 404, 503 and 504 (as so redesignated by section 601), 1001 and 1002, by striking ''Postal Rate Commission'' each place it appears and inserting ''Postal Regulatory Commission'';

[(b) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended in sections 104(1), 306(f), 2104(b), 3371(3), 5314 (in the item relating to Chairman, Postal Rate Commission), 5315 (in the item relating to Members, Postal Rate Commission), 5514(a)(5)(B), 7342(a)(1)(A), 7511(a)(1)(B)(ii), 8402(c)(1), 8423(b)(1)(B), and 8474(c)(4) by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

[(c) AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978.—Section 101(f)(6) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

[(d) AMENDMENT TO THE REHABILITATION ACT OF 1973.—Section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)) is amended by striking ''Postal Rate Office'' and inserting ''Postal Regulatory Commission''.

[(e) AMENDMENT TO TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

[(f) OTHER REFERENCES.—Whenever a reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, document, or other record of the United States to the Postal Rate Commission, such reference shall be considered a reference to the Postal Regulatory Commission.

[SEC. 605. FINANCIAL TRANSPARENCY.

[(a) IN GENERAL.—Section 101 of title 39, United States Code, is amended—

[(1) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

[(2) by inserting after subsection (c) the following:

[''(d) As an independent establishment of the executive branch of the Government of the United States, the Postal Service shall be subject to a high degree of transparency to ensure fair treatment of customers of the Postal Service's market-dominant products and companies competing with the Postal Service's competitive products.''.

[(b) FINANCIAL REPORTING REQUIREMENTS AND ENFORCEMENT POWERS APPLICABLE TO POSTAL SERVICE.—Section 503 of title 39, United States Code (as so redesignated by section 601 and 604) is amended by—

[(1) inserting ''(a)'' before ''The Postal Regulatory Commission shall promulgate''; and

[(2) adding at the end the following:

[''(b)(1) Beginning with the first full fiscal year following the date of enactment of the Postal Accountability and Enhancement Act, the Postal Service shall file with the Postal Regulatory Commission —

[''(A) within 35 days after the end of each fiscal quarter, a quarterly report containing the information prescribed in Form 10–Q of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form;

[''(B) within 60 days after the end of each fiscal year, an annual report containing the information prescribed in Form 10–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form; and

[''(C) periodic reports within the time frame and containing the information prescribed in Form 8–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form.

[''(2) For purposes of preparing the reports required under paragraph (1), the Postal Service shall be deemed to be the registrant described in the Securities and Exchange Commission forms, and references contained in such forms to Securities and Exchange Commission regulations are applicable.

[''(3) For purposes of preparing the reports required under paragraph (1), the Postal Service shall comply with the rules prescribed by the Securities and Exchange Commission implementing section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262; Public Law 107–204) beginning with fiscal year 2007 and in each fiscal year thereafter.

[''(c)(1) The reports required under subsection (b)(1)(B) shall include, with respect to the financial obligations of the Postal Service under chapters 83, 84, and 89 of title 5 for retirees of the Postal Service—

[''(A) the funded status of such obligations of the Postal Service;

[''(B) components of the net change in the fund balances and obligations and the nature and cause of any significant changes;

[''(C) components of net periodic costs;

[''(D) cost methods and assumptions underlying the relevant actuarial valuations;

[''(E) the effect of a one-percentage point increase in the assumed health care cost trend rate for each future year on the service and interest costs components of net periodic cost and the accumulated obligation of the Postal Service under chapter 89 of title 5 for retirees of the Postal Service;

[''(F) actual contributions to and payments from the funds for the years presented and the estimated future contributions and payments for each of the following 5 years;

[''(G) the composition of plan assets reflected in the fund balances; and

[''(H) the assumed rate of return on fund balances and the actual rates of return for the years presented.

[''(2)(A) Beginning with the fiscal year 2007 and in each fiscal year thereafter, for purposes of the reports required under subsection (b)(1) (A) and (B), the Postal Service shall include segment reporting.

[''(B) The Postal Service shall determine the appropriate segment reporting under subparagraph (A), after consultation with the Postal Regulatory Commission.

[''(d) For purposes of the annual reports required under subsection (b)(1)(B), the Postal Service shall obtain an opinion from an independent auditor on whether the information listed under subsection (c) is fairly stated in all material respects, either in relation to the basic financial statements as a whole or on a stand-alone basis.

[''(e) The Postal Regulatory Commission shall have access to the audit documentation and any other supporting matter of the Postal Service and its independent auditor in connection with any information submitted under subsection (b)(1)(B).

[''(f) The Postal Regulatory Commission may, on its own motion or on request of an interested party, initiate proceedings (to be

conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this section whenever it shall appear that the data—

[''(1) have become significantly inaccurate;

[''(2) can be significantly improved; or

[''(3) are not cost beneficial.''.

[TITLE VII—EVALUATIONS

[SEC. 701. ASSESSMENTS OF RATEMAKING, CLASSIFICATION, AND OTHER PROVISIONS.

[(a) IN GENERAL.—The Postal Regulatory Commission shall, at least every 3 years, submit a report to the President and Congress concerning—

[(1) the operation of the amendments made by this Act; and

[(2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States.

[(b) POSTAL SERVICE VIEWS.—A report under this section shall be submitted only after reasonable opportunity has been afforded to the Postal Service to review the report and to submit written comments on the report. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).

[SEC. 702. REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY.

[(a) REPORT BY THE POSTAL REGULATORY COMMISSION.—

[(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Postal Regulatory Commission shall submit a report to the President and Congress on universal postal service and the postal monopoly in the United States (in this section referred to as ''universal service and the postal monopoly''), including the monopoly on the delivery of mail and on access to mailboxes.

[(2) CONTENTS.—The report under this subsection shall include—

[(A) a comprehensive review of the history and development of universal service and the postal monopoly, including how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas;

[(B) the scope and standards of universal service and the postal monopoly provided under current law (including sections 101 and 403 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service;

[(C) a description of any geographic areas, populations, communities (including both urban and rural communities), organizations, or other groups or entities not currently covered by universal service or that are covered but that are receiving services deficient in scope or quality or both; and

[(D) the scope and standards of universal service and the postal monopoly likely to be required in the future in order to meet the needs and expectations of the United States public, including all types of mail users, based on discussion of such assumptions, alternative sets of assumptions, and analyses as the Postal Service considers plausible.

[(b) RECOMMENDED CHANGES TO UNIVERSAL SERVICE AND THE MONOPOLY.—The Postal Regulatory Commission shall include in the report under subsection (a), and in all reports submitted under section 701 of this Act—

[(1) any recommended changes to universal service and the postal monopoly as the Commission considers appropriate, including changes that the Commission may implement under current law and changes that would require changes to current law, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service;

[(2) with respect to each recommended change described under paragraph (1)—

[(A) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

[(B) an analysis of the likely benefit of the current postal monopoly to the ability of the Postal Service to sustain the current scope and standards of universal service, including estimates of the financial benefit of the postal monopoly to the extent practicable, under current law; and

[(3) such additional topics and recommendations as the Commission considers appropriate, with estimated effects of the recommendations on the service, financial condition, rates, and the security of mail provided by the Postal Service.

[SEC. 703. STUDY ON EQUAL APPLICATION OF LAWS TO COMPETITIVE PRODUCTS.

[(a) IN GENERAL.—The Federal Trade Commission shall prepare and submit to the President and Congress, and to the Postal Regulatory Commission, within 1 year after the date of enactment of this Act, a comprehensive report identifying Federal and State laws that apply differently to the United States Postal Service with respect to the competitive category of mail (within the meaning of section 102 of title 39, United States Code, as amended by section 101) and similar products provided by private companies.

[(b) RECOMMENDATIONS.—The Federal Trade Commission shall include such recommendations as it considers appropriate for bringing such legal discrimination to an end, and in the interim, to account under section 3633 of title 39, United States Code (as added by this Act), for the net economic advantages provided by those laws.

[(c) CONSULTATION.—In preparing its report, the Federal Trade Commission shall consult with the United States Postal Service, the Postal Regulatory Commission, other Federal agencies, mailers, private companies that provide delivery services, and the general public, and shall append to such report any written comments received under this subsection.

[(d) COMPETITIVE PRODUCT REGULATION.—The Postal Regulatory Commission shall take into account the recommendations of the Federal Trade Commission in promulgating or revising the regulations required under section 3633 of title 39, United States Code.

[SEC. 704. REPORT ON POSTAL WORKPLACE SAFETY AND WORKPLACE-RELATED INJURIES.

[(a) REPORT BY THE INSPECTOR GENERAL.—

[(1) IN GENERAL.—Not later than 6 months after the enactment of this Act, the Inspector General of the United States Postal Service shall submit a report to Congress and the Postal Service that—

[(A) details and assesses any progress the Postal Service has made in improving workplace safety and reducing workplace-related injuries nationwide; and

[(B) identifies opportunities for improvement that remain with respect to such improvements and reductions.

[(2) CONTENTS.—The report under this subsection shall also—

[(A) discuss any injury reduction goals established by the Postal Service;

[(B) describe the actions that the Postal Service has taken to improve workplace safety and reduce workplace-related injuries, and assess how successful the Postal Service has been in meeting its injury reduction goal; and

[(C) identify areas where the Postal Service has failed to meet its injury reduction goals, explain the reasons why these goals were not met, and identify opportunities for making further progress in meeting these goals.

[(b) REPORT BY THE POSTAL SERVICE.—

[(1) REPORT TO CONGRESS.—Not later than 6 months after receiving the report under subsection (a), the Postal Service shall submit a report to Congress detailing how it plans to improve workplace safety and reduce workplace-related injuries nationwide, including goals and metrics.

[(2) PROBLEM AREAS.—The report under this subsection shall also include plans, developed in consultation with the Inspector General and employee representatives, including representatives of each postal labor union and management association, for addressing the problem areas identified by the Inspector General in the report under subsection (a)(2)(C).

[SEC. 705. STUDY ON RECYCLED PAPER.

[(a) IN GENERAL.—Within 12 months after the date of enactment of this Act, the Government Accountability Office shall study and submit to the Congress, the Board of Governors of the Postal Service, and to the Postal Regulatory Commission a report concerning—

[(1) the economic and environmental efficacy of establishing rate incentives for mailers linked to the use of recycled paper;

[(2) a description of the accomplishments of the Postal Service in each of the preceding 5 years involving recycling activities, including the amount of annual revenue generated and savings achieved by the Postal Service as a result of its use of recycled paper and other recycled products and its efforts to recycle undeliverable and discarded mail and other materials; and

[(3) additional opportunities that may be available for the United States Postal Service to engage in recycling initiatives and the projected costs and revenues of undertaking such opportunities.

[(b) RECOMMENDATIONS.—The report shall include recommendations for any administrative or legislative actions that may be appropriate.

[TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

[SEC. 801. SHORT TITLE.

[This title may be cited as the ''Postal Civil Service Retirement and Health Benefits Funding Amendments of 2004''.

[SEC. 802. CIVIL SERVICE RETIREMENT SYSTEM.

[(a) IN GENERAL.—Chapter 83 of title 5, United States Code, is amended—

[(1) in section 8334(a)(1)(B), by striking clause (ii) and inserting the following:

[''(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph.''; and

[(2) by amending section 8348(h) to read as follows:

[''(h)(1) In this subsection, the term 'Postal surplus or supplemental liability' means the estimated difference, as determined by the Office, between—

[''(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

[''(B) the sum of—

[''(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

[''(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United

States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

[''(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

[''(2)(A) Not later than June 15, 2006, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2005. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a by June 30, 2006. If the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing September 30, 2006, which provides for the liquidation of such liability by September 30, 2043.

[''(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2006, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C), and any prior amortization schedule for payments shall be terminated. If the result is a supplemental liability, the Office shall establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

[''(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

[''(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

[''(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

[''(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.''.

[(b) CREDIT ALLOWED FOR MILITARY SERVICE.—In the application of section 8348(g)(2) of title 5, United States Code, for the fiscal year 2006, the Office of Personnel Management shall include, in addition to the amount otherwise computed under that paragraph, the amounts that would have been included for the fiscal years 2003 through 2005 with respect to credit for military service of former employees of the United States Postal Service as though the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) had not been enacted, and the Secretary of the Treasury shall make the required transfer to the Civil Service Retirement and Disability Fund based on that amount.

[SEC. 803. HEALTH INSURANCE.

[(a) IN GENERAL.—

[(1) FUNDING.—Chapter 89 of title 5, United States Code, is amended—

[(A) in section 8906(g)(2)(A), by striking ''shall be paid by the United States Postal Service.'' and inserting ''shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service.''; and

[(B) by inserting after section 8909 the following:

[''§ 8909a. Postal Service Retiree Health Benefit Fund

[''(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

[''(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

[''(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

[''(d)(1) Not later than June 30, 2006, and by June 30 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

[''(2)(A) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year, the Office shall recompute the difference between—

[''(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

[''(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

[''(II) the net present value computed under paragraph (1).

[''(B) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year shall recompute, an amortization schedule including a series of annual installments which provide for the liquidation by September 30, 2045, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

[''(3) Not later than September 30, 2006, and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund—

[''(A) the net present value computed under paragraph (1); and

[''(B) the annual installment computed under paragraph (2)(B).

[''(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

[''(5) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.''.

[(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8909 the following:

[''8909a. Postal Service Retiree Health Benefits Fund.''.

[(b) TRANSITIONAL ADJUSTMENT FOR FISCAL YEAR 2006.—For fiscal year 2006, the amounts paid by the Postal Service in Government contributions under section 8906(g)(2)(A) of title 5, United States Code, for fiscal year 2006 contributions shall be deducted from the initial payment otherwise due from the Postal Service to the Postal Service Retiree Health Benefits Fund under section 8909a(d)(3) of such title as added by this section.

[SEC. 804. REPEAL OF DISPOSITION OF SAVINGS PROVISION.

[Section 3 of the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) is repealed.

[SEC. 805. EFFECTIVE DATES.

[(a) IN GENERAL.—Except as provided under subsection (b), this title shall take effect on October 1, 2005.

[(b) TERMINATION OF EMPLOYER CONTRIBUTION.—The amendment made by paragraph (1) of section 802(a) shall take effect on the first day of the first pay period beginning on or after October 1, 2005.

[TITLE IX—COMPENSATION FOR WORK INJURIES

[SEC. 901. TEMPORARY DISABILITY; CONTINUATION OF PAY.

[(a) TIME OF ACCRUAL OF RIGHT.—Section 8117 of title 5, United States Code, is amended—

[(1) by striking ''An employee'' and inserting ''(a) An employee other than a Postal Service employee''; and

[(2) by adding at the end the following:

[''(b) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period, except that if the disability exceeds 14 days or is followed by permanent disability, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.''.

[(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 8118(b)(1) of title 5, United States Code, is amended to read as follows:

[''(1) without a break in time, except as provided under section 8117(b), unless controverted under regulations of the Secretary''.

[SEC. 902. DISABILITY RETIREMENT FOR POSTAL EMPLOYEES.

[(a) TOTAL DISABILITY.—Section 8105 of title 5, United States Code, is amended—

[(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (c).''; and

[(2) by adding at the end the following:

[''(c)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(*l*)(1) of the Social Security Act (42 U.S.C. 416(*l*)(1)).

[''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of the Postal Accountability and Enhancement Act, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for total disability is converted to 50 percent of the monthly pay of the employee on the later of—

[''(A) the date on which the injured employee reaches retirement age; or

[''(B) 1 year after the employee begins receiving compensation.''.

[(b) PARTIAL DISABILITY.—Section 8106 of title 5, United States Code, is amended—

[(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (d).''; and

[(2) by adding at the end the following:

[''(d)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(*l*)(1) of the Social Security Act (42 U.S.C. 416(*l*)(1)).

[''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of this subsection, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for partial disability is converted to 50 percent of the difference between the monthly pay of an employee and the monthly wage earning capacity of the employee after the beginning of partial disability on the later of—

[''(A) the date on which the injured employee reaches retirement age; or

[''(B) 1 year after the employee begins receiving compensation.''.

[TITLE X—MISCELLANEOUS

[SEC. 1001. EMPLOYMENT OF POSTAL POLICE OFFICERS.

[Section 404 of title 39, United States Code (as amended by this Act), is further amended by adding at the end the following:

[''(d) The Postal Service may employ guards for all buildings and areas owned or occupied by the Postal Service or under the charge and control of the Postal Service, and may give such guards, with respect to such property, any of the powers of special policemen provided under section 1315 of title 40. The Postmaster General, or the designee of the Postmaster General, may take any action that the Secretary of Homeland Security may take under section 1315 of title 40, with respect to that property.

[SEC. 1002. EXPANDED CONTRACTING AUTHORITY.

[(a) AMENDMENT TO TITLE 39, UNITED STATES CODE.—

[(1) CONTRACTS WITH AIR CARRIERS.—Subsection (e) of section 5402 of title 39, United States Code, is amended—

[(A) by striking the matter preceding paragraph (2) and inserting the following:

[''(e)(1) The Postal Service may contract with any air carrier for the transportation of mail by aircraft in interstate air transportation, including the rates for that transportation, either through negotiations or competitive bidding.'';

[(B) by redesignating paragraph (2) as paragraph (4); and

[(C) by inserting after paragraph (1) the following:

[''(2) Notwithstanding subsections (b) through (d), the Postal Service may contract with any air carrier or foreign air carrier for the transportation of mail by aircraft in foreign air transportation, including the rates for that transportation, either through negotiations or competitive bidding, except that—

[''(A) any such contract may be awarded only to—

[''(i) an air carrier holding a certificate required by section 41101 of title 49 or an exemption therefrom issued by the Secretary of Transportation;

[''(ii) a foreign air carrier holding a permit required by section 41301 of title 49 or an exemption therefrom issued by the Secretary of Transportation; or

[''(iii) a combination of such air carriers or foreign air carriers (or both);

[''(B) mail transported under any such contract shall not be subject to any duty-to-carry requirement imposed by any provision of subtitle VII of title 49 or by any certificate, permit, or corresponding exemption authority issued by the Secretary of Transportation under that subtitle;

[''(C) during the 5-year period beginning 1 year after the date of enactment of the Postal Accountability and Enhancement Act, the Postal Service may not under this paragraph—

[''(i) contract for service between a pair or combination of pairs of points in foreign air transportation with—

[''(I) a foreign air carrier; or

[''(II) an air carrier to the extent that service provided would be offered through a code sharing arrangement in which the air carrier's designator code is used to identify a flight operated by a foreign air carrier; or

[''(ii) tender mail in foreign air transportation under contracts providing for the carriage of mail in foreign air transportation over all (or substantially all, as determined by the Postal Service) of a carrier's routes or all or substantially all of a carrier's routes within a geographic area determined by the Postal Service on the basis of a common unit price per mile and a separate terminal price to—

[''(I) a foreign air carrier; or

[''(II) an air carrier to the extent that service provided would be offered through a code sharing arrangement in which the air carrier's designator code is used to identify a flight operated by a foreign air carrier, unless—

[''(aa) with respect to clause (i) and this clause, fewer than 2 air carriers capable of providing service to the Postal Service adequate for its purposes between the pair or combination of pairs of points in foreign air transportation offer scheduled service between the pair or combination of pairs of points in foreign air transportation which are the subject of the contract or tender;

[''(bb) with respect to clause (i), after competitive solicitation, the Postal Service has not received at least 2 offers from eligible air carriers capable of providing service to the Postal Service adequate for its purposes between the pair of combination of pairs of points in foreign air transportation; or

[''(cc) with respect to this clause, after competitive solicitation, fewer than 2 air carriers under contract with the Postal Service offer service adequate for the Postal Service's purposes between the pair or combination of pairs of points in foreign air transportation for which tender is being made;

[''(D) beginning 6 years after the date of enactment of the Postal Accountability and Enhancement Act, every contract that the Postal Service awards to a foreign air carrier under this paragraph shall be subject to the continuing requirement that air carriers shall be afforded the same opportunity to carry the mail of the country to and from which the mail is transported and the flag country of the foreign air carrier, if different, as the Postal Service has afforded the foreign air carrier; and

[''(E) the Postmaster General shall consult with the Secretary of Defense concerning actions that affect the carriage of military mail transported in foreign air transportation.

[''(3) Paragraph (2) shall not be interpreted as suspending or otherwise diminishing the authority of the Secretary of Transportation under section 41310 of title 49.''.

[(2) DEFINITIONS.—Section 5402(a) of title 39, United States Code, is amended by striking paragraph (2) and inserting the following:

[''(2) The terms 'air carrier', 'air transportation', 'foreign air carrier', 'foreign air transportation', 'interstate air transportation', and 'mail' have the meanings given such terms in section 40102(a) of title 49.''.

[(b) AMENDMENTS TO TITLE 49, UNITED STATES CODE.—

[(1) AUTHORITY OF POSTAL SERVICE TO PROVIDE FOR INTERSTATE AIR TRANSPORTATION OF MAIL.—Section 41901(a) of title 49, United States Code, is amended to read as follows:

[''(a) TITLE 39.—The United States Postal Service may provide for the transportation of mail by aircraft in air transportation under this chapter and under chapter 54 of title 39.''.

[(2) SCHEDULES FOR CERTAIN TRANSPORTATION OF MAIL.—Section 41902 of title 49, United States Code, is amended—

[(A) by striking subsection (b) and inserting the following:

[''(b) STATEMENTS ON PLACES AND SCHEDULES.—Every air carrier shall file with the Secretary of Transportation and the United States Postal Service a statement showing—

[''(1) the places between which the carrier is authorized to transport mail in Alaska;

[''(2) every schedule of aircraft regularly operated by the carrier between places described under paragraph (1) and every change in each schedule; and

[''(3) for each schedule, the places served by the carrier and the time of arrival at, and departure from, each place.'';

[(B) in subsection (c), by striking ''(b)(3)'' and inserting ''(b)''; and

[(C) in subsection (d), in the first sentence, by striking ''(b)(3)'' and inserting ''(b)''.

[(3) PRICES FOR FOREIGN TRANSPORTATION OF MAIL.—Section 41907 of title 49, United States Code, is amended—

[(A) by striking ''(a) LIMITATIONS.—''; and

[(B) by striking subsection (b).

[(4) TECHNICAL AND CONFORMING AMENDMENTS.—Sections 41107, 41901(b)(1), 41902(a), and 41903 (a) and (b) of title 49, United States Code, are amended by striking ''in foreign air transportation or''.

[(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of enactment of this Act.

[SEC. 1003. REPORT ON THE UNITED STATES POSTAL INSPECTION SERVICE AND THE OFFICE OF THE INSPECTOR GENERAL OF THE UNITED STATES POSTAL SERVICE.

[(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Government Accountability Office shall review the functions, responsibilities, and areas of possible duplication of the United States Postal Inspection Service and the Office of the Inspector General of the United States Postal Service and submit a report on the review to the Committee on Homeland Security and Governmental Affairs of the Senate.

[(b) CONTENTS.—The report under this section shall include recommendations for legislative actions necessary to clarify the roles of the United States Postal Inspection Service and the Office of the Inspector General of the United States Postal Service to strengthen oversight of postal operations.

[SEC. 1004. SENSE OF CONGRESS REGARDING POSTAL SERVICE PURCHASING REFORM.

[It is the sense of Congress that the Postal Service should—

[(1) ensure the fair and consistent treatment of suppliers and contractors in its current purchasing policies and any revision or replacement of such policies, such as through the use of competitive contract award procedures, effective dispute resolution mechanisms, and socioeconomic programs; and

[(2) implement commercial best practices in Postal Service purchasing policies to achieve greater efficiency and cost savings as recommended in July 2003 by the President's Commission on the United States Postal Service, in a manner that is compatible with the fair and consistent treatment of suppliers and contractors, as befitting an establishment in the United States Government.]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Postal Accountability and Enhancement Act''.

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

Sec. 1. Short title; table of contents.

TITLE I—DEFINITIONS; POSTAL SERVICES
Sec. 101. Definitions.
Sec. 102. Postal services.
TITLE II—MODERN RATE REGULATION
Sec. 201. Provisions relating to market-dominant products.
Sec. 202. Provisions relating to competitive products.
Sec. 203. Provisions relating to experimental and new products.
Sec. 204. Reporting requirements and related provisions.
Sec. 205. Complaints; appellate review and enforcement.
Sec. 206. Clerical amendment.
TITLE III—MODERN SERVICE STANDARDS
Sec. 301. Establishment of modern service standards.
Sec. 302. Postal service plan.
TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION
Sec. 401. Postal Service Competitive Products Fund.
Sec. 402. Assumed Federal income tax on competitive products income.
Sec. 403. Unfair competition prohibited.
Sec. 404. Suits by and against the Postal Service.
Sec. 405. International postal arrangements.
TITLE V—GENERAL PROVISIONS
Sec. 501. Qualification and term requirements for Governors.
Sec. 502. Obligations.
Sec. 503. Private carriage of letters.
Sec. 504. Rulemaking authority.
Sec. 505. Noninterference with collective bargaining agreements.
Sec. 506. Bonus authority.
TITLE VI—ENHANCED REGULATORY COMMISSION
Sec. 601. Reorganization and modification of certain provisions relating to the Postal Regulatory Commission.
Sec. 602. Authority for Postal Regulatory Commission to issue subpoenas.
Sec. 603. Authorization of appropriations from the Postal Service Fund.
Sec. 604. Redesignation of the Postal Rate Commission.
Sec. 605. Financial transparency.
TITLE VII—EVALUATIONS
Sec. 701. Assessments of ratemaking, classification, and other provisions.
Sec. 702. Report on universal postal service and the postal monopoly.
Sec. 703. Study on equal application of laws to competitive products.
Sec. 704. Report on postal workplace safety and workplace-related injuries.
Sec. 705. Study on recycled paper.
TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING
Sec. 801. Short title.
Sec. 802. Civil Service Retirement System.
Sec. 803. Health insurance.
Sec. 804. Repeal of disposition of savings provision.
Sec. 805. Effective dates.
TITLE IX—COMPENSATION FOR WORK INJURIES
Sec. 901. Temporary disability; continuation of pay.
Sec. 902. Disability retirement for postal employees.
TITLE X—MISCELLANEOUS
Sec. 1001. Employment of postal police officers.
Sec. 1002. Obsolete provisions.
Sec. 1003. Reduced rates.
Sec. 1004. Sense of Congress regarding Postal Service purchasing reform.

TITLE I—DEFINITIONS; POSTAL SERVICES

SEC. 101. DEFINITIONS.

Section 102 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following:

''(5) 'postal service' refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other functions ancillary thereto;

''(6) 'product' means a postal service with a distinct cost or market characteristic for which a rate or rates are applied;

''(7) 'rates', as used with respect to products, includes fees for postal services;

''(8) 'market-dominant product' or 'product in the market-dominant category of mail' means a product subject to subchapter I of chapter 36; and

''(9) 'competitive product' or 'product in the competitive category of mail' means a product subject to subchapter II of chapter 36; and

''(10) 'year', as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.''.

SEC. 102. POSTAL SERVICES.

(a) IN GENERAL.—Section 404 of title 39, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and by redesignating paragraphs (7) through (9) as paragraphs (6) through (8), respectively; and

(2) by adding at the end the following:

''(c) Except as provided in section 411, nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services.''.

(b) CONFORMING AMENDMENTS.—(1) Section 1402(b)(1)(B)(ii) of the Victims of Crime Act of 1984 (98 Stat. 2170; 42 U.S.C. 10601(b)(1)(B)(ii)) is amended by striking ''404(a)(8)'' and inserting ''404(a)(7)''.

(2) Section 2003(b)(1) of title 39, United States Code, is amended by striking ''and nonpostal''.

TITLE II—MODERN RATE REGULATION

SEC. 201. PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS.

(a) IN GENERAL.—Chapter 36 of title 39, United States Code, is amended by striking sections 3621 and 3622 and inserting the following:

''§ 3621. Applicability; definitions

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1) first-class mail letters and sealed parcels;
''(2) first-class mail cards;
''(3) periodicals;
''(4) standard mail;
''(5) single-piece parcel post;
''(6) media mail;
''(7) bound printed matter;
''(8) library mail;
''(9) special services; and
''(10) single-piece international mail,

subject to any changes the Postal Regulatory Commission may make under section 3642.

''(b) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''§ 3622. Modern rate regulation

''(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

''(b) OBJECTIVES.—Such system shall be designed to achieve the following objectives:

''(1) To reduce the administrative burden and increase the transparency of the ratemaking process while affording reasonable opportunities for interested parties to participate in that process.

''(2) To create predictability and stability in rates.

''(3) To maximize incentives to reduce costs and increase efficiency.

''(4) To enhance mail security and deter terrorism by promoting secure, sender-identified mail.

''(5) To allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent mail and encourage increased mail volume during nonpeak periods.

''(6) To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.

''(7) To allocate the total institutional costs of the Postal Service equitably between market-dominant and competitive products.

''(c) FACTORS.—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

''(1) the establishment and maintenance of a fair and equitable schedule for rates and classification system;

''(2) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;

''(3) the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail service through reliably identified causal relationships plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

''(4) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

''(5) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

''(6) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

''(7) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

''(8) the importance of pricing flexibility to encourage increased mail volume and operational efficiency;

''(9) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

''(10) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

''(11) the desirability of special classifications from the point of view of both the user and of the Postal Service;

''(12) the educational, cultural, scientific, and informational value to the recipient of mail matter;

''(13) the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable, universal postal service; and

''(14) the policies of this title as well as such other factors as the Commission determines appropriate.

''(d) REQUIREMENTS.—

''(1) IN GENERAL.—The system for regulating rates and classes for market-dominant products shall—

''(A) include an annual limitation on the percentage changes in rates to be set by the Postal Regulatory Commission that will be equal to the change in the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation over the most recent available 12-month period preceding the date the Postal Service files notice of its intention to increase rates;

''(B) establish a schedule whereby rates, when necessary and appropriate, would change at regular intervals by predictable amounts;

''(C) not later than 45 days before the implementation of any adjustment in rates under this section—

''(i) require the Postal Service to provide public notice of the adjustment;

''(ii) provide an opportunity for review by the Postal Regulatory Commission;

''(iii) provide for the Postal Regulatory Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under subparagraph (A); and

''(iv) require the Postal Service to respond to the notice provided under clause (iii) and describe the actions to be taken to comply with the limitation under subparagraph (A);

''(D) establish procedures whereby the Postal Service may adjust rates not in excess of the annual limitations under subparagraph (A); and

''(E) notwithstanding any limitation set under subparagraphs (A) and (C), establish procedures whereby rates may be adjusted on an expedited basis due to unexpected and extraordinary circumstances.

''(2) LIMITATIONS.—

''(A) CLASSES OF MAIL.—The annual limitations under paragraph (1)(A) shall apply to a class of mail, as defined in the Domestic Mail Classification Schedule as in effect on the date of enactment of the Postal Accountability and Enhancement Act.

''(B) ROUNDING OF RATES AND FEES.—Nothing in this subsection shall preclude the Postal Service from rounding rates and fees to the nearest whole integer, if the effect of such rounding does not cause the overall rate increase for any class to exceed the Consumer Price Index for All Urban Consumers.

''(C) BANKING UNUSED PRICING AUTHORITY.—Notwithstanding paragraph (1), for any class or service that failed to recover its attributable costs in the previous fiscal year, or for all classes and services when the Postal Service has operated at a loss for the last 2 years, rate increases may exceed Consumer Price Index for All Urban Consumers by the amount rate increases in the previous year were less than Consumer Price Index for All Urban Consumers.

''(e) WORKSHARE DISCOUNTS.—

''(1) DEFINITION.—In this subsection, the term 'workshare discount' refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

''(2) REGULATIONS.—As part of the regulations established under subsection (a), the Postal Regulatory Commission shall establish rules for workshare discounts that ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless—

''(A) the discount is—

''(i) associated with a new postal service, a change to an existing postal service, or with a new workshare initiative related to an existing postal service; and

''(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service and the portion of the discount in excess of the cost that the Postal Service avoids as a result of the workshare activity will be phased out over a limited period of time;

''(B) a reduction in the discount would—

''(i) lead to a loss of volume in the affected category or subclass of mail and reduce the aggregate contribution to the institutional costs of the Postal Service from the category or subclass subject to the discount below what it otherwise would have been if the discount had not been reduced to costs avoided;

''(ii) result in a further increase in the rates paid by mailers not able to take advantage of the discount; or

''(iii) impede the efficient operation of the Postal Service;

''(C) the amount of the discount above costs avoided—

''(i) is necessary to mitigate rate shock; and

''(ii) will be phased out over time; or

''(D) the discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, scientific, or informational value.

''(3) REPORT.—Whenever the Postal Service establishes or maintains a workshare discount, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report that—

''(A) explains the Postal Service's reasons for establishing or maintaining the rate;

''(B) sets forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate; and

''(C) certifies that the discount will not adversely affect rates or services provided to users of postal services who do not take advantage of the discount rate.

''(f) TRANSITION RULE.—Until regulations under this section first take effect, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of enactment of this section.''.

(b) REPEALED SECTIONS.—Sections 3623, 3624, 3625, and 3628 of title 39, United States Code, are repealed.

(c) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect after the amendment made by section 601, but before the amendment made by section 202) is amended by striking the heading for subchapter II and inserting the following:

''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS''.

SEC. 202. PROVISIONS RELATING TO COMPETITIVE PRODUCTS.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3629 the following:

''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

''§ 3631. Applicability; definitions and updates

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1) priority mail;

''(2) expedited mail;

''(3) bulk parcel post;

''(4) bulk international mail; and

''(5) mailgrams;

subject to subsection (d) and any changes the Postal Regulatory Commission may make under section 3642.

''(b) DEFINITION.—For purposes of this subchapter, the term 'costs attributable', as used with respect to a product, means the direct and indirect postal costs attributable to such product through reliably identified causal relationships.

''(c) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''(d) LIMITATION.—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply with respect to any product then currently in the market-dominant category of mail.

''§ 3632. Action of the Governors

''(a) AUTHORITY TO ESTABLISH RATES AND CLASSES.—The Governors, with the written concurrence of a majority of all of the Governors then holding office, shall establish rates and classes for products in the competitive category of mail in accordance with the requirements of this subchapter and regulations promulgated under section 3633.

''(b) PROCEDURES.—

''(1) IN GENERAL.—Rates and classes shall be established in writing, complete with a statement of explanation and justification, and the date as of which each such rate or class takes effect.

''(2) PUBLIC NOTICE; REVIEW; AND COMPLIANCE.—Not later than 30 days before the date of implementation of any adjustment in rates under this section—

''(A) the Governors shall provide public notice of the adjustment and an opportunity for review by the Postal Regulatory Commission;

''(B) the Postal Regulatory Commission shall notify the Governors of any noncompliance of the adjustment with section 3633; and

''(C) the Governors shall respond to the notice provided under subparagraph (B) and describe the actions to be taken to comply with section 3633.

''(c) TRANSITION RULE.—Until regulations under section 3633 first take effect, rates and classes for competitive products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were as last in effect before the date of enactment of this section.

''§ 3633. Provisions applicable to rates for competitive products

''(a) IN GENERAL.—The Postal Regulatory Commission shall, within 180 days after the date of enactment of this section, promulgate (and may from time to time thereafter revise) regulations to—

''(1) prohibit the subsidization of competitive products by market-dominant products;

''(2) ensure that each competitive product covers its costs attributable; and

''(3) ensure that all competitive products collectively cover their share of the institutional costs of the Postal Service.

''(b) REVIEW OF MINIMUM CONTRIBUTION.—Five years after the date of enactment of this section, and every 5 years thereafter, the Postal Regulatory Commission shall conduct a review to determine whether the institutional costs contribution requirement under subsection (a)(3) should be retained in its current form, modified, or eliminated. In making its determination, the Commission shall consider all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products.''.

SEC. 203. PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS.

Subchapter III of chapter 36 of title 39, United States Code, is amended to read as follows:

''SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

''§ 3641. Market tests of experimental products

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Postal Service may conduct market tests of experimental products in accordance with this section.

''(2) PROVISIONS WAIVED.—A product shall not, while it is being tested under this section, be subject to the requirements of sections 3622, 3633, or 3642, or regulations promulgated under those sections.

''(b) CONDITIONS.—A product may not be tested under this section unless it satisfies each of the following:

''(1) SIGNIFICANTLY DIFFERENT PRODUCT.—The product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test.

''(2) MARKET DISRUPTION.—The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns (as defined under subsection (h)).

''(3) CORRECT CATEGORIZATION.—The Postal Service identifies the product, for the purpose of a test under this section, as either market-dominant or competitive, consistent with the criteria under section 3642(b)(1). Costs and revenues attributable to a product identified as competitive shall be included in any determination under section 3633(3)(relating to provisions applicable to competitive products collectively). Any test that solely affects products currently classified as competitive, or which provides services ancillary to only competitive products, shall be presumed to be in the competitive product category

without regard to whether a similar ancillary product exists for market-dominant products.

''(c) NOTICE.—

''(1) IN GENERAL.—At least 30 days before initiating a market test under this section, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register a notice—

''(A) setting out the basis for the Postal Service's determination that the market test is covered by this section; and

''(B) describing the nature and scope of the market test.

''(2) SAFEGUARDS.—For a competitive experimental product, the provisions of section 504(g) shall be available with respect to any information required to be filed under paragraph (1) to the same extent and in the same manner as in the case of any matter described in section 504(g)(1). Nothing in paragraph (1) shall be considered to permit or require the publication of any information as to which confidential treatment is accorded under the preceding sentence (subject to the same exception as set forth in section 504(g)(3)).

''(d) DURATION.—

''(1) IN GENERAL.—A market test of a product under this section may be conducted over a period of not to exceed 24 months.

''(2) EXTENSION AUTHORITY.—If necessary in order to determine the feasibility or desirability of a product being tested under this section, the Postal Regulatory Commission may, upon written application of the Postal Service (filed not later than 60 days before the date as of which the testing of such product would otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.

''(e) DOLLAR-AMOUNT LIMITATION.—

''(1) IN GENERAL.—A product may only be tested under this section if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $10,000,000 in any year, subject to paragraph (2) and subsection (g).

''(2) EXEMPTION AUTHORITY.—The Postal Regulatory Commission may, upon written application of the Postal Service, exempt the market test from the limit in paragraph (1) if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $50,000,000 in any year, subject to subsection (g). In reviewing an application under this paragraph, the Postal Regulatory Commission shall approve such application if it determines that—

''(A) the product is likely to benefit the public and meet an expected demand;

''(B) the product is likely to contribute to the financial stability of the Postal Service; and

''(C) the product is not likely to result in unfair or otherwise inappropriate competition.

''(f) CANCELLATION.—If the Postal Regulatory Commission at any time determines that a market test under this section fails to meet 1 or more of the requirements of this section, it may order the cancellation of the test involved or take such other action as it considers appropriate. A determination under this subsection shall be made in accordance with such procedures as the Commission shall by regulation prescribe.

''(g) ADJUSTMENT FOR INFLATION.—For purposes of each year following the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a), each dollar amount contained in this section shall be adjusted by the change in the Consumer Price Index for such year (as determined under regulations of the Commission).

''(h) DEFINITION OF A SMALL BUSINESS CONCERN.—The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns shall, for purposes of this section, be established by the Postal Regulatory Commission in conformance with the requirements of section 3 of the Small Business Act.

''(i) EFFECTIVE DATE.—Market tests under this subchapter may be conducted in any year beginning with the first year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a).

''§ 3642. New products and transfers of products between the market-dominant and competitive categories of mail

''(a) IN GENERAL.—Upon request of the Postal Service or users of the mails, or upon its own initiative, the Postal Regulatory Commission may change the list of market-dominant products under section 3621 and the list of competitive products under section 3631 by adding new products to the lists, removing products from the lists, or transferring products between the lists.

''(b) CRITERIA.—All determinations by the Postal Regulatory Commission under subsection (a) shall be made in accordance with the following criteria:

''(1) The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing substantial business to other firms offering similar products. The competitive category of products shall consist of all other products.

''(2) EXCLUSION OF PRODUCTS COVERED BY POSTAL MONOPOLY.—A product covered by the postal monopoly shall not be subject to transfer under this section from the market-dominant category of mail. For purposes of the preceding sentence, the term 'product covered by the postal monopoly' means any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(e)(1).

''(3) ADDITIONAL CONSIDERATIONS.—In making any decision under this section, due regard shall be given to—

''(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

''(B) the views of those who use the product involved on the appropriateness of the proposed action; and

''(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

''(c) TRANSFERS OF SUBCLASSES AND OTHER SUBORDINATE UNITS ALLOWABLE.—Nothing in this title shall be considered to prevent transfers under this section from being made by reason of the fact that they would involve only some (but not all) of the subclasses or other subordinate units of the class of mail or type of postal service involved (without regard to satisfaction of minimum quantity requirements standing alone).

''(d) NOTIFICATION AND PUBLICATION REQUIREMENTS.—

''(1) NOTIFICATION REQUIREMENT.—The Postal Service shall, whenever it requests to add a product or transfer a product to a different category, file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for its determination that the product satisfies the criteria under subsection (b) and, in the case of a request to add a product or transfer a product to the competitive category of mail, that the product meets the regulations promulgated by the Postal Regulatory Commission under section 3633. The provisions of section 504(g) shall be available with respect to any information required to be filed.

''(2) PUBLICATION REQUIREMENT.—The Postal Regulatory Commission shall, whenever it changes the list of products in the market-dominant or competitive category of mail, prescribe new lists of products. The revised lists shall indicate how and when any previous lists (including the lists under sections 3621 and 3631) are superseded, and shall be published in the Federal Register.

''(e) PROHIBITION.—Except as provided in section 3641, no product that involves the physical delivery of letters, printed matter, or packages may be offered by the Postal Service unless it has been assigned to the market-dominant or competitive category of mail (as appropriate) either—

''(1) under this subchapter; or

''(2) by or under any other provision of law.''.

SEC. 204. REPORTING REQUIREMENTS AND RELATED PROVISIONS.

(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by subsection (b)) is amended—

(1) by striking the heading for subchapter IV and inserting the following:

''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW''; and

(2) by striking the heading for subchapter V and inserting the following:

''SUBCHAPTER VI—GENERAL''.

(b) REPORTS AND COMPLIANCE.—Chapter 36 of title 39, United States Code, is amended by inserting after subchapter III the following:

''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

''§ 3651. Annual reports by the Commission

''(a) IN GENERAL.—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title, including the extent to which regulations are achieving the objectives under sections 3622, 3633, and 3691.

''(b) INFORMATION FROM POSTAL SERVICE.—The Postal Service shall provide the Postal Regulatory Commission with such information as may, in the judgment of the Commission, be necessary in order for the Commission to prepare its reports under this section.

''§ 3652. Annual reports to the Commission

''(a) COSTS, REVENUES, RATES, AND SERVICE.—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex to the report as the Commission may require under subsection (e))—

''(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

''(2) which shall, for each market-dominant product provided in such year, provide—

''(A) product information, including mail volumes; and

''(B) measures of the service afforded by the Postal Service in connection with such product, including—

''(i) the level of service (described in terms of speed of delivery and reliability) provided; and

''(ii) the degree of customer satisfaction with the service provided.

Before submitting a report under this subsection (including any annex to the report and the information required under subsection (b)), the Postal Service shall have the information contained in such report (and annex) audited by the Inspector General. The results of any such audit shall be submitted along with the report to which it pertains.

''(b) INFORMATION RELATING TO WORKSHARE DISCOUNTS.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

''(1) The per-item cost avoided by the Postal Service by virtue of such discount.

''(2) The percentage of such per-item cost avoided that the per-item workshare discount represents.

''(3) The per-item contribution made to institutional costs.

''(c) SERVICE AGREEMENTS AND MARKET TESTS.—In carrying out subsections (a) and (b) with respect to service agreements and experimental products offered through market tests under section 3641 in a year, the Postal Service—

''(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

''(2) shall report such data as the Postal Regulatory Commission requires.

''(d) SUPPORTING MATTER.—The Postal Regulatory Commission shall have access, in accordance with such regulations as the Commission shall prescribe, to the working papers and any other supporting matter of the Postal Service and the Inspector General in connection with any information submitted under this section.

''(e) CONTENT AND FORM OF REPORTS.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating to the report) to be provided by the Postal Service under this section. In carrying out this subsection, the Commission shall give due consideration to—

''(A) providing the public with timely, adequate information to assess the lawfulness of rates charged;

''(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and

''(C) protecting the confidentiality of commercially sensitive information.

''(2) REVISED REQUIREMENTS.—The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this subsection whenever it shall appear that—

''(A) the attribution of costs or revenues to products has become significantly inaccurate or can be significantly improved;

''(B) the quality of service data has become significantly inaccurate or can be significantly improved; or

''(C) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

''(f) CONFIDENTIAL INFORMATION.—

''(1) IN GENERAL.—If the Postal Service determines that any document or portion of a document, or other matter, which it provides to the Postal Regulatory Commission in a nonpublic annex under this section or under subsection (d) contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefor.

''(2) TREATMENT.—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

''(g) OTHER REPORTS.—The Postal Service shall submit to the Postal Regulatory Commission, together with any other submission that the Postal Service is required to make under this section in a year, copies of its then most recent—

''(1) comprehensive statement under section 2401(e);

''(2) strategic plan under section 2802;

''(3) performance plan under section 2803; and

''(4) program performance reports under section 2804.

''§ 3653. Annual determination of compliance

''(a) OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3652 for any year, the Postal Regulatory Commission shall promptly provide an opportunity for comment on such reports by users of the mails, affected parties, and an officer of the Commission who shall be required to represent the interests of the general public.

''(b) DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3652 with respect to a year, the Postal Regulatory Commission shall make a written determination as to—

''(1) whether any rates or fees in effect during such year (for products individually or collectively) were not in compliance with applicable provisions of this chapter (or regulations promulgated thereunder); or

''(2) whether any service standards in effect during such year were not met.

If, with respect to a year, no instance of noncompliance is found under this subsection to have occurred in such year, the written determination shall be to that effect.

''(c) IF ANY NONCOMPLIANCE IS FOUND.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take any appropriate remedial action authorized by section 3662(c).

''(d) REBUTTABLE PRESUMPTION.—A timely written determination described in the last sentence of subsection (b) shall, for purposes of any proceeding under section 3662, create a rebuttable presumption of compliance by the Postal Service (with regard to the matters described under paragraphs (1) and (2) of subsection (b)) during the year to which such determination relates.''.

SEC. 205. COMPLAINTS; APPELLATE REVIEW AND ENFORCEMENT.

Chapter 36 of title 39, United States Code, is amended by striking sections 3662 and 3663 and inserting the following:

''§ 3662. Rate and service complaints

''(a) IN GENERAL.—Any person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of chapter 1, 4, or 6, or this chapter (or regulations promulgated under any of those chapters) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

''(b) PROMPT RESPONSE REQUIRED.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a), either—

''(A) begin proceedings on such complaint; or

''(B) issue an order dismissing the complaint (together with a statement of the reasons therefor).

''(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

''(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds the complaint to be justified, it shall order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance including ordering unlawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, and requiring the Postal Service to make up for revenue shortfalls in competitive products.

''(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid out of the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

''§ 3663. Appellate review

''A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

''§ 3664. Enforcement of orders

''The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain the Postal Service from violating, any order issued by the Postal Regulatory Commission.''.

SEC. 206. CLERICAL AMENDMENT.

Chapter 36 of title 39, United States Code, is amended by striking the heading and analysis for such chapter and inserting the following:

''CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS

''Sec.
''3621. Applicability; definitions.
''3622. Modern rate regulation.
''[3623. Repealed.]
''[3624. Repealed.]
''[3625. Repealed.]
''3626. Reduced Rates.
''3627. Adjusting free rates.
''[3628. Repealed.]
''3629. Reduced rates for voter registration purposes.

''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

''3631. Applicability; definitions and updates.
''3632. Action of the Governors.
''3633. Provisions applicable to rates for competitive products.
''3634. Assumed Federal income tax on competitive products.

''SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

''3641. Market tests of experimental products.
''3642. New products and transfers of products between the market-dominant and competitive categories of mail.

''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

''3651. Annual reports by the Commission.
''3652. Annual reports to the Commission.
''3653. Annual determination of compliance.

''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW

''3661. Postal Services.
''3662. Rate and service complaints.
''3663. Appellate review.
''3664. Enforcement of orders.

''SUBCHAPTER VI—GENERAL

''3681. Reimbursement.

''3682. Size and weight limits.
''3683. Uniform rates for books; films, other materials.
''3684. Limitations.
''3685. Filing of information relating to periodical publications.
''3686. Bonus authority.
''SUBCHAPTER VII—MODERN SERVICE STANDARDS
''3691. Establishment of modern service standards.''.

TITLE III—MODERN SERVICE STANDARDS

SEC. 301. ESTABLISHMENT OF MODERN SERVICE STANDARDS.

Chapter 36 of title 39, United States Code, as amended by this Act, is further amended by adding at the end the following:

''SUBCHAPTER VII—MODERN SERVICE STANDARDS

''§ 3691. Establishment of modern service standards

''(a) AUTHORITY GENERALLY.—Not later than 12 months after the date of enactment of this section, the Postal Service shall, in consultation with the Postal Regulatory Commission, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with the Postal Service's universal service obligation as defined in sections 101 (a) and (b) and 403.

''(b) OBJECTIVES.—Such standards shall be designed to achieve the following objectives:

''(1) To enhance the value of postal services to both senders and recipients.

''(2) To preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.

''(3) To reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

''(4) To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.

''(c) FACTORS.—In establishing or revising such standards, the Postal Service shall take into account—

''(1) the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;

''(2) the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail;

''(3) the needs of Postal Service customers, including those with physical impairments;

''(4) mail volume and revenues projected for future years;

''(5) the projected growth in the number of addresses the Postal Service will be required to serve in future years;

''(6) the current and projected future cost of serving Postal Service customers;

''(7) the effect of changes in technology, demographics, and population distribution on the efficient and reliable operation of the postal delivery system; and

''(8) the policies of this title and such other factors as the Commission determines appropriate.

''(d) REVIEW.—The regulations promulgated pursuant to this section (and any revisions thereto) shall be subject to review upon complaint under sections 3662 and 3663.

SEC. 302. POSTAL SERVICE PLAN.

(a) IN GENERAL.—Within 6 months after the establishment of the service standards under section 3691 of title 39, United States Code, as added by this Act, the Postal Service shall, in consultation with the Postal Regulatory Commission, develop and submit to Congress a plan for meeting those standards.

(b) CONTENTS.—The plan under this section shall—

(1) establish performance goals;

(2) describe any changes to the Postal Service's processing, transportation, delivery, and retail networks necessary to allow the Postal Service to meet the performance goals;

(3) describe any changes to planning and performance management documents previously submitted to Congress to reflect new performance goals; and

(4) contain the matters relating to postal facilities provided under subsection (c).

(c) POSTAL FACILITIES.—

(1) FINDINGS.—Congress finds that—

(A) the Postal Service has more than 400 logistics facilities, separate from its post office network;

(B) as noted by the President's Commission on the United States Postal Service, the Postal Service has more facilities than it needs and the streamlining of this distribution network can pave the way for the potential consolidation of sorting facilities and the elimination of excess costs;

(C) the Postal Service has always revised its distribution network to meet changing conditions and is best suited to address its operational needs; and

(D) Congress strongly encourages the Postal Service to—

(i) expeditiously move forward in its streamlining efforts; and

(ii) keep unions, management associations, and local elected officials informed as an essential part of this effort and abide by any procedural requirements contained in the national bargaining agreements.

(2) IN GENERAL.—The Postal Service plan shall include a description of—

(A) the long-term vision of the Postal Service for rationalizing its infrastructure and workforce; and

(B) how the Postal Service intends to implement that vision.

(3) CONTENT OF FACILITIES PLAN.—The plan under this subsection shall include—

(A) a strategy for how the Postal Service intends to rationalize the postal facilities network and remove excess processing capacity and space from the network, including estimated timeframes, criteria, and processes to be used for making changes to the facilities network, and the process for engaging policy makers and the public in related decisions;

(B) a discussion of what impact any facility changes may have on the postal workforce and whether the Postal Service has sufficient flexibility to make needed workforce changes; and

(C) an identification of anticipated costs, cost savings, and other benefits associated with the infrastructure rationalization alternatives discussed in the plan.

(4) ANNUAL REPORTS.—

(A) IN GENERAL.—Not later than 90 days after the end of each fiscal year, the Postal Service shall prepare and submit a report to Congress on how postal decisions have impacted or will impact rationalization plans.

(B) CONTENTS.—Each report under this paragraph shall include—

(i) an account of actions taken during the preceding fiscal year to improve the efficiency and effectiveness of its processing, transportation, and distribution networks while preserving the timely delivery of postal services, including overall estimated costs and cost savings;

(ii) an account of actions taken to identify any excess capacity within its processing, transportation, and distribution networks and implement savings through realignment or consolidation of facilities including overall estimated costs and cost savings;

(iii) an estimate of how postal decisions related to mail changes, security, automation initiatives, worksharing, information technology systems, excess capacity, consolidating and closing facilities, and other areas will impact rationalization plans;

(iv) identification of any statutory or regulatory obstacles that prevented or will prevent or hinder the Postal Service from taking action to realign or consolidate facilities; and

(v) such additional topics and recommendations as the Postal Service considers appropriate.

(d) ALTERNATE RETAIL OPTIONS.—The Postal Service plan shall include plans to expand and market retail access to postal services, in addition to post offices, including—

(1) vending machines;

(2) the Internet;

(3) postage meter;

(4) stamps by mail;

(5) Postal Service employees on delivery routes;

(6) retail facilities in which overhead costs are shared with private businesses and other government agencies; or

(7) any other nonpost office access channel providing market retail access to postal services.

(e) REEMPLOYMENT ASSISTANCE AND RETIREMENT BENEFITS.—The Postal Service plan shall include—

(1) a plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation of any of its functions or the closing and consolidation of any of its facilities; and

(2) a plan, developed in consultation with the Office of Personnel Management, to offer early retirement benefits.

(f) INSPECTOR GENERAL REPORT.—

(1) IN GENERAL.—Before submitting the plan under subsection (a) and each annual report under subsection (c) to Congress, the Postal Service shall submit the plan and each annual report to the Inspector General of the United States Postal Service in a timely manner to carry out this subsection.

(2) REPORT.—The Inspector General shall prepare a report describing the extent to which the Postal Service plan and each annual report under subsection (c)—

(A) are consistent with the continuing obligations of the Postal Service under title 39, United States Code;

(B) provide for the Postal Service to meet the service standards established under section 3691 of title 39, United States Code; and

(C) allow progress toward improving overall efficiency and effectiveness consistent with the need to maintain universal postal service at affordable rates.

(g) CONTINUED AUTHORITY.—Nothing in this section shall be construed to prohibit the Postal Service from implementing any change to its processing, transportation, delivery, and retail networks under any authority granted to the Postal Service for those purposes.

TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

SEC. 401. POSTAL SERVICE COMPETITIVE PRODUCTS FUND.

(a) PROVISIONS RELATING TO POSTAL SERVICE COMPETITIVE PRODUCTS FUND AND RELATED MATTERS.—

(1) IN GENERAL.—Chapter 20 of title 39, United States Code, is amended by adding at the end the following:

''§ 2011. Provisions relating to competitive products

''(a)(1) In this subsection, the term 'costs attributable' has the meaning given such term by section 3631.

''(2) There is established in the Treasury of the United States a revolving fund, to be called the Postal Service Competitive Products Fund, which shall be available to the Postal Service without fiscal year limitation for the payment of—

''(A) costs attributable to competitive products; and

''(B) all other costs incurred by the Postal Service, to the extent allocable to competitive products.

''(b) There shall be deposited in the Competitive Products Fund, subject to withdrawal by the Postal Service—

''(1) revenues from competitive products;

''(2) amounts received from obligations issued by Postal Service under subsection (e);

''(3) interest and dividends earned on investments of the Competitive Products Fund; and

''(4) any other receipts of the Postal Service (including from the sale of assets), to the extent allocable to competitive products.

''(c) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, the Postal Service may request the investment of such amounts as the Postal Service determines advisable by the Secretary of the Treasury in obligations of, or obligations guaranteed by, the Government of the United States, and, with the approval of the Secretary, in such other obligations or securities as the Postal Service determines appropriate.

''(d) With the approval of the Secretary of the Treasury, the Postal Service may deposit moneys of the Competitive Products Fund in any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Postal Service and the Secretary may mutually agree.

''(e)(1)(A) Subject to the limitations specified in section 2005(a), the Postal Service is authorized to borrow money and to issue and sell such obligations as the Postal Service determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund.

''(B) Subject to paragraph (5), any borrowings by the Postal Service under subparagraph (A) shall be supported and serviced by—

''(i) the revenues and receipts from competitive products and the assets related to the provision of competitive products (as determined under subsection (h)); or

''(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e).

''(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with any trustee under any agreement entered into in connection with the issuance of such obligations with respect to—

''(A) the establishment of reserve, sinking, and other funds;

''(B) application and use of revenues and receipts of the Competitive Products Fund;

''(C) stipulations concerning the subsequent issuance of obligations or the execution of leases or lease purchases relating to properties of the Postal Service; and

''(D) such other matters as the Postal Service, considers necessary or desirable to enhance the marketability of such obligations.

''(3) Obligations issued by the Postal Service under this subsection—

''(A) shall be in such forms and denominations;

''(B) shall be sold at such times and in such amounts;

''(C) shall mature at such time or times;

''(D) shall be sold at such prices;

''(E) shall bear such rates of interest;

''(F) may be redeemable before maturity in such manner, at such times, and at such redemption premiums;

''(G) may be entitled to such relative priorities of claim on the assets of the Postal Service with respect to principal and interest payments; and

''(H) shall be subject to such other terms and conditions,

as the Postal Service determines.

''(4) Obligations issued by the Postal Service under this subsection—

''(A) shall be negotiable or nonnegotiable and bearer or registered instruments, as specified therein and in any indenture or covenant relating thereto;

''(B) shall contain a recital that such obligations are issued under this subsection, and such recital shall be conclusive evidence of the regularity of the issuance and sale of such obligations and of their validity;

''(C) shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the Government of the United States, and the Secretary of the Treasury or any other officer or agency having authority over or control of any such fiduciary, trust, or public funds, may at any time sell any of the obligations of the Postal Service acquired under this section;

''(D) shall not be exempt either as to principal or interest from any taxation now or hereafter imposed by any State or local taxing authority; and

''(E) except as provided in section 2006(c), shall not be obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the Government of the United States, and the obligations shall so plainly state.

''(5)(A) Subject to subparagraph (B), the Postal Service shall make payments of principal, or interest, or both on obligations issued under this subsection from—

''(i) revenues and receipts from competitive products and assets related to the provision of competitive products (as determined under subsection (h)); or

''(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available, including the audited statements required by section 2008(e).

''(B) Based on the audited financial statements for the most recently completed fiscal year, the total assets of the Competitive Products Fund may not be less than the amount determined by multiplying—

''(i) the quotient resulting from the total revenue of the Competitive Products Fund divided by the total revenue of the Postal Service; and

''(ii) the total assets of the Postal Service.

''(f) The receipts and disbursements of the Competitive Products Fund shall be accorded the same budgetary treatment as is accorded to receipts and disbursements of the Postal Service Fund under section 2009a.

''(g) A judgment (or settlement of a claim) against the Postal Service or the Government of the United States shall be paid out of the Competitive Products Fund to the extent that the judgment or claim arises out of activities of the Postal Service in the provision of competitive products.

''(h)(1)(A) The Secretary of the Treasury, in consultation with the Postal Service and an independent, certified public accounting firm and other advisors as the Secretary considers appropriate, shall develop recommendations regarding—

''(i) the accounting practices and principles that should be followed by the Postal Service with the objectives of—

''(I) identifying and valuing the assets and liabilities of the Postal Service associated with providing competitive products, including the capital and operating costs incurred by the Postal Service in providing such competitive products; and

''(II) subject to subsection (e)(5), preventing the subsidization of such products by market-dominant products; and

''(ii) the substantive and procedural rules that should be followed in determining the assumed Federal income tax on competitive products income of the Postal Service for any year (within the meaning of section 3634).

''(B) Not earlier than 6 months after the date of enactment of this section, and not later than 12 months after such date, the Secretary of the Treasury shall submit the recommendations under subparagraph (A) to the Postal Regulatory Commission.

''(2)(A) Upon receiving the recommendations of the Secretary of the Treasury under paragraph (1), the Commission shall give interested parties, including the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public, an opportunity to present their views on those recommendations through submission of written data, views, or arguments with or without opportunity for oral presentation, or in such other manner as the Commission considers appropriate.

''(B)(i) After due consideration of the views and other information received under subparagraph (A), the Commission shall by rule—

''(I) provide for the establishment and application of the accounting practices and principles which shall be followed by the Postal Service;

''(II) provide for the establishment and application of the substantive and procedural rules described under paragraph (1)(A)(ii); and

''(III) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

''(ii) Final rules under this subparagraph shall be issued not later than 12 months after the date on which recommendations are submitted under paragraph (1) (or by such later date on which the Commission and the Postal Service may agree). The Commission may revise such rules.

''(C)(i) Reports described under subparagraph (B)(i)(III) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

''(ii) The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service information under subparagraph (B)(i)(III) whenever it shall appear that—

''(I) the quality of the information furnished in those reports has become significantly inaccurate or can be significantly improved; or

''(II) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

''(D) A copy of each report described under subparagraph (B)(i)(III) shall be submitted by the Postal Service to the Secretary of the Treasury and the Inspector General of the United States Postal Service.

''(i)(1) The Postal Service shall submit an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund. The report shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses.

''(2) A copy of the most recent report submitted under paragraph (1) shall be included in the annual report submitted by the Postal Regulatory Commission under section 3652(g).''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:

''2011. Provisions relating to competitive products.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 2001 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

''(2) COMPETITIVE PRODUCTS FUND.—The term 'Competitive Products Fund' means the Postal Service Competitive Products Fund established by section 2011; and''.

(2) CAPITAL OF THE POSTAL SERVICE.—Section 2002(b) of title 39, United States Code, is amended by striking ''Fund,'' and inserting ''Fund

and the balance in the Competitive Products Fund,''.

(3) POSTAL SERVICE FUND.—

(A) PURPOSES FOR WHICH AVAILABLE.—Section 2003(a) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available).''.

(B) DEPOSITS.—Section 2003(b) of title 39, United States Code, is amended by striking ''There'' and inserting ''Except as otherwise provided in section 2011, there''.

(4) RELATIONSHIP BETWEEN THE TREASURY AND THE POSTAL SERVICE.—Section 2006 of title 39, United States Code, is amended—

(A) in subsection (a), in the first sentence, by inserting ''or 2011'' after ''section 2005'';

(B) in subsection (b)—

(i) in the first sentence, by inserting ''under section 2005'' before ''in such amounts''; and

(ii) in the second sentence, by inserting ''under section 2005'' before ''in excess of such amount.''; and

(C) in subsection (c), by inserting ''or 2011(e)(4)(E)'' after ''section 2005(d)(5)''.

SEC. 402. ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS INCOME.

Subchapter II of chapter 36 of title 39, United States Code, as amended by section 202, is amended by adding at the end the following:

''§ 3634. Assumed Federal income tax on competitive products income

''(a) DEFINITIONS.—For purposes of this section—

''(1) the term 'assumed Federal income tax on competitive products income' means the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 on the Postal Service's assumed taxable income from competitive products for the year; and

''(2) the term 'assumed taxable income from competitive products', with respect to a year, refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—

''(A) the only activities of such corporation were the activities of the Postal Service allocable under section 2011(h) to competitive products; and

''(B) the only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.

''(b) COMPUTATION AND TRANSFER REQUIREMENTS.—The Postal Service shall, for each year beginning with the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a)—

''(1) compute its assumed Federal income tax on competitive products income for such year; and

''(2) transfer from the Competitive Products Fund to the Postal Service Fund the amount of that assumed tax.

''(c) DEADLINE FOR TRANSFERS.—Any transfer required to be made under this section for a year shall be due on or before the January 15th next occurring after the close of such year.''.

SEC. 403. UNFAIR COMPETITION PROHIBITED.

(a) SPECIFIC LIMITATIONS.—Chapter 4 of title 39, United States Code, is amended by adding after section 404 the following:

''§ 404a. Specific limitations

''(a) Except as specifically authorized by law, the Postal Service may not—

''(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;

''(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or

''(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any postal service that uses or is based in whole or in part on such information, without the consent of the person providing that information, unless substantially the same information is obtained (or obtainable) from an independent source or is otherwise obtained (or obtainable).

''(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

''(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.''.

(b) CONFORMING AMENDMENTS.—

(1) GENERAL POWERS.—Section 401 of title 39, United States Code, is amended by striking ''The'' and inserting ''Subject to the provisions of section 404a, the''.

(2) SPECIFIC POWERS.—Section 404(a) of title 39, United States Code, is amended by striking ''Without'' and inserting ''Subject to the provisions of section 404a, but otherwise without''.

(c) CLERICAL AMENDMENT.—The analysis for chapter 4 of title 39, United States Code, is amended by inserting after the item relating to section 404 the following:

''404a. Specific limitations.''.

SEC. 404. SUITS BY AND AGAINST THE POSTAL SERVICE.

(a) IN GENERAL.—Section 409 of title 39, United States Code, is amended by striking subsections (d) and (e) and inserting the following:

''(d)(1) For purposes of the provisions of law cited in paragraphs (2)(A) and (2)(B), respectively, the Postal Service—

''(A) shall be considered to be a 'person', as used in the provisions of law involved; and

''(B) shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service.

''(2) This subsection applies with respect to—

''(A) the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946' (15 U.S.C. 1051 and following)); and

''(B) the provisions of section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair or deceptive acts or practices.

''(e)(1) To the extent that the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, engages in conduct with respect to any product which is not reserved to the United States under section 1696 of title 18, the Postal Service or other Federal agency (as the case may be)—

''(A) shall not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof; and

''(B) shall be considered to be a person (as defined in subsection (a) of the first section of the Clayton Act) for purposes of—

''(i) the antitrust laws (as defined in such subsection); and

''(ii) section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

For purposes of the preceding sentence, any private carriage of mail allowable by virtue of section 601 shall not be considered a service reserved to the United States under section 1696 of title 18.

''(2) No damages, interest on damages, costs or attorney's fees may be recovered, and no criminal liability may be imposed, under the antitrust laws (as so defined) from any officer or employee of the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, acting in an official capacity.

''(3) This subsection shall not apply with respect to conduct occurring before the date of enactment of this subsection.

''(f) To the extent that the Postal Service engages in conduct with respect to the provision of competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.

''(g)(1) Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with 1 of the nationally recognized model building codes and with other applicable nationally recognized codes. To the extent practicable, model building codes should meet the voluntary consensus criteria established for codes and standards as required in the National Technology Transfer and Advancement Act of 1995 as defined in Office of Management and Budget Circular A1190. For purposes of life safety, the Postal Service shall continue to comply with the most current edition of the Life Safety Code of the National Fire Protection Association (NFPA 101).

''(2) Each building constructed or altered by the Postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.

''(3) For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—

''(A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;

''(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

''(C) permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—

''(i) a copy of such schedule before construction of the building is begun; and

''(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding sentence, nor shall anything in this subsection require the Postal Service or any of its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

''(4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.

''(5) In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.

''(6) For purposes of this subsection, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

''(h)(1) Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising, in whole or in part, under any of the following:

''(A) Subsection (d) or (e) of this section.

''(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

''(C) Section 3663 (relating to appellate review).

The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph.

''(2) In any circumstance not covered by paragraph (1), the Department of Justice shall, under section 411, furnish the Postal Service such legal representation as it may require, except that, with the prior consent of the Attorney General, the Postal Service may, in any such circumstance, employ attorneys by contract or otherwise to conduct litigation brought by or against the Postal Service or its officers or employees in matters affecting the Postal Service.

''(3)(A) In any action, suit, or proceeding in a court of the United States arising in whole or in part under any of the provisions of law referred to in subparagraph (B) or (C) of paragraph (1), and to which the Commission is not otherwise a party, the Commission shall be permitted to appear as a party on its own motion and as of right.

''(B) The Department of Justice shall, under such terms and conditions as the Commission and the Attorney General shall consider appropriate, furnish the Commission such legal representation as it may require in connection with any such action, suit, or proceeding, except that, with the prior consent of the Attorney General, the Commission may employ attorneys by contract or otherwise for that purpose.

''(i) A judgment against the Government of the United States arising out of activities of the Postal Service shall be paid by the Postal Service out of any funds available to the Postal Service, subject to the restriction specified in section 2011(g).''.

(b) TECHNICAL AMENDMENT.—Section 409(a) of title 39, United States Code, is amended by striking ''Except as provided in section 3628 of this title,'' and inserting ''Except as otherwise provided in this title,''.

SEC. 405. INTERNATIONAL POSTAL ARRANGEMENTS.

(a) IN GENERAL.—Section 407 of title 39, United States Code, is amended to read as follows:

''§ 407. International postal arrangements

''(a) It is the policy of the United States—

''(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

''(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

''(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services; and

''(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

''(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and shall have the power to conclude postal treaties and conventions, except that the Secretary may not conclude any postal treaty or convention if such treaty or convention would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal services, or any other person.

''(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

''(A) shall coordinate with other agencies as appropriate, and in particular, should consider the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

''(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

''(C) shall maintain continuing liaison with the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives;

''(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

''(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

''(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

''(c) Before concluding any postal treaty or convention that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

''(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services as it deems appropriate, except that—

''(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be binding under international law; and

''(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

''(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

''(2) In exercising the authority under subsection (b) to conclude new postal treaties and conventions related to international postal services and to renegotiate such treaties and conventions, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

''(3) The provisions of this subsection shall take effect 6 months after the date of enactment of this subsection or such earlier date as the Customs Service may determine in writing.''.

(b) EFFECTIVE DATE.—Notwithstanding any provision of the amendment made by subsection (a), the authority of the United States Postal Service to establish the rates of postage or other charges on mail matter conveyed between the United States and other countries shall remain available to the Postal Service until—

(1) with respect to market-dominant products, the date as of which the regulations promulgated under section 3622 of title 39, United States Code (as amended by section 201(a)) take effect; and

(2) with respect to competitive products, the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

TITLE V—GENERAL PROVISIONS

SEC. 501. QUALIFICATION AND TERM REQUIREMENTS FOR GOVERNORS.

(a) QUALIFICATIONS.—

(1) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking ''(a)'' and inserting ''(a)(1)'' and by striking the fourth sentence and inserting the following: ''The Governors shall represent the public interest generally, and shall be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. Experience in the fields of law and accounting shall be considered in making appointments of Governors. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.''.

(2) APPLICABILITY.—The amendment made by paragraph (1) shall not affect the appointment or tenure of any person serving as a Governor of the United States Postal Service under an appointment made before the date of enactment of this Act however, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment. The requirement set forth in the fourth sentence of section 202(a)(1) of title 39, United States Code (as amended by subsection (a)) shall be met beginning not later than 9 years after the date of enactment of this Act.

(b) CONSULTATION REQUIREMENT.—Section 202(a) of title 39, United States Code, is amended by adding at the end the following:

''(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, the President should consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate.''.

(c) 5-YEAR TERMS.—

(1) IN GENERAL.—Section 202(b) of title 39, United States code, is amended in the first sentence by striking ''9 years'' and inserting ''5 years''.

(2) APPLICABILITY.—

(A) CONTINUATION BY INCUMBENTS.—The amendment made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act and such person

may continue to serve the remainder of the applicable term.

(B) VACANCY BY INCUMBENT BEFORE 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served less than 5 years of that term, the resulting vacancy in office shall be treated as a vacancy in a 5-year term.

(C) VACANCY BY INCUMBENT AFTER 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served 5 years or more of that term, that term shall be deemed to have been a 5-year term beginning on its commencement date for purposes of determining vacancies in office. Any appointment to the vacant office shall be for a 5-year term beginning at the end of the original 9-year term determined without regard to the deeming under the preceding sentence. Nothing in this subparagraph shall be construed to affect any action or authority of any Governor or the Board of Governors during any portion of a 9-year term deemed to be 5-year term under this subparagraph.

(d) TERM LIMITATION.—

(1) IN GENERAL.—Section 202(b) of title 39, United States Code, is amended—

(A) by inserting ''(1)'' after ''(b)''; and

(B) by adding at the end the following:

''(2) No person may serve more than 3 terms as a Governor.''.

(2) APPLICABILITY.—The amendments made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act with respect to the term which that person is serving on that date. Such person may continue to serve the remainder of the applicable term, after which the amendments made by paragraph (1) shall apply.

SEC. 502. OBLIGATIONS.

(a) PURPOSES FOR WHICH OBLIGATIONS MAY BE ISSUED.—The first sentence of section 2005(a)(1) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title, other than any of the purposes for which the corresponding authority is available to the Postal Service under section 2011.''.

(b) INCREASE RELATING TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS.—Section 2005(a)(1) of title 39, United States Code, is amended by striking the third sentence.

(c) AMOUNTS WHICH MAY BE PLEDGED.—

(1) OBLIGATIONS TO WHICH PROVISIONS APPLY.—The first sentence of section 2005(b) of title 39, United States Code, is amended by striking ''such obligations,'' and inserting ''obligations issued by the Postal Service under this section,''.

(2) ASSETS, REVENUES, AND RECEIPTS TO WHICH PROVISIONS APPLY.—Subsection (b) of section 2005 of title 39, United States Code, is amended by striking ''(b)'' and inserting ''(b)(1)'', and by adding at the end the following:

''(2) Notwithstanding any other provision of this section—

''(A) the authority to pledge assets of the Postal Service under this subsection shall be available only to the extent that such assets are not related to the provision of competitive products (as determined under section 2011(h) or, for purposes of any period before accounting practices and principles under section 2011(h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)); and

''(B) any authority under this subsection relating to the pledging or other use of revenues or receipts of the Postal Service shall be available only to the extent that they are not revenues or receipts of the Competitive Products Fund.''.

SEC. 503. PRIVATE CARRIAGE OF LETTERS.

(a) IN GENERAL.—Section 601 of title 39, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) A letter may also be carried out of the mails when—

''(1) the amount paid for the private carriage of the letter is at least the amount equal to 6 times the rate then currently charged for the 1st ounce of a single-piece first class letter;

''(2) the letter weighs at least 12½ ounces; or

''(3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that permit private carriage by suspension of the operation of this section (as then in effect).

''(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.''.

(b) EFFECTIVE DATE.—This section shall take effect on the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

SEC. 504. RULEMAKING AUTHORITY.

Paragraph (2) of section 401 of title 39, United States Code, is amended to read as follows:

''(2) to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title;''.

SEC. 505. NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.

(a) LABOR DISPUTES.—Section 1207 of title 39, United States Code, is amended to read as follows:

''§ 1207. Labor disputes

''(a) If there is a collective-bargaining agreement in effect, no party to such agreement shall terminate or modify such agreement unless the party desiring such termination or modification serves written notice upon the other party to the agreement of the proposed termination or modification not less than 90 days prior to the expiration date thereof, or not less than 90 days prior to the time it is proposed to make such termination or modification. The party serving such notice shall notify the Federal Mediation and Conciliation Service of the existence of a dispute within 45 days after such notice, if no agreement has been reached by that time.

''(b) If the parties fail to reach agreement or to adopt a procedure providing for a binding resolution of a dispute by the expiration date of the agreement in effect, or the date of the proposed termination or modification, the Director of the Federal Mediation and Conciliation Service shall within 10 days appoint a mediator of nationwide reputation and professional stature, and who is also a member of the National Academy of Arbitrators. The parties shall cooperate with the mediator in an effort to reach an agreement and shall meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, shall direct.

''(c)(1) If no agreement is reached within 60 days after the expiration or termination of the agreement or the date on which the agreement became subject to modification under subsection (a) of this section, or if the parties decide upon arbitration but do not agree upon the procedures therefore, an arbitration board shall be established consisting of 3 members, 1 of whom shall be selected by the Postal Service, 1 by the bargaining representative of the employees, and the third by the 2 thus selected. If either of the parties fails to select a member, or if the members chosen by the parties fail to agree on the third person within 5 days after their first meeting, the selection shall be made from a list of names provided by the Director. This list shall consist of not less then 9 names of arbitrators of nationwide reputation and professional nature, who are also members of the National Academy of Arbitrators, and whom the Director has determined are available and willing to serve.

''(2) The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel or by other representative as they may elect. Decisions of the arbitration board shall be conclusive and binding upon the parties. The arbitration board shall render its decision within 45 days after its appointment.

''(3) Costs of the arbitration board and mediation shall be shared equally by the Postal Service and the bargaining representative.

''(d) In the case of a bargaining unit whose recognized collective-bargaining representative does not have an agreement with the Postal Service, if the parties fail to reach the agreement within 90 days after the commencement of collective bargaining, a mediator shall be appointed in accordance with the terms in subsection (b) of this section, unless the parties have previously agreed to another procedure for a binding resolution of their differences. If the parties fail to reach agreement within 180 days after the commencement of collective bargaining, and if they have not agreed to another procedure for binding resolution, an arbitration board shall be established to provide conclusive and binding arbitration in accordance with the terms of subsection (c) of this section.''.

(b) NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.—Except as otherwise provided by the amendment made by subsection (a), nothing in this Act shall restrict, expand, or otherwise affect any of the rights, privileges, or benefits of either employees of or labor organizations representing employees of the United States Postal Service under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations within the United States Postal Service, or any collective bargaining agreement.

(c) FREE MAILING PRIVILEGES CONTINUE UNCHANGED.—Nothing in this Act or any amendment made by this Act shall affect any free mailing privileges accorded under section 3217 or sections 3403 through 3406 of title 39, United States Code.

SEC. 506. BONUS AUTHORITY.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3685 the following:

''§ 3686. Bonus authority

''(a) IN GENERAL.—The Postal Service may establish 1 or more programs to provide bonuses or other rewards to officers and employees of the Postal Service in senior executive or equivalent positions to achieve the objectives of this chapter.

''(b) LIMITATION ON TOTAL COMPENSATION.—

''(1) IN GENERAL.—Under any such program, the Postal Service may award a bonus or other reward in excess of the limitation set forth in the last sentence of section 1003(a), if such program has been approved under paragraph (2). Any such award or bonus may not cause the total compensation of such officer or employee to exceed the total annual compensation payable to the Vice President under section 104 of title 3 as of the end of the calendar year in which the bonus or award is paid.

''(2) APPROVAL PROCESS.—If the Postal Service wishes to have the authority, under any program described in subsection (a), to award bonuses or other rewards in excess of the limitation set forth in the last sentence of section 1003(a)—

''(A) the Postal Service shall make an appropriate request to the Board of Governors of the Postal Service in such form and manner as the Board requires; and

''(B) the Board of Governors shall approve any such request if the Board certifies, for the

annual appraisal period involved, that the performance appraisal system for affected officers and employees of the Postal Service (as designed and applied) makes meaningful distinctions based on relative performance.

''(3) REVOCATION AUTHORITY.—If the Board of Governors of the Postal Service finds that a performance appraisal system previously approved under paragraph (2)(B) does not (as designed and applied) make meaningful distinctions based on relative performance, the Board may revoke or suspend the authority of the Postal Service to continue a program approved under paragraph (2) until such time as appropriate corrective measures have, in the judgment of the Board, been taken.

''(c) REPORTING REQUIREMENT RELATING TO BONUSES OR OTHER REWARDS.—Included in its comprehensive statement under section 2401(e) for any period shall be—

''(1) the name of each person receiving a bonus or other reward during such period which would not have been allowable but for the provisions of subsection (b);

''(2) the amount of the bonus or other reward; and

''(3) the amount by which the limitation referred to in subsection (b)(1) was exceeded as a result of such bonus or other reward.''.

TITLE VI—ENHANCED REGULATORY COMMISSION

SEC. 601. REORGANIZATION AND MODIFICATION OF CERTAIN PROVISIONS RELATING TO THE POSTAL REGULATORY COMMISSION.

(a) TRANSFER AND REDESIGNATION.—Title 39, United States Code, is amended—

(1) by inserting after chapter 4 the following:

''CHAPTER 5—POSTAL REGULATORY COMMISSION

''Sec.
''501. Establishment.
''502. Commissioners.
''503. Rules; regulations; procedures.
''504. Administration.
''505. Officer of the Postal Regulatory Commission representing the general public.

''§ 501. Establishment

''The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.

''§ 502. Commissioners

''(a) The Postal Regulatory Commission is composed of 5 Commissioners, appointed by the President, by and with the advice and consent of the Senate. The Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration, and may be removed by the President only for cause. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability and Enhancement Act. Not more than 3 of the Commissioners may be adherents of the same political party.

''(b) No Commissioner shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.

''(c) A Commissioner may continue to serve after the expiration of his term until his successor has qualified, except that a Commissioner may not so continue to serve for more than 1 year after the date upon which his term otherwise would expire under subsection (f).

''(d) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

''(e) The Commissioners shall by majority vote designate a Vice Chairman of the Commission. The Vice Chairman shall act as Chairman of the Commission in the absence of the Chairman.

''(f) The Commissioners shall serve for terms of 6 years.'';

(2) by striking, in subchapter I of chapter 36 (as in effect before the amendment made by section 201(c)), the heading for such subchapter I and all that follows through section 3602;

(3) by redesignating sections 3603 and 3604 as sections 503 and 504, respectively, and transferring such sections to the end of chapter 5 (as inserted by paragraph (1)); and

(4) by adding after such section 504 the following:

''§ 505. Officer of the Postal Regulatory Commission representing the general public

''The Postal Regulatory Commission shall designate an officer of the Postal Regulatory Commission in all public proceedings who shall represent the interests of the general public.''.

(b) APPLICABILITY.—The amendment made by subsection (a)(1) shall not affect the appointment or tenure of any person serving as a Commissioner on the Postal Regulatory Commission (as so redesignated by section 604) under an appointment made before the date of enactment of this Act or any nomination made before that date, but, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.

(c) CLERICAL AMENDMENT.—The analysis for part I of title 39, United States Code, is amended by inserting after the item relating to chapter 4 the following:

''5. Postal Regulatory Commission ... 501''

SEC. 602. AUTHORITY FOR POSTAL REGULATORY COMMISSION TO ISSUE SUBPOENAS.

Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding at the end the following:

''(f)(1) Any Commissioner of the Postal Regulatory Commission, any administrative law judge appointed by the Commission under section 3105 of title 5, and any employee of the Commission designated by the Commission may administer oaths, examine witnesses, take depositions, and receive evidence.

''(2) The Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge appointed by the Commission under section 3105 of title 5 may, with respect to any proceeding conducted by the Commission under this title or to obtain information to be used to prepare a report under this title—

''(A) issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and

''(B) order the taking of depositions and responses to written interrogatories by a covered person.

The written concurrence of a majority of the Commissioners then holding office shall, with respect to each subpoena under subparagraph (A), be required in advance of its issuance.

''(3) In the case of contumacy or failure to obey a subpoena issued under this subsection, upon application by the Commission, the district court of the United States for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

''(4) For purposes of this subsection, the term 'covered person' means an officer, employee, agent, or contractor of the Postal Service.

''(g)(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission under a subpoena issued under subsection (f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

''(2) Except as provided in paragraph (3), no officer or employee of the Commission may, with respect to any information as to which the Commission has been notified under paragraph (1)—

''(A) use such information for purposes other than the purposes for which it is supplied; or

''(B) permit anyone who is not an officer or employee of the Commission to have access to any such information.

''(3)(A) Paragraph (2) shall not prohibit the Commission from publicly disclosing relevant information in furtherance of its duties under this title, provided that the Commission has adopted regulations under section 553 of title 5, that establish a procedure for according appropriate confidentiality to information identified by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service under paragraph (1), the Commission shall balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

''(B) Paragraph (2) shall not prevent the Commission from requiring production of information in the course of any discovery procedure established in connection with a proceeding under this title. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for information furnished to any party.''.

SEC. 603. APPROPRIATIONS FOR THE POSTAL REGULATORY COMMISSION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Subsection (d) of section 504 of title 39, United States Code (as so redesignated by section 601) is amended to read as follows:

''(d) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Postal Regulatory Commission. In requesting an appropriation under this subsection for a fiscal year, the Commission shall prepare and submit to the Congress under section 2009 a budget of the Commission's expenses, including expenses for facilities, supplies, compensation, and employee benefits.''.

(b) BUDGET PROGRAM.—

(1) IN GENERAL.—The next to last sentence of section 2009 of title 39, United States Code, is amended to read as follows: ''The budget program shall also include separate statements of the amounts which (1) the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401, (2) the Office of Inspector General of the United States Postal Service requests to be appropriated, out of the Postal Service Fund, under section 8G(f) of the Inspector General Act of 1978, and (3) the Postal Regulatory Commission requests to be appropriated, out of the Postal Service Fund, under section 504(d) of this title.''.

(2) CONFORMING AMENDMENT.—Section 2003(e)(1) of title 39, United States Code, is amended by striking the first sentence and inserting the following: ''The Fund shall be available for the payment of (A) all expenses incurred by the Postal Service in carrying out its functions as provided by law, subject to the same limitation as set forth in the parenthetical matter under subsection (a); (B) all expenses of the Postal Regulatory Commission, subject to the availability of amounts appropriated under section 504(d); and (C) all expenses of the Office of Inspector General, subject to the availability of amounts appropriated under section 8G(f) of the Inspector General Act of 1978.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 2002.

(2) SAVINGS PROVISION.—The provisions of title 39, United States Code, that are amended by this section shall, for purposes of any fiscal year before the first fiscal year to which the amendments made by this section apply, continue to apply in the same way as if this section had never been enacted.

SEC. 604. REDESIGNATION OF THE POSTAL RATE COMMISSION.

(a) AMENDMENTS TO TITLE 39, UNITED STATES CODE.—Title 39, United States Code, is amended in sections 404, 503 and 504 (as so redesignated by section 601), 1001 and 1002, by striking ''Postal Rate Commission'' each place it appears and inserting ''Postal Regulatory Commission'';

(b) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended in sections 104(1), 306(f), 2104(b), 3371(3), 5314 (in the item relating to Chairman, Postal Rate Commission), 5315 (in the item relating to Members, Postal Rate Commission), 5514(a)(5)(B), 7342(a)(1)(A), 7511(a)(1)(B)(ii), 8402(c)(1), 8423(b)(1)(B), and 8474(c)(4) by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(c) AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978.—Section 101(f)(6) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(d) AMENDMENT TO THE REHABILITATION ACT OF 1973.—Section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)) is amended by striking ''Postal Rate Office'' and inserting ''Postal Regulatory Commission''.

(e) AMENDMENT TO TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(f) OTHER REFERENCES.—Whenever a reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, document, or other record of the United States to the Postal Rate Commission, such reference shall be considered a reference to the Postal Regulatory Commission.

SEC. 605. FINANCIAL TRANSPARENCY.

(a) IN GENERAL.—Section 101 of title 39, United States Code, is amended—

(1) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

(2) by inserting after subsection (c) the following:

''(d) As an independent establishment of the executive branch of the Government of the United States, the Postal Service shall be subject to a high degree of transparency to ensure fair treatment of customers of the Postal Service's market-dominant products and companies competing with the Postal Service's competitive products.''.

(b) FINANCIAL REPORTING REQUIREMENTS AND ENFORCEMENT POWERS APPLICABLE TO POSTAL SERVICE.—Section 503 of title 39, United States Code (as so redesignated by section 601 and 604) is amended by—

(1) inserting ''(a)'' before ''The Postal Regulatory Commission shall promulgate''; and

(2) adding at the end the following:

''(b)(1) Beginning with the first full fiscal year following the date of enactment of the Postal Accountability and Enhancement Act, the Postal Service shall file with the Postal Regulatory Commission —

''(A) within 35 days after the end of each fiscal quarter, a quarterly report containing the information prescribed in Form 10–Q of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form;

''(B) within 60 days after the end of each fiscal year, an annual report containing the information prescribed in Form 10–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form; and

''(C) periodic reports within the time frame and containing the information prescribed in Form 8–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form.

''(2) For purposes of preparing the reports required under paragraph (1), the Postal Service shall be deemed to be the registrant described in the Securities and Exchange Commission forms, and references contained in such forms to Securities and Exchange Commission regulations are applicable.

''(3) For purposes of preparing the reports required under paragraph (1), the Postal Service shall comply with the rules prescribed by the Securities and Exchange Commission implementing section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262; Public Law 107–204) beginning with fiscal year 2007 and in each fiscal year thereafter.

''(c)(1) The reports required under subsection (b)(1)(B) shall include, with respect to the financial obligations of the Postal Service under chapters 83, 84, and 89 of title 5 for retirees of the Postal Service—

''(A) the funded status of such obligations of the Postal Service;

''(B) components of the net change in the fund balances and obligations and the nature and cause of any significant changes;

''(C) components of net periodic costs;

''(D) cost methods and assumptions underlying the relevant actuarial valuations;

''(E) the effect of a one-percentage point increase in the assumed health care cost trend rate for each future year on the service and interest costs components of net periodic cost and the accumulated obligation of the Postal Service under chapter 89 of title 5 for retirees of the Postal Service;

''(F) actual contributions to and payments from the funds for the years presented and the estimated future contributions and payments for each of the following 5 years;

''(G) the composition of plan assets reflected in the fund balances; and

''(H) the assumed rate of return on fund balances and the actual rates of return for the years presented.

''(2)(A) Beginning with the fiscal year 2007 and in each fiscal year thereafter, for purposes of the reports required under subsection (b)(1)(A) and (B), the Postal Service shall include segment reporting.

''(B) The Postal Service shall determine the appropriate segment reporting under subparagraph (A), after consultation with the Postal Regulatory Commission.

''(d) For purposes of the annual reports required under subsection (b)(1)(B), the Postal Service shall obtain an opinion from an independent auditor on whether the information listed under subsection (c) is fairly stated in all material respects, either in relation to the basic financial statements as a whole or on a standalone basis.

''(e) The Postal Regulatory Commission shall have access to the audit documentation and any other supporting matter of the Postal Service and its independent auditor in connection with any information submitted under subsection (b)(1)(B).

''(f) The Postal Regulatory Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this section whenever it shall appear that the data—

''(1) have become significantly inaccurate;

''(2) can be significantly improved; or

''(3) are not cost beneficial.''.

TITLE VII—EVALUATIONS

SEC. 701. ASSESSMENTS OF RATEMAKING, CLASSIFICATION, AND OTHER PROVISIONS.

(a) IN GENERAL.—The Postal Regulatory Commission shall, at least every 3 years, submit a report to the President and Congress concerning—

(1) the operation of the amendments made by this Act; and

(2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States.

(b) POSTAL SERVICE VIEWS.—A report under this section shall be submitted only after reasonable opportunity has been afforded to the Postal Service to review the report and to submit written comments on the report. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).

SEC. 702. REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY.

(a) REPORT BY THE POSTAL REGULATORY COMMISSION.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Postal Regulatory Commission shall submit a report to the President and Congress on universal postal service and the postal monopoly in the United States (in this section referred to as ''universal service and the postal monopoly''), including the monopoly on the delivery of mail and on access to mailboxes.

(2) CONTENTS.—The report under this subsection shall include—

(A) a comprehensive review of the history and development of universal service and the postal monopoly, including how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas;

(B) the scope and standards of universal service and the postal monopoly provided under current law (including sections 101 and 403 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service;

(C) a description of any geographic areas, populations, communities (including both urban and rural communities), organizations, or other groups or entities not currently covered by universal service or that are covered but that are receiving services deficient in scope or quality or both; and

(D) the scope and standards of universal service and the postal monopoly likely to be required in the future in order to meet the needs and expectations of the United States public, including all types of mail users, based on discussion of such assumptions, alternative sets of assumptions, and analyses as the Postal Service considers plausible.

(b) RECOMMENDED CHANGES TO UNIVERSAL SERVICE AND THE MONOPOLY.—The Postal Regulatory Commission shall include in the report under subsection (a), and in all reports submitted under section 701 of this Act—

(1) any recommended changes to universal service and the postal monopoly as the Commission considers appropriate, including changes that the Commission may implement under current law and changes that would require changes to current law, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service;

(2) with respect to each recommended change described under paragraph (1)—

(A) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

(B) an analysis of the likely benefit of the current postal monopoly to the ability of the Postal Service to sustain the current scope and standards of universal service, including estimates of the financial benefit of the postal monopoly to the extent practicable, under current law; and

(3) such additional topics and recommendations as the Commission considers appropriate, with estimated effects of the recommendations on the service, financial condition, rates, and the security of mail provided by the Postal Service.

SEC. 703. STUDY ON EQUAL APPLICATION OF LAWS TO COMPETITIVE PRODUCTS.

(a) IN GENERAL.—The Federal Trade Commission shall prepare and submit to the President and Congress, and to the Postal Regulatory Commission, within 1 year after the date of enactment of this Act, a comprehensive report identifying Federal and State laws that apply differently to the United States Postal Service with respect to the competitive category of mail (within the meaning of section 102 of title 39, United States Code, as amended by section 101) and similar products provided by private companies.

(b) RECOMMENDATIONS.—The Federal Trade Commission shall include such recommendations as it considers appropriate for bringing such legal discrimination to an end, and in the interim, to account under section 3633 of title 39, United States Code (as added by this Act), for the net economic advantages provided by those laws.

(c) CONSULTATION.—In preparing its report, the Federal Trade Commission shall consult with the United States Postal Service, the Postal Regulatory Commission, other Federal agencies, mailers, private companies that provide delivery services, and the general public, and shall append to such report any written comments received under this subsection.

(d) COMPETITIVE PRODUCT REGULATION.—The Postal Regulatory Commission shall take into account the recommendations of the Federal Trade Commission in promulgating or revising the regulations required under section 3633 of title 39, United States Code.

SEC. 704. REPORT ON POSTAL WORKPLACE SAFETY AND WORKPLACE-RELATED INJURIES.

(a) REPORT BY THE INSPECTOR GENERAL.—

(1) IN GENERAL.—Not later than 6 months after the enactment of this Act, the Inspector General of the United States Postal Service shall submit a report to Congress and the Postal Service that—

(A) details and assesses any progress the Postal Service has made in improving workplace safety and reducing workplace-related injuries nationwide; and

(B) identifies opportunities for improvement that remain with respect to such improvements and reductions.

(2) CONTENTS.—The report under this subsection shall also—

(A) discuss any injury reduction goals established by the Postal Service;

(B) describe the actions that the Postal Service has taken to improve workplace safety and reduce workplace-related injuries, and assess how successful the Postal Service has been in meeting its injury reduction goal; and

(C) identify areas where the Postal Service has failed to meet its injury reduction goals, explain the reasons why these goals were not met, and identify opportunities for making further progress in meeting these goals.

(b) REPORT BY THE POSTAL SERVICE.—

(1) REPORT TO CONGRESS.—Not later than 6 months after receiving the report under subsection (a), the Postal Service shall submit a report to Congress detailing how it plans to improve workplace safety and reduce workplace-related injuries nationwide, including goals and metrics.

(2) PROBLEM AREAS.—The report under this subsection shall also include plans, developed in consultation with the Inspector General and employee representatives, including representatives of each postal labor union and management association, for addressing the problem areas identified by the Inspector General in the report under subsection (a)(2)(C).

SEC. 705. STUDY ON RECYCLED PAPER.

(a) IN GENERAL.—Within 12 months after the date of enactment of this Act, the Government Accountability Office shall study and submit to the Congress, the Board of Governors of the Postal Service, and to the Postal Regulatory Commission a report concerning—

(1) the economic and environmental efficacy of establishing rate incentives for mailers linked to the use of recycled paper;

(2) a description of the accomplishments of the Postal Service in each of the preceding 5 years involving recycling activities, including the amount of annual revenue generated and savings achieved by the Postal Service as a result of its use of recycled paper and other recycled products and its efforts to recycle undeliverable and discarded mail and other materials; and

(3) additional opportunities that may be available for the United States Postal Service to engage in recycling initiatives and the projected costs and revenues of undertaking such opportunities.

(b) RECOMMENDATIONS.—The report shall include recommendations for any administrative or legislative actions that may be appropriate.

TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

SEC. 801. SHORT TITLE.

This title may be cited as the ''Postal Civil Service Retirement and Health Benefits Funding Amendments of 2004''.

SEC. 802. CIVIL SERVICE RETIREMENT SYSTEM.

(a) IN GENERAL.—Chapter 83 of title 5, United States Code, is amended—

(1) in section 8334(a)(1)(B), by striking clause (ii) and inserting the following:

''(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph.''; and

(2) by amending section 8348(h) to read as follows:

''(h)(1) In this subsection, the term 'Postal surplus or supplemental liability' means the estimated difference, as determined by the Office, between—

''(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

''(B) the sum of—

''(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

''(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

''(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

''(2)(A) Not later than June 15, 2006, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2005. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a by June 30, 2006. If the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing September 30, 2006, which provides for the liquidation of such liability by September 30, 2043.

''(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2006, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C), and any prior amortization schedule for payments shall be terminated. If the result is a supplemental liability, the Office shall establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

''(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

''(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

''(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

''(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.''.

(b) CREDIT ALLOWED FOR MILITARY SERVICE.—In the application of section 8348(g)(2) of title 5, United States Code, for the fiscal year 2006, the Office of Personnel Management shall include, in addition to the amount otherwise computed under that paragraph, the amounts that would have been included for the fiscal years 2003 through 2005 with respect to credit for military service of former employees of the United States Postal Service as though the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) had not been enacted, and the Secretary of the Treasury shall make the required transfer to the Civil Service Retirement and Disability Fund based on that amount.

(c) REVIEW.—

(1) IN GENERAL.—

(A) REQUEST FOR REVIEW.—Notwithstanding any other provision of this section (including any amendment made by this section), any determination or redetermination made by the Office of Personnel Management under this section (including any amendment made by this section) shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this subsection.

(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of pension obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(2) RECONSIDERATION.—Upon receiving the report from the Commission under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

SEC. 803. HEALTH INSURANCE.

(a) IN GENERAL.—

(1) FUNDING.—Chapter 89 of title 5, United States Code, is amended—

(A) in section 8906(g)(2)(A), by striking ''shall be paid by the United States Postal Service.'' and inserting ''shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service.''; and

(B) by inserting after section 8909 the following:

''§ 8909a. Postal Service Retiree Health Benefit Fund

''(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

''(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

''(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

''(d)(1) Not later than June 30, 2006, and by June 30 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

''(2)(A) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year, the Office shall recompute the difference between—

''(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

''(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

''(II) the net present value computed under paragraph (1).

''(B) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year shall recompute, an amortization schedule including a series of annual installments which provide for the liquidation by September 30, 2045, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

''(3) Not later than September 30, 2006, and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund—

''(A) the net present value computed under paragraph (1); and

''(B) the annual installment computed under paragraph (2)(B).

''(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

''(5)(A)(i) Any computation or other determination of the Office under this subsection shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

''(ii) Upon receiving a request under clause (i), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this subparagraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

''(B) Upon receiving the report under subparagraph (A), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

''(6) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8909 the following:

''8909a. Postal Service Retiree Health Benefits Fund.''.

(b) REVIEW.—

(1) IN GENERAL.—

(A) REQUEST FOR REVIEW.—Any regulation established under section 8909a(d)(5) of title 5, United States Code (as added by subsection (a)), shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(2) RECONSIDERATION.—Upon receiving the report under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

(c) TRANSITIONAL ADJUSTMENT FOR FISCAL YEAR 2006.—For fiscal year 2006, the amounts paid by the Postal Service in Government contributions under section 8906(g)(2)(A) of title 5, United States Code, for fiscal year 2006 contributions shall be deducted from the initial payment otherwise due from the Postal Service to the Postal Service Retiree Health Benefits Fund under section 8909a(d)(3) of such title as added by this section.

SEC. 804. REPEAL OF DISPOSITION OF SAVINGS PROVISION.

Section 3 of the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) is repealed.

SEC. 805. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided under subsection (b), this title shall take effect on October 1, 2005.

(b) TERMINATION OF EMPLOYER CONTRIBUTION.—The amendment made by paragraph (1) of section 802(a) shall take effect on the first day of the first pay period beginning on or after October 1, 2005.

TITLE IX—COMPENSATION FOR WORK INJURIES

SEC. 901. TEMPORARY DISABILITY; CONTINUATION OF PAY.

(a) TIME OF ACCRUAL OF RIGHT.—Section 8117 of title 5, United States Code, is amended—

(1) by striking ''An employee'' and inserting ''(a) An employee other than a Postal Service employee''; and

(2) by adding at the end the following:

''(b) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period, except that if the disability exceeds 14 days or is followed by permanent disability, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 8118(b)(1) of title 5, United States Code, is amended to read as follows:

''(1) without a break in time, except as provided under section 8117(b), unless controverted under regulations of the Secretary''.

SEC. 902. DISABILITY RETIREMENT FOR POSTAL EMPLOYEES.

(a) TOTAL DISABILITY.—Section 8105 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1)).

''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of the Postal Accountability and Enhancement Act, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for total disability is converted to 50 percent of the monthly pay of the employee on the later of—

''(A) the date on which the injured employee reaches retirement age; or

''(B) 1 year after the employee begins receiving compensation.''.

(b) PARTIAL DISABILITY.—Section 8106 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (d).''; and

(2) by adding at the end the following:

''(d)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1)).

''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of this subsection, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for partial disability is converted to 50 percent of the difference between the monthly pay of an employee and the monthly wage earning capacity of the employee after the beginning of partial disability on the later of—

''(A) the date on which the injured employee reaches retirement age; or

''(B) 1 year after the employee begins receiving compensation.''.

TITLE X—MISCELLANEOUS

SEC. 1001. EMPLOYMENT OF POSTAL POLICE OFFICERS.

Section 404 of title 39, United States Code (as amended by this Act), is further amended by adding at the end the following:

''(d) The Postal Service may employ guards for all buildings and areas owned or occupied by the Postal Service or under the charge and control of the Postal Service, and may give such guards, with respect to such property, any of the powers of special policemen provided under section 1315 of title 40. The Postmaster General, or the designee of the Postmaster General, may take any action that the Secretary of Homeland

Security may take under section 1315 of title 40, with respect to that property.

SEC. 1002. OBSOLETE PROVISIONS.

(a) REPEAL.—

(1) IN GENERAL.—Chapter 52 of title 39, United States Code, is repealed.

(2) CONFORMING AMENDMENTS.—(A) Section 5005(a) of title 39, United States Code, is amended—

(i) by striking paragraph (1), and by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively; and

(ii) in paragraph (3) (as so designated by clause (i)), by striking ''(as defined in section 5201(6) of this title)''.

(B) Section 5005(b) of such title 39 is amended by striking ''(a)(4)'' each place it appears and inserting ''(a)(3)''.

(C) Section 5005(c) of such title 39 is amended by striking ''by carrier or person under subsection (a)(1) of this section, by contract under subsection (a)(4) of this section, or'' and inserting ''by contract under subsection (a)(3) of this section or''.

(b) ELIMINATING RESTRICTION ON LENGTH OF CONTRACTS.—(1) Section 5005(b)(1) of title 39, United States Code, is amended by striking ''(or where the Postal Service determines that special conditions or the use of special equipment warrants, not in excess of 6 years)'' and inserting ''(or such longer period of time as may be determined by the Postal Service to be advisable or appropriate)''.

(2) Section 5402(d) of such title 39 is amended by striking ''for a period of not more than 4 years''.

(3) Section 5605 of such title 39 is amended by striking ''for periods of not in excess of 4 years''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V of title 39, United States Code, is amended by repealing the item relating to chapter 52.

SEC. 1003. REDUCED RATES.

Section 3626 of title 39, United States Code, is amended—

(1) in subsection (a), by striking all before paragraph (4) and inserting the following:

''(a)(1) Except as otherwise provided in this section, rates of postage for a class of mail or kind of mailer under former section 4358, 4452(b), 4452(c), 4554(b), or 4554(c) of this title shall be established in accordance with section 3622.

''(2) For the purpose of this subsection, the term 'regular-rate category' means any class of mail or kind of mailer, other than a class or kind referred to in section 2401(c).

''(3) Rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title shall be established so that postage on each mailing of such mail reflects its preferred status as compared to the postage for the most closely corresponding regular-rate category mailing.'';

(2) in subsection (g), by adding at the end the following:

''(3) For purposes of this section and former section 4358(a) through (c) of this title, those copies of an issue of a publication entered within the county in which it is published, but distributed outside such county on postal carrier routes originating in the county of publication, shall be treated as if they were distributed within the county of publication.

''(4)(A) In the case of an issue of a publication, any number of copies of which are mailed at the rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title, any copies of such issue which are distributed outside the county of publication (excluding any copies subject to paragraph (3)) shall be subject to rates of postage provided for under this paragraph.

''(B) The rates of postage applicable to mail under this paragraph shall be established in accordance with section 3622.

''(C) This paragraph shall not apply with respect to an issue of a publication unless the total paid circulation of such issue outside the county of publication (not counting recipients of copies subject to paragraph (3)) is less than 5,000.''; and

(3) by adding at the end the following:

''(n) In the administration of this section, matter that satisfies the circulation standards for requester publications shall not be excluded from being mailed at the rates for mail under former section 4358 solely because such matter is designed primarily for free circulation or for circulation at nominal rates, or fails to meet the requirements of former section 4354(a)(5).''.

SEC. 1004. SENSE OF CONGRESS REGARDING POSTAL SERVICE PURCHASING REFORM.

It is the sense of Congress that the Postal Service should—

(1) ensure the fair and consistent treatment of suppliers and contractors in its current purchasing policies and any revision or replacement of such policies, such as through the use of competitive contract award procedures, effective dispute resolution mechanisms, and socioeconomic programs; and

(2) implement commercial best practices in Postal Service purchasing policies to achieve greater efficiency and cost savings as recommended in July 2003 by the President's Commission on the United States Postal Service, in a manner that is compatible with the fair and consistent treatment of suppliers and contractors, as befitting an establishment in the United States Government.

Mr. FRIST. Mr. President, I ask unanimous consent that the amendments at the desk be agreed to, the committee-reported amendment, as amended, be agreed to, and the bill, as amended, be read a third time.

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

The amendments (Nos. 2750, 2751, 2752, and 2753) were agreed to, as follows:

AMENDMENT NO. 2750

(Purpose: To modify provisions relating to objectives, unused rate adjustment authority, transition rules, rate and service complaints, and for other purposes)

On page 133, line 25, insert before the colon '', each of which shall be applied in conjunction with the others''.

On page 134, between lines 21 and 22, insert the following:

''(8) To establish and maintain a just and reasonable schedule for rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.

On page 135, strike lines 1 through 3.

On page 135, line 4, strike ''(2)'' and insert ''(1)''.

On page 135, line 9, strike ''(3)'' and insert ''(2)''.

On page 135, line 15, strike ''(4)'' and insert ''(3)''.

On page 135, line 19, strike ''(5)'' and insert ''(4)''.

On page 135, line 22, strike ''(6)'' and insert ''(5)''.

On page 136, line 1, strike ''(7)'' and insert ''(6)''.

On page 136, line 5, strike ''(8)'' and insert ''(7)''.

On page 136, line 8, strike ''(9)'' and insert ''(8)''.

On page 136, line 12, strike ''(10)'' and insert ''(9)''.

On page 136, line 16, strike ''(11)'' and insert ''(10)''.

On page 136, line 19, strike ''(12)'' and insert ''(11)''.

On page 136, line 21, strike ''(13)'' and insert ''(12)''.

On page 137, line 1, strike ''(14)'' and insert ''(13)''.

On page 138, line 19, strike ''The'' and insert ''Except as provided under subparagraph (C), the''.

On page 139, strike lines 8 through 17, and insert the following:

''(C) USE OF UNUSED RATE AUTHORITY.—

''(i) DEFINITION.—In this subparagraph, the term 'unused rate adjustment authority' means the difference between—

''(I) the maximum amount of a rate adjustment that the Postal Service is authorized to make in any year subject to the annual limitation under paragraph (1); and

''(II) the amount of the rate adjustment the Postal Service actually makes in that year.

''(ii) AUTHORITY.—Subject to clause (iii), the Postal Service may use any unused rate adjustment authority for any of the 5 years following the year such authority occurred.

''(iii) LIMITATIONS.—In exercising the authority under clause (ii) in any year, the Postal Service—

''(I) may use unused rate adjustment authority from more than 1 year;

''(II) may use any part of the unused rate adjustment authority from any year;

''(III) shall use the unused rate adjustment authority from the earliest year such authority first occurred and then each following year; and

''(IV) for any class or service, may not exceed the annual limitation under paragraph (1) by more than 2 percentage points.

On page 142, strike lines 5 through 10, and insert the following:

''(f) TRANSITION RULE.—For the 1-year period beginning on the date of enactment of this section, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of enactment of this section. Proceedings initiated to consider a request for a recommended decision filed by the Postal Service during that 1-year period shall be completed in accordance with subchapter II of chapter 36 of this title and implementing regulations, as in effect before the date of enactment of this section.''.

On page 162, line 10, strike all through page 164, line 9, and insert the following:

''§ 3662. Rate and service complaints

''(a) IN GENERAL.—Any interested party (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of chapter 1 (except section 101(c)), sections 401, 403, 404, 404a, 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

''(b) PROMPT RESPONSE REQUIRED.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a)—

''(A) either—

''(i) upon a finding that such complaint raises substantial and material issues of fact or law, begin proceedings on such complaint; or

''(ii) issue an order dismissing the complaint; and

''(B) with respect to any action taken under subparagraph (A) (i) or (ii), issue a written statement setting forth the bases of its determination.

''(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, any complaint under subsection (a) on which the

Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

''(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds upon clear and convincing evidence the complaint to be justified, it shall order that the Postal Service take such action as is necessary to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance.

''(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid from the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

On page 168, line 11, strike ''Commission'' and insert ''Postal Service''.

AMENDMENT NO. 2751

(Purpose: To provide for procedures by the Postal Service to give notice on certain actions affecting communities)

On page 171, line 6, strike ''and''.

On page 171, line 10, strike the period and insert ''; and''.

On page 171, between lines 10 and 11, insert the following:

(D) procedures that the Postal Service will use to—

(i) provide adequate public notice to communities potentially affected by a proposed rationalization decision;

(ii) make available, upon request, any data, analyses, or other information considered by the Postal Service in making the proposed decision;

(iii) afford affected persons ample opportunity to provide input on the proposed decision; and

(iv) take such comments into account in making a final decision.

On page 172, between lines 22 and 23, insert the following:

(5) EXISTING EFFORTS.—Effective on the date of enactment of this Act, the Postal Service may not close or consolidate any processing or logistics facilities without using procedures for public notice and input consistent with those described under paragraph (3)(D).

AMENDMENT NO. 2752

(Purpose: To modify qualifications and terms of Governors of the United States Postal Service)

On page 202, lines 10 through 14, strike ''demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. Experience in the fields of law and accounting shall be considered in making appointments of Governors.'' and insert ''experience in the fields of public service, law or accounting or on their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size.''

On page 203, line 14, strike ''5'' and insert ''7''.

On page 203, line 17, strike ''5'' and insert ''7''.

On page 205, line 9, strike ''3'' and insert ''2''.

AMENDMENT NO. 2753

(Purpose: To modify contracts for the transportation of mail by air, and for other purposes)

On page 256, add after line 3, the following:

SEC. 1005. CONTRACTS FOR TRANSPORTATION OF MAIL BY AIR.

(a) DEFINITIONS.—Section 5402(a) of title 39, United States Code, is amended—

(1) in paragraph (4), by striking ''(g)(1)(D)(i)'' and inserting ''(g)(1)(A)(iv)(I)'';

(2) in paragraph (5), by striking ''(g)(1)(D)(i)'' and inserting ''(g)(1)(A)(iv)(I)'';

(3) in paragraph (6), by striking ''only'';

(4) in paragraph (8), by striking ''rates paid to a bush carrier'' and inserting ''linehaul rates and a single terminal handling payment at a bush terminal handling rate paid to a bush carrier'';

(5) in paragraph (11), by striking ''(g)(1)(D)(ii)'' and inserting ''(g)(1)(A)(iv)(II)'';

(6) in paragraph (13)—

(A) in subparagraph (A)—

(i) by striking ''clause (i) or (ii) of subsection (g)(1)(D)'' and inserting ''subclause (I) or (II) of subsection (g)(1)(A)(iv)''; and

(ii) by striking ''and'' after the semicolon;

(B) in subparagraph (B), by adding ''and'' after the semicolon; and

(C) by adding at the end the following:

''(C) is not comprised of previously qualified existing mainline carriers as a result of merger or sale;'';

(7) in paragraph (18), by striking ''bush routes'' and inserting ''routes''; and

(8) in paragraph (22), by striking ''bush routes'' and inserting ''routes''.

(b) NONPRIORITY BYPASS MAIL.—Section 5402(g) of title 39, United States Code, is amended—

(1) in paragraph (2)(C), by inserting ''or a destination city'' after ''acceptance point and a hub'';

(2) in paragraph (3), by adding at the end the following:

''(C) When a new hub results from a change in a determination under subparagraph (B), mail tender from that hub during the 12-month period beginning on the effective date of that change shall be based on the passenger and freight shares to the destinations of the affected hub or hubs resulting in the new hub.''; and

(3) in paragraph (5)(A)(i), by striking ''(g)(1)(D)(ii)'' and inserting ''(g)(1)(A)(iv)(II)''.

(c) EQUITABLE TENDER.—Section 5402(h) of title 39, United States Code, is amended—

(1) in paragraph (1), by inserting ''bush'' after ''providing scheduled'';

(2) by striking paragraph (3) and inserting the following:

''(3)(A) Except as provided under subparagraph (C), a new or existing 121 bush passenger carrier qualified under subsection (g)(1) shall be exempt from the requirements under paragraphs (1)(B) and (2)(A) on a city pair route for a period which shall extend for—

''(i) 1 year;

''(ii) 1 year in addition to the extension under clause (i) if, as of the conclusion of the first year, such carrier has been providing not less than 5 percent of the passenger service on that route (as calculated under paragraph (5)); and

''(iii) 1 year in addition to the extension under clause (ii) if, as of the conclusion of the second year, such carrier has been providing not less than 10 percent of the passenger service on that route (as calculated under paragraph (5)).

''(B)(i) The first 3 121 bush passenger carriers entitled to the exemptions under subparagraph (A) on any city pair route shall divide no more than an additional 10 percent of the mail, apportioned equally, comprised of no more than—

''(I) 5 percent of the share of each qualified passenger carrier servicing that route that is not a 121 bush passenger carrier; and

''(II) 5 percent of the share of each nonpassenger carrier servicing that route that transports 25 percent or more of the total nonmail freight under subsection (i)(1).

''(ii) Additional 121 bush passenger carriers entering service on that city pair route after the first 3 shall not receive any additional mail share.

''(iii) If any 121 bush passenger carrier on a city pair route receiving an additional share of the mail under clause (ii) discontinues service on that route, the 121 bush passenger carrier that has been providing the longest period of service on that route and is otherwise eligible but is not receiving a share by reason of clause (ii), shall receive the share of the carrier discontinuing service.

''(C) Notwithstanding the requirements of this subsection, if only 1 passenger carrier or aircraft is qualified to be tendered nonpriority bypass mail as a passenger carrier or aircraft on a city pair route in the State of Alaska, the Postal Service shall tender 20 percent of the nonpriority bypass mail described under paragraph (1) to the passenger carrier or aircraft providing at least 10 percent of the passenger service on such route.'';

(3) in paragraph (5)(A)—

(A) by striking ''(i)'' after ''(A)''; and

(B) by striking clause (ii).

(d) PERCENT OF NONMAIL FREIGHT.—Section 5402(i)(6) of title 39, United States Code, is amended—

(1) by striking ''(A)'' after ''(6)''; and

(2) by striking subparagraph (B).

(e) PERCENT OF TENDER RATE.—Section 5402(j)(3)(B) of title 39, United States Code, is amended by striking ''bush routes in the State of Alaska'' and inserting ''routes served exclusively by bush carriers in the State of Alaska''.

(f) DETERMINATION OF RATES.—Section 5402(k) of title 39, United States Code, is amended by striking paragraph (5).

(g) TECHNICAL AND CONFORMING AMENDMENT.—Section 5402(p)(3) of title 39, United States Code, is amended by striking ''(g)(1)(D)'' and inserting ''(g)(1)(A)(iv)''.

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided under paragraph (2), this section shall take effect on the date of enactment of this Act.

(2) EQUITABLE TENDER.—Subsection (c) shall take effect on July 1, 2006.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. FRIST. Mr. President, I further ask unanimous consent that the Senate now proceed to Calendar No. 176, H.R. 22.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 22) to reform the postal laws of the United States.

Mr. FRIST. Mr. President, I now ask consent that all after the enacting clause be stricken, the text of S. 662, as amended, be inserted in lieu thereof, and the bill, as amended, be read a third time and passed, and the Senate insist on its amendment, request a conference with the House, and the Chair

be authorized to appoint conferees with a ratio of 5 to 3.

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

The bill (H.R. 22), as amended, was read the third time and passed, as follows:

H.R. 22

Resolved, That the bill from the House of Representatives (H.R. 22) entitled ''An Act to reform the postal laws of the United States.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Postal Accountability and Enhancement Act''.

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

Sec. 1. Short title; table of contents.

TITLE I—DEFINITIONS; POSTAL SERVICES

Sec. 101. Definitions.
Sec. 102. Postal Services.

TITLE II—MODERN RATE REGULATION

Sec. 201. Provisions relating to market-dominant products.
Sec. 202. Provisions relating to competitive products.
Sec. 203. Provisions relating to experimental and new products.
Sec. 204. Reporting requirements and related provisions.
Sec. 205. Complaints; appellate review and enforcement.
Sec. 206. Clerical amendment.

TITLE III—MODERN SERVICE STANDARDS

Sec. 301. Establishment of modern service standards.
Sec. 302. Postal service plan.

TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

Sec. 401. Postal Service Competitive Products Fund.
Sec. 402. Assumed Federal income tax on competitive products income.
Sec. 403. Unfair competition prohibited.
Sec. 404. Suits by and against the Postal Service.
Sec. 405. International postal arrangements.

TITLE V—GENERAL PROVISIONS

Sec. 501. Qualification and term requirements for Governors.
Sec. 502. Obligations.
Sec. 503. Private carriage of letters.
Sec. 504. Rulemaking authority.
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Sec. 506. Bonus authority.

TITLE VI—ENHANCED REGULATORY COMMISSION

Sec. 601. Reorganization and modification of certain provisions relating to the Postal Regulatory Commission.
Sec. 602. Authority for Postal Regulatory Commission to issue subpoenas.
Sec. 603. Authorization of appropriations from the Postal Service Fund.
Sec. 604. Redesignation of the Postal Rate Commission.
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TITLE VII—EVALUATIONS

Sec. 701. Assessments of ratemaking, classification, and other provisions.
Sec. 702. Report on universal postal service and the postal monopoly.
Sec. 703. Study on equal application of laws to competitive products.
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Sec. 705. Study on recycled paper.

TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

Sec. 801. Short title.
Sec. 802. Civil Service Retirement System.
Sec. 803. Health insurance.
Sec. 804. Repeal of disposition of savings provision.
Sec. 805. Effective dates.

TITLE IX—COMPENSATION FOR WORK INJURIES

Sec. 901. Temporary disability; continuation of pay.
Sec. 902. Disability retirement for postal employees.

TITLE X—MISCELLANEOUS

Sec. 1001. Employment of postal police officers.
Sec. 1002. Obsolete provisions.
Sec. 1003. Reduced rates.
Sec. 1004. Sense of Congress regarding Postal Service purchasing reform.
Sec. 1005. Contracts for transportation of mail by air.

TITLE I—DEFINITIONS; POSTAL SERVICES

SEC. 101. DEFINITIONS.

Section 102 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following:

''(5) 'postal service' refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other functions ancillary thereto;

''(6) 'product' means a postal service with a distinct cost or market characteristic for which a rate or rates are applied;

''(7) 'rates', as used with respect to products, includes fees for postal services;

''(8) 'market-dominant product' or 'product in the market-dominant category of mail' means a product subject to subchapter I of chapter 36; and

''(9) 'competitive product' or 'product in the competitive category of mail' means a product subject to subchapter II of chapter 36; and

''(10) 'year', as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.''.

SEC. 102. POSTAL SERVICES.

(a) IN GENERAL.—Section 404 of title 39, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and by redesignating paragraphs (7) through (9) as paragraphs (6) through (8), respectively; and

(2) by adding at the end the following:

''(c) Except as provided in section 411, nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services.''.

(b) CONFORMING AMENDMENTS.—(1) Section 1402(b)(1)(B)(ii) of the Victims of Crime Act of 1984 (98 Stat. 2170; 42 U.S.C. 10601(b)(1)(B)(ii)) is amended by striking ''404(a)(8)'' and inserting ''404(a)(7)''.

(2) Section 2003(b)(1) of title 39, United States Code, is amended by striking ''and nonpostal''.

TITLE II—MODERN RATE REGULATION

SEC. 201. PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS.

(a) IN GENERAL.—Chapter 36 of title 39, United States Code, is amended by striking sections 3621 and 3622 and inserting the following:

''§ 3621. Applicability; definitions

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1) first-class mail letters and sealed parcels;
''(2) first-class mail cards;
''(3) periodicals;
''(4) standard mail;
''(5) single-piece parcel post;
''(6) media mail;
''(7) bound printed matter;
''(8) library mail;
''(9) special services; and
''(10) single-piece international mail,

subject to any changes the Postal Regulatory Commission may make under section 3642.

''(b) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''§ 3622. Modern rate regulation

''(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

''(b) OBJECTIVES.—Such system shall be designed to achieve the following objectives, each of which shall be applied in conjunction with the others:

''(1) To reduce the administrative burden and increase the transparency of the ratemaking process while affording reasonable opportunities for interested parties to participate in that process.

''(2) To create predictability and stability in rates.

''(3) To maximize incentives to reduce costs and increase efficiency.

''(4) To enhance mail security and deter terrorism by promoting secure, sender-identified mail.

''(5) To allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent mail and encourage increased mail volume during nonpeak periods.

''(6) To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.

''(7) To allocate the total institutional costs of the Postal Service equitably between market-dominant and competitive products.

''(8) To establish and maintain a just and reasonable schedule for rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.

''(c) FACTORS.—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

''(1) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;

''(2) the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail service through reliably identified causal relationships plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

''(3) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

''(4) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

''(5) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

''(6) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

''(7) the importance of pricing flexibility to encourage increased mail volume and operational efficiency;

''(8) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

''(9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

''(10) the desirability of special classifications from the point of view of both the user and of the Postal Service;

''(11) the educational, cultural, scientific, and informational value to the recipient of mail matter;

''(12) the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable, universal postal service; and

''(13) the policies of this title as well as such other factors as the Commission determines appropriate.

''(d) REQUIREMENTS.—

''(1) IN GENERAL.—The system for regulating rates and classes for market-dominant products shall—

''(A) include an annual limitation on the percentage changes in rates to be set by the Postal Regulatory Commission that will be equal to the change in the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation over the most recent available 12-month period preceding the date the Postal Service files notice of its intention to increase rates;

''(B) establish a schedule whereby rates, when necessary and appropriate, would change at regular intervals by predictable amounts;

''(C) not later than 45 days before the implementation of any adjustment in rates under this section—

''(i) require the Postal Service to provide public notice of the adjustment;

''(ii) provide an opportunity for review by the Postal Regulatory Commission;

''(iii) provide for the Postal Regulatory Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under subparagraph (A); and

''(iv) require the Postal Service to respond to the notice provided under clause (iii) and describe the actions to be taken to comply with the limitation under subparagraph (A);

''(D) establish procedures whereby the Postal Service may adjust rates not in excess of the annual limitations under subparagraph (A); and

''(E) notwithstanding any limitation set under subparagraphs (A) and (C), establish procedures whereby rates may be adjusted on an expedited basis due to unexpected and extraordinary circumstances.

''(2) LIMITATIONS.—

''(A) CLASSES OF MAIL.—Except as provided under subparagraph (C), the annual limitations under paragraph (1)(A) shall apply to a class of mail, as defined in the Domestic Mail Classification Schedule as in effect on the date of enactment of the Postal Accountability and Enhancement Act.

''(B) ROUNDING OF RATES AND FEES.—Nothing in this subsection shall preclude the Postal Service from rounding rates and fees to the nearest whole integer, if the effect of such rounding does not cause the overall rate increase for any class to exceed the Consumer Price Index for All Urban Consumers.

''(C) USE OF UNUSED RATE AUTHORITY.—

''(i) DEFINITION.—In this subparagraph, the term 'unused rate adjustment authority' means the difference between—

''(I) the maximum amount of a rate adjustment that the Postal Service is authorized to make in any year subject to the annual limitation under paragraph (1); and

''(II) the amount of the rate adjustment the Postal Service actually makes in that year.

''(ii) AUTHORITY.—Subject to clause (iii), the Postal Service may use any unused rate adjustment authority for any of the 5 years following the year such authority occurred.

''(iii) LIMITATIONS.—In exercising the authority under clause (ii) in any year, the Postal Service—

''(I) may use unused rate adjustment authority from more than 1 year;

''(II) may use any part of the unused rate adjustment authority from any year;

''(III) shall use the unused rate adjustment authority from the earliest year such authority first occurred and then each following year; and

''(IV) for any class or service, may not exceed the annual limitation under paragraph (1) by more than 2 percentage points.

''(e) WORKSHARE DISCOUNTS.—

''(1) DEFINITION.—In this subsection, the term 'workshare discount' refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

''(2) REGULATIONS.—As part of the regulations established under subsection (a), the Postal Regulatory Commission shall establish rules for workshare discounts that ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless—

''(A) the discount is—

''(i) associated with a new postal service, a change to an existing postal service, or with a new workshare initiative related to an existing postal service; and

''(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service and the portion of the discount in excess of the cost that the Postal Service avoids as a result of the workshare activity will be phased out over a limited period of time;

''(B) a reduction in the discount would—

''(i) lead to a loss of volume in the affected category or subclass of mail and reduce the aggregate contribution to the institutional costs of the Postal Service from the category or subclass subject to the discount below what it otherwise would have been if the discount had not been reduced to costs avoided;

''(ii) result in a further increase in the rates paid by mailers not able to take advantage of the discount; or

''(iii) impede the efficient operation of the Postal Service;

''(C) the amount of the discount above costs avoided—

''(i) is necessary to mitigate rate shock; and

''(ii) will be phased out over time; or

''(D) the discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, scientific, or informational value.

''(3) REPORT.—Whenever the Postal Service establishes or maintains a workshare discount, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report that—

''(A) explains the Postal Service's reasons for establishing or maintaining the rate;

''(B) sets forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate; and

''(C) certifies that the discount will not adversely affect rates or services provided to users of postal services who do not take advantage of the discount rate.

''(f) TRANSITION RULE.—For the 1-year period beginning on the date of enactment of this section, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of enactment of this section. Proceedings initiated to consider a request for a recommended decision filed by the Postal Service during that 1-year period shall be completed in accordance with subchapter II of chapter 36 of this title and implementing regulations, as in effect before the date of enactment of this section.''.

(b) REPEALED SECTIONS.—Sections 3623, 3624, 3625, and 3628 of title 39, United States Code, are repealed.

(c) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect after the amendment made by section 601, but before the amendment made by section 202) is amended by striking the heading for subchapter II and inserting the following:

''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS''.

SEC. 202. PROVISIONS RELATING TO COMPETITIVE PRODUCTS.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3629 the following:

''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

''§ 3631. Applicability; definitions and updates

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1) priority mail;

''(2) expedited mail;

''(3) bulk parcel post;

''(4) bulk international mail; and

''(5) mailgrams;

subject to subsection (d) and any changes the Postal Regulatory Commission may make under section 3642.

''(b) DEFINITION.—For purposes of this subchapter, the term 'costs attributable', as used with respect to a product, means the direct and indirect postal costs attributable to such product through reliably identified causal relationships.

''(c) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''(d) LIMITATION.—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply with respect to any product then currently in the market-dominant category of mail.

''§ 3632. Action of the Governors

''(a) AUTHORITY TO ESTABLISH RATES AND CLASSES.—The Governors, with the written concurrence of a majority of all of the Governors then holding office, shall establish rates and classes for products in the competitive category of mail in accordance with the requirements of this subchapter and regulations promulgated under section 3633.

''(b) PROCEDURES.—

''(1) IN GENERAL.—Rates and classes shall be established in writing, complete with a statement of explanation and justification, and the date as of which each such rate or class takes effect.

''(2) PUBLIC NOTICE; REVIEW; AND COMPLIANCE.—Not later than 30 days before the date of implementation of any adjustment in rates under this section—

''(A) the Governors shall provide public notice of the adjustment and an opportunity for review by the Postal Regulatory Commission;

''(B) the Postal Regulatory Commission shall notify the Governors of any noncompliance of the adjustment with section 3633; and

''(C) the Governors shall respond to the notice provided under subparagraph (B) and describe the actions to be taken to comply with section 3633.

''(c) TRANSITION RULE.—Until regulations under section 3633 first take effect, rates and classes for competitive products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were as last in effect before the date of enactment of this section.

''§ 3633. Provisions applicable to rates for competitive products

''(a) IN GENERAL.—The Postal Regulatory Commission shall, within 180 days after the date of enactment of this section, promulgate (and may from time to time thereafter revise) regulations to—

''(1) prohibit the subsidization of competitive products by market-dominant products;

''(2) ensure that each competitive product covers its costs attributable; and

''(3) ensure that all competitive products collectively cover their share of the institutional costs of the Postal Service.

''(b) REVIEW OF MINIMUM CONTRIBUTION.—Five years after the date of enactment of this section, and every 5 years thereafter, the Postal Regulatory Commission shall conduct a review to determine whether the institutional costs contribution requirement under subsection (a)(3) should be retained in its current form, modified, or eliminated. In making its determination, the Commission shall consider all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products.''.

SEC. 203. PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS.

Subchapter III of chapter 36 of title 39, United States Code, is amended to read as follows:

''SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

''§ 3641. Market tests of experimental products

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Postal Service may conduct market tests of experimental products in accordance with this section.

''(2) PROVISIONS WAIVED.—A product shall not, while it is being tested under this section, be subject to the requirements of sections 3622, 3633, or 3642, or regulations promulgated under those sections.

''(b) CONDITIONS.—A product may not be tested under this section unless it satisfies each of the following:

''(1) SIGNIFICANTLY DIFFERENT PRODUCT.—The product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test.

''(2) MARKET DISRUPTION.—The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns (as defined under subsection (h)).

''(3) CORRECT CATEGORIZATION.—The Postal Service identifies the product, for the purpose of a test under this section, as either market-dominant or competitive, consistent with the criteria under section 3642(b)(1). Costs and revenues attributable to a product identified as competitive shall be included in any determination under section 3633(3)(relating to provisions applicable to competitive products collectively). Any test that solely affects products currently classified as competitive, or which provides services ancillary to only competitive products, shall be presumed to be in the competitive product category without regard to whether a similar ancillary product exists for market-dominant products.

''(c) NOTICE.—

''(1) IN GENERAL.—At least 30 days before initiating a market test under this section, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register a notice—

''(A) setting out the basis for the Postal Service's determination that the market test is covered by this section; and

''(B) describing the nature and scope of the market test.

''(2) SAFEGUARDS.—For a competitive experimental product, the provisions of section 504(g) shall be available with respect to any information required to be filed under paragraph (1) to the same extent and in the same manner as in the case of any matter described in section 504(g)(1). Nothing in paragraph (1) shall be considered to permit or require the publication of any information as to which confidential treatment is accorded under the preceding sentence (subject to the same exception as set forth in section 504(g)(3)).

''(d) DURATION.—

''(1) IN GENERAL.—A market test of a product under this section may be conducted over a period of not to exceed 24 months.

''(2) EXTENSION AUTHORITY.—If necessary in order to determine the feasibility or desirability of a product being tested under this section, the Postal Regulatory Commission may, upon written application of the Postal Service (filed not later than 60 days before the date as of which the testing of such product would otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.

''(e) DOLLAR-AMOUNT LIMITATION.—

''(1) IN GENERAL.—A product may only be tested under this section if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $10,000,000 in any year, subject to paragraph (2) and subsection (g).

''(2) EXEMPTION AUTHORITY.—The Postal Regulatory Commission may, upon written application of the Postal Service, exempt the market test from the limit in paragraph (1) if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $50,000,000 in any year, subject to subsection (g). In reviewing an application under this paragraph, the Postal Regulatory Commission shall approve such application if it determines that—

''(A) the product is likely to benefit the public and meet an expected demand;

''(B) the product is likely to contribute to the financial stability of the Postal Service; and

''(C) the product is not likely to result in unfair or otherwise inappropriate competition.

''(f) CANCELLATION.—If the Postal Regulatory Commission at any time determines that a market test under this section fails to meet 1 or more of the requirements of this section, it may order the cancellation of the test involved or take such other action as it considers appropriate. A determination under this subsection shall be made in accordance with such procedures as the Commission shall by regulation prescribe.

''(g) ADJUSTMENT FOR INFLATION.—For purposes of each year following the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a), each dollar amount contained in this section shall be adjusted by the change in the Consumer Price Index for such year (as determined under regulations of the Commission).

''(h) DEFINITION OF A SMALL BUSINESS CONCERN.—The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns shall, for purposes of this section, be established by the Postal Regulatory Commission in conformance with the requirements of section 3 of the Small Business Act.

''(i) EFFECTIVE DATE.—Market tests under this subchapter may be conducted in any year beginning with the first year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a).

''§ 3642. New products and transfers of products between the market-dominant and competitive categories of mail

''(a) IN GENERAL.—Upon request of the Postal Service or users of the mails, or upon its own initiative, the Postal Regulatory Commission may change the list of market-dominant products under section 3621 and the list of competitive products under section 3631 by adding new products to the lists, removing products from the lists, or transferring products between the lists.

''(b) CRITERIA.—All determinations by the Postal Regulatory Commission under subsection (a) shall be made in accordance with the following criteria:

''(1) The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing substantial business to other firms offering similar products. The competitive category of products shall consist of all other products.

''(2) EXCLUSION OF PRODUCTS COVERED BY POSTAL MONOPOLY.—A product covered by the postal monopoly shall not be subject to transfer under this section from the market-dominant category of mail. For purposes of the preceding sentence, the term 'product covered by the postal monopoly' means any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(e)(1).

''(3) ADDITIONAL CONSIDERATIONS.—In making any decision under this section, due regard shall be given to—

''(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

''(B) the views of those who use the product involved on the appropriateness of the proposed action; and

''(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

''(c) TRANSFERS OF SUBCLASSES AND OTHER SUBORDINATE UNITS ALLOWABLE.—Nothing in this title shall be considered to prevent transfers under this section from being made by reason of the fact that they would involve only some (but not all) of the subclasses or other subordinate units of the class of mail or type of postal service involved (without regard to satisfaction of minimum quantity requirements standing alone).

''(d) NOTIFICATION AND PUBLICATION REQUIREMENTS.—

''(1) NOTIFICATION REQUIREMENT.—The Postal Service shall, whenever it requests to add a product or transfer a product to a different category, file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for its determination that the product satisfies the criteria under subsection (b) and, in the case of a request to add a product or transfer a product to the competitive category of mail, that the product meets the regulations promulgated by the Postal Regulatory Commission under section 3633. The provisions of section 504(g) shall be available with respect to any information required to be filed.

''(2) PUBLICATION REQUIREMENT.—The Postal Regulatory Commission shall, whenever it changes the list of products in the market-dominant or competitive category of mail, prescribe new lists of products. The revised lists shall indicate how and when any previous lists (including the lists under sections 3621 and 3631) are superseded, and shall be published in the Federal Register.

''(e) PROHIBITION.—Except as provided in section 3641, no product that involves the physical delivery of letters, printed matter, or packages may be offered by the Postal Service unless it has been assigned to the market-dominant or competitive category of mail (as appropriate) either—

''(1) under this subchapter; or

''(2) by or under any other provision of law.''.

SEC. 204. REPORTING REQUIREMENTS AND RELATED PROVISIONS.

(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by subsection (b)) is amended—

(1) by striking the heading for subchapter IV and inserting the following:

''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW''; and

(2) by striking the heading for subchapter V and inserting the following:

''SUBCHAPTER VI—GENERAL''.

(b) REPORTS AND COMPLIANCE.—Chapter 36 of title 39, United States Code, is amended by inserting after subchapter III the following:

''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

''§ 3651. Annual reports by the Commission

''(a) IN GENERAL.—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title, including the extent to which regulations are achieving the objectives under sections 3622, 3633, and 3691.

''(b) INFORMATION FROM POSTAL SERVICE.—The Postal Service shall provide the Postal Regulatory Commission with such information as may, in the judgment of the Commission, be necessary in order for the Commission to prepare its reports under this section.

''§ 3652. Annual reports to the Commission

''(a) COSTS, REVENUES, RATES, AND SERVICE.—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex to the report as the Commission may require under subsection (e))—

''(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

''(2) which shall, for each market-dominant product provided in such year, provide—

''(A) product information, including mail volumes; and

''(B) measures of the service afforded by the Postal Service in connection with such product, including—

''(i) the level of service (described in terms of speed of delivery and reliability) provided; and

''(ii) the degree of customer satisfaction with the service provided.

Before submitting a report under this subsection (including any annex to the report and the information required under subsection (b)), the Postal Service shall have the information contained in such report (and annex) audited by the Inspector General. The results of any such audit shall be submitted along with the report to which it pertains.

''(b) INFORMATION RELATING TO WORKSHARE DISCOUNTS.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

''(1) The per-item cost avoided by the Postal Service by virtue of such discount.

''(2) The percentage of such per-item cost avoided that the per-item workshare discount represents.

''(3) The per-item contribution made to institutional costs.

''(c) SERVICE AGREEMENTS AND MARKET TESTS.—In carrying out subsections (a) and (b) with respect to service agreements and experimental products offered through market tests under section 3641 in a year, the Postal Service—

''(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

''(2) shall report such data as the Postal Regulatory Commission requires.

''(d) SUPPORTING MATTER.—The Postal Regulatory Commission shall have access, in accordance with such regulations as the Commission shall prescribe, to the working papers and any other supporting matter of the Postal Service and the Inspector General in connection with any information submitted under this section.

''(e) CONTENT AND FORM OF REPORTS.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating to the report) to be provided by the Postal Service under this section. In carrying out this subsection, the Commission shall give due consideration to—

''(A) providing the public with timely, adequate information to assess the lawfulness of rates charged;

''(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and

''(C) protecting the confidentiality of commercially sensitive information.

''(2) REVISED REQUIREMENTS.—The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this subsection whenever it shall appear that—

''(A) the attribution of costs or revenues to products has become significantly inaccurate or can be significantly improved;

''(B) the quality of service data has become significantly inaccurate or can be significantly improved; or

''(C) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

''(f) CONFIDENTIAL INFORMATION.—

''(1) IN GENERAL.—If the Postal Service determines that any document or portion of a document, or other matter, which it provides to the Postal Regulatory Commission in a nonpublic annex under this section or under subsection (d) contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefor.

''(2) TREATMENT.—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

''(g) OTHER REPORTS.—The Postal Service shall submit to the Postal Regulatory Commission, together with any other submission that the Postal Service is required to make under this section in a year, copies of its then most recent—

''(1) comprehensive statement under section 2401(e);

''(2) strategic plan under section 2802;

''(3) performance plan under section 2803; and

''(4) program performance reports under section 2804.

''§ 3653. Annual determination of compliance

''(a) OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3652 for any year, the Postal Regulatory Commission shall promptly provide an opportunity for comment on such reports by users of the mails, affected parties, and an officer of the Commission who shall be required to represent the interests of the general public.

''(b) DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3652 with respect to a year, the Postal Regulatory Commission shall make a written determination as to—

''(1) whether any rates or fees in effect during such year (for products individually or collectively) were not in compliance with applicable provisions of this chapter (or regulations promulgated thereunder); or

''(2) whether any service standards in effect during such year were not met.

If, with respect to a year, no instance of noncompliance is found under this subsection to have occurred in such year, the written determination shall be to that effect.

''(c) IF ANY NONCOMPLIANCE IS FOUND.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take any appropriate remedial action authorized by section 3662(c).

''(d) REBUTTABLE PRESUMPTION.—A timely written determination described in the last sentence of subsection (b) shall, for purposes of any proceeding under section 3662, create a rebuttable presumption of compliance by the Postal Service (with regard to the matters described under paragraphs (1) and (2) of subsection (b)) during the year to which such determination relates.''.

SEC. 205. COMPLAINTS; APPELLATE REVIEW AND ENFORCEMENT.

Chapter 36 of title 39, United States Code, is amended by striking sections 3662 and 3663 and inserting the following:

''§ 3662. Rate and service complaints

''(a) IN GENERAL.—Any interested party (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of chapter 1 (except section 101(c)), sections 401, 403, 404, 404a, 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

''(b) PROMPT RESPONSE REQUIRED.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a)—

''(A) either—

''(i) upon a finding that such complaint raises substantial and material issues of fact or law, begin proceedings on such complaint; or

''(ii) issue an order dismissing the complaint; and

''(B) with respect to any action taken under subparagraph (A) (i) or (ii), issue a written statement setting forth the bases of its determination.

''(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

''(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds upon clear and convincing evidence the complaint to be justified, it shall order that the Postal Service take such action as is necessary to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance.

''(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid from the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

''§ 3663. Appellate review

''A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision

becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

''§ 3664. Enforcement of orders

''The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain the Postal Service from violating, any order issued by the Postal Regulatory Commission.''.

SEC. 206. CLERICAL AMENDMENT.

Chapter 36 of title 39, United States Code, is amended by striking the heading and analysis for such chapter and inserting the following:

''CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS

''Sec.
''3621. Applicability; definitions.
''3622. Modern rate regulation.
''[3623. Repealed.]
''[3624. Repealed.]
''[3625. Repealed.]
''3626. Reduced Rates.
''3627. Adjusting free rates.
''[3628. Repealed.]
''3629. Reduced rates for voter registration purposes.

''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

''3631. Applicability; definitions and updates.
''3632. Action of the Governors.
''3633. Provisions applicable to rates for competitive products.
''3634. Assumed Federal income tax on competitive products.

''SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

''3641. Market tests of experimental products.
''3642. New products and transfers of products between the market-dominant and competitive categories of mail.

''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

''3651. Annual reports by the Commission.
''3652. Annual reports to the Commission.
''3653. Annual determination of compliance.

''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW

''3661. Postal Services.
''3662. Rate and service complaints.
''3663. Appellate review.
''3664. Enforcement of orders.

''SUBCHAPTER VI—GENERAL

''3681. Reimbursement.
''3682. Size and weight limits.
''3683. Uniform rates for books; films, other materials.
''3684. Limitations.
''3685. Filing of information relating to periodical publications.
''3686. Bonus authority.

''SUBCHAPTER VII—MODERN SERVICE STANDARDS

''3691. Establishment of modern service standards.''.

TITLE III—MODERN SERVICE STANDARDS

SEC. 301. ESTABLISHMENT OF MODERN SERVICE STANDARDS.

Chapter 36 of title 39, United States Code, as amended by this Act, is further amended by adding at the end the following:

''SUBCHAPTER VII—MODERN SERVICE STANDARDS

''§ 3691. Establishment of modern service standards

''(a) AUTHORITY GENERALLY.—Not later than 12 months after the date of enactment of this section, the Postal Service shall, in consultation with the Postal Regulatory Commission, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with the Postal Service's universal service obligation as defined in sections 101 (a) and (b) and 403.

''(b) OBJECTIVES.—Such standards shall be designed to achieve the following objectives:

''(1) To enhance the value of postal services to both senders and recipients.

''(2) To preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.

''(3) To reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

''(4) To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.

''(c) FACTORS.—In establishing or revising such standards, the Postal Service shall take into account—

''(1) the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;

''(2) the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail;

''(3) the needs of Postal Service customers, including those with physical impairments;

''(4) mail volume and revenues projected for future years;

''(5) the projected growth in the number of addresses the Postal Service will be required to serve in future years;

''(6) the current and projected future cost of serving Postal Service customers;

''(7) the effect of changes in technology, demographics, and population distribution on the efficient and reliable operation of the postal delivery system; and

''(8) the policies of this title and such other factors as the Postal Service determines appropriate.

''(d) REVIEW.—The regulations promulgated pursuant to this section (and any revisions thereto) shall be subject to review upon complaint under sections 3662 and 3663.''.

SEC. 302. POSTAL SERVICE PLAN.

(a) IN GENERAL.—Within 6 months after the establishment of the service standards under section 3691 of title 39, United States Code, as added by this Act, the Postal Service shall, in consultation with the Postal Regulatory Commission, develop and submit to Congress a plan for meeting those standards.

(b) CONTENTS.—The plan under this section shall—

(1) establish performance goals;

(2) describe any changes to the Postal Service's processing, transportation, delivery, and retail networks necessary to allow the Postal Service to meet the performance goals;

(3) describe any changes to planning and performance management documents previously submitted to Congress to reflect new performance goals; and

(4) contain the matters relating to postal facilities provided under subsection (c).

(c) POSTAL FACILITIES.—

(1) FINDINGS.—Congress finds that—

(A) the Postal Service has more than 400 logistics facilities, separate from its post office network;

(B) as noted by the President's Commission on the United States Postal Service, the Postal Service has more facilities than it needs and the streamlining of this distribution network can pave the way for the potential consolidation of sorting facilities and the elimination of excess costs;

(C) the Postal Service has always revised its distribution network to meet changing conditions and is best suited to address its operational needs; and

(D) Congress strongly encourages the Postal Service to—

(i) expeditiously move forward in its streamlining efforts; and

(ii) keep unions, management associations, and local elected officials informed as an essential part of this effort and abide by any procedural requirements contained in the national bargaining agreements.

(2) IN GENERAL.—The Postal Service plan shall include a description of—

(A) the long-term vision of the Postal Service for rationalizing its infrastructure and workforce; and

(B) how the Postal Service intends to implement that vision.

(3) CONTENT OF FACILITIES PLAN.—The plan under this subsection shall include—

(A) a strategy for how the Postal Service intends to rationalize the postal facilities network and remove excess processing capacity and space from the network, including estimated timeframes, criteria, and processes to be used for making changes to the facilities network, and the process for engaging policy makers and the public in related decisions;

(B) a discussion of what impact any facility changes may have on the postal workforce and whether the Postal Service has sufficient flexibility to make needed workforce changes;

(C) an identification of anticipated costs, cost savings, and other benefits associated with the infrastructure rationalization alternatives discussed in the plan; and

(D) procedures that the Postal Service will use to—

(i) provide adequate public notice to communities potentially affected by a proposed rationalization decision;

(ii) make available, upon request, any data, analyses, or other information considered by the Postal Service in making the proposed decision;

(iii) afford affected persons ample opportunity to provide input on the proposed decision; and

(iv) take such comments into account in making a final decision.

(4) ANNUAL REPORTS.—

(A) IN GENERAL.—Not later than 90 days after the end of each fiscal year, the Postal Service shall prepare and submit a report to Congress on how postal decisions have impacted or will impact rationalization plans.

(B) CONTENTS.—Each report under this paragraph shall include—

(i) an account of actions taken during the preceding fiscal year to improve the efficiency and effectiveness of its processing, transportation, and distribution networks while preserving the timely delivery of postal services, including overall estimated costs and cost savings;

(ii) an account of actions taken to identify any excess capacity within its processing, transportation, and distribution networks and implement savings through realignment or consolidation of facilities including overall estimated costs and cost savings;

(iii) an estimate of how postal decisions related to mail changes, security, automation initiatives, worksharing, information technology systems, excess capacity, consolidating and closing facilities, and other areas will impact rationalization plans;

(iv) identification of any statutory or regulatory obstacles that prevented or will prevent or hinder the Postal Service from taking action to realign or consolidate facilities; and

(v) such additional topics and recommendations as the Postal Service considers appropriate.

(5) EXISTING EFFORTS.—Effective on the date of enactment of this Act, the Postal Service may not close or consolidate any processing or logistics facilities without using procedures for public notice and input consistent with those described under paragraph (3)(D).

(d) ALTERNATE RETAIL OPTIONS.—The Postal Service plan shall include plans to expand and market retail access to postal services, in addition to post offices, including—

(1) vending machines;

(2) the Internet;

(3) postage meters;

(4) Stamps by Mail;

(5) Postal Service employees on delivery routes;

(6) retail facilities in which overhead costs are shared with private businesses and other government agencies; or

(7) any other nonpost office access channel providing market retail access to postal services.

(e) REEMPLOYMENT ASSISTANCE AND RETIREMENT BENEFITS.—The Postal Service plan shall include—

(1) a plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation of any of its functions or the closing and consolidation of any of its facilities; and

(2) a plan, developed in consultation with the Office of Personnel Management, to offer early retirement benefits.

(f) INSPECTOR GENERAL REPORT.—

(1) IN GENERALBefore submitting the plan under subsection (a) and each annual report under subsection (c) to Congress, the Postal Service shall submit the plan and each annual report to the Inspector General of the United States Postal Service in a timely manner to carry out this subsection.

(2) REPORT.—The Inspector General shall prepare a report describing the extent to which the Postal Service plan and each annual report under subsection (c)—

(A) are consistent with the continuing obligations of the Postal Service under title 39, United States Code;

(B) provide for the Postal Service to meet the service standards established under section 3691 of title 39, United States Code; and

(C) allow progress toward improving overall efficiency and effectiveness consistent with the need to maintain universal postal service at affordable rates.

(g) CONTINUED AUTHORITY.—Nothing in this section shall be construed to prohibit the Postal Service from implementing any change to its processing, transportation, delivery, and retail networks under any authority granted to the Postal Service for those purposes.

TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

SEC. 401. POSTAL SERVICE COMPETITIVE PRODUCTS FUND.

(a) PROVISIONS RELATING TO POSTAL SERVICE COMPETITIVE PRODUCTS FUND AND RELATED MATTERS.—

(1) IN GENERAL.—Chapter 20 of title 39, United States Code, is amended by adding at the end the following:

''§2011. Provisions relating to competitive products

''(a)(1) In this subsection, the term 'costs attributable' has the meaning given such term by section 3631.

''(2) There is established in the Treasury of the United States a revolving fund, to be called the Postal Service Competitive Products Fund, which shall be available to the Postal Service without fiscal year limitation for the payment of—

''(A) costs attributable to competitive products; and

''(B) all other costs incurred by the Postal Service, to the extent allocable to competitive products.

''(b) There shall be deposited in the Competitive Products Fund, subject to withdrawal by the Postal Service—

''(1) revenues from competitive products;

''(2) amounts received from obligations issued by Postal Service under subsection (e);

''(3) interest and dividends earned on investments of the Competitive Products Fund; and

''(4) any other receipts of the Postal Service (including from the sale of assets), to the extent allocable to competitive products.

''(c) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, the Postal Service may request the investment of such amounts as the Postal Service determines advisable by the Secretary of the Treasury in obligations of, or obligations guaranteed by, the Government of the United States, and, with the approval of the Secretary, in such other obligations or securities as the Postal Service determines appropriate.

''(d) With the approval of the Secretary of the Treasury, the Postal Service may deposit moneys of the Competitive Products Fund in any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Postal Service and the Secretary may mutually agree.

''(e)(1)(A) Subject to the limitations specified in section 2005(a), the Postal Service is authorized to borrow money and to issue and sell such obligations as the Postal Service determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund.

''(B) Subject to paragraph (5), any borrowings by the Postal Service under subparagraph (A) shall be supported and serviced by—

''(i) the revenues and receipts from competitive products and the assets related to the provision of competitive products (as determined under subsection (h)); or

''(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e).

''(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with any trustee under any agreement entered into in connection with the issuance of such obligations with respect to—

''(A) the establishment of reserve, sinking, and other funds;

''(B) application and use of revenues and receipts of the Competitive Products Fund;

''(C) stipulations concerning the subsequent issuance of obligations or the execution of leases or lease purchases relating to properties of the Postal Service; and

''(D) such other matters as the Postal Service, considers necessary or desirable to enhance the marketability of such obligations.

''(3) Obligations issued by the Postal Service under this subsection—

''(A) shall be in such forms and denominations;

''(B) shall be sold at such times and in such amounts;

''(C) shall mature at such time or times;

''(D) shall be sold at such prices;

''(E) shall bear such rates of interest;

''(F) may be redeemable before maturity in such manner, at such times, and at such redemption premiums;

''(G) may be entitled to such relative priorities of claim on the assets of the Postal Service with respect to principal and interest payments; and

''(H) shall be subject to such other terms and conditions,

as the Postal Service determines.

''(4) Obligations issued by the Postal Service under this subsection—

''(A) shall be negotiable or nonnegotiable and bearer or registered instruments, as specified therein and in any indenture or covenant relating thereto;

''(B) shall contain a recital that such obligations are issued under this subsection, and such recital shall be conclusive evidence of the regularity of the issuance and sale of such obligations and of their validity;

''(C) shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the Government of the United States, and the Secretary of the Treasury or any other officer or agency having authority over or control of any such fiduciary, trust, or public funds, may at any time sell any of the obligations of the Postal Service acquired under this section;

''(D) shall not be exempt either as to principal or interest from any taxation now or hereafter imposed by any State or local taxing authority; and

''(E) except as provided in section 2006(c), shall not be obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the Government of the United States, and the obligations shall so plainly state.

''(5)(A) Subject to subparagraph (B), the Postal Service shall make payments of principal, or interest, or both on obligations issued under this subsection from—

''(i) revenues and receipts from competitive products and assets related to the provision of competitive products (as determined under subsection (h)); or

''(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available, including the audited statements required by section 2008(e).

''(B) Based on the audited financial statements for the most recently completed fiscal year, the total assets of the Competitive Products Fund may not be less than the amount determined by multiplying—

''(i) the quotient resulting from the total revenue of the Competitive Products Fund divided by the total revenue of the Postal Service; and

''(ii) the total assets of the Postal Service.

''(f) The receipts and disbursements of the Competitive Products Fund shall be accorded the same budgetary treatment as is accorded to receipts and disbursements of the Postal Service Fund under section 2009a.

''(g) A judgment (or settlement of a claim) against the Postal Service or the Government of the United States shall be paid out of the Competitive Products Fund to the extent that the judgment or claim arises out of activities of the Postal Service in the provision of competitive products.

''(h)(1)(A) The Secretary of the Treasury, in consultation with the Postal Service and an independent, certified public accounting firm and other advisors as the Secretary considers appropriate, shall develop recommendations regarding—

''(i) the accounting practices and principles that should be followed by the Postal Service with the objectives of—

''(I) identifying and valuing the assets and liabilities of the Postal Service associated with providing competitive products, including the capital and operating costs incurred by the Postal Service in providing such competitive products; and

''(II) subject to subsection (e)(5), preventing the subsidization of such products by market-dominant products; and

''(ii) the substantive and procedural rules that should be followed in determining the assumed Federal income tax on competitive products income of the Postal Service for any year (within the meaning of section 3634).

''(B) Not earlier than 6 months after the date of enactment of this section, and not later than 12 months after such date, the Secretary of the Treasury shall submit the recommendations under subparagraph (A) to the Postal Regulatory Commission.

''(2)(A) Upon receiving the recommendations of the Secretary of the Treasury under paragraph (1), the Commission shall give interested parties, including the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public, an opportunity to present their

views on those recommendations through submission of written data, views, or arguments with or without opportunity for oral presentation, or in such other manner as the Commission considers appropriate.

''(B)(i) After due consideration of the views and other information received under subparagraph (A), the Commission shall by rule—

''(I) provide for the establishment and application of the accounting practices and principles which shall be followed by the Postal Service;

''(II) provide for the establishment and application of the substantive and procedural rules described under paragraph (1)(A)(ii); and

''(III) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

''(ii) Final rules under this subparagraph shall be issued not later than 12 months after the date on which recommendations are submitted under paragraph (1) (or by such later date on which the Commission and the Postal Service may agree). The Commission may revise such rules.

''(C)(i) Reports described under subparagraph (B)(i)(III) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

''(ii) The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service information under subparagraph (B)(i)(III) whenever it shall appear that—

''(I) the quality of the information furnished in those reports has become significantly inaccurate or can be significantly improved; or

''(II) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

''(D) A copy of each report described under subparagraph (B)(i)(III) shall be submitted by the Postal Service to the Secretary of the Treasury and the Inspector General of the United States Postal Service.

''(i)(1) The Postal Service shall submit an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund. The report shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses.

''(2) A copy of the most recent report submitted under paragraph (1) shall be included in the annual report submitted by the Postal Regulatory Commission under section 3652(g).''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:

''2011. Provisions relating to competitive products.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 2001 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

''(2) COMPETITIVE PRODUCTS FUND.—The term 'Competitive Products Fund' means the Postal Service Competitive Products Fund established by section 2011; and''.

(2) CAPITAL OF THE POSTAL SERVICE.—Section 2002(b) of title 39, United States Code, is amended by striking ''Fund,'' and inserting ''Fund and the balance in the Competitive Products Fund,''.

(3) POSTAL SERVICE FUND.—

(A) PURPOSES FOR WHICH AVAILABLE.—Section 2003(a) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available).''.

(B) DEPOSITS.—Section 2003(b) of title 39, United States Code, is amended by striking ''There'' and inserting ''Except as otherwise provided in section 2011, there''.

(4) RELATIONSHIP BETWEEN THE TREASURY AND THE POSTAL SERVICE.—Section 2006 of title 39, United States Code, is amended—

(A) in subsection (a), in the first sentence, by inserting ''or 2011'' after ''section 2005'';

(B) in subsection (b)—

(i) in the first sentence, by inserting ''under section 2005'' before ''in such amounts''; and

(ii) in the second sentence, by inserting ''under section 2005'' before ''in excess of such amount.''; and

(C) in subsection (c), by inserting ''or 2011(e)(4)(E)'' after ''section 2005(d)(5)''.

SEC. 402. ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS INCOME.

Subchapter II of chapter 36 of title 39, United States Code, as amended by section 202, is amended by adding at the end the following:

''§ 3634. Assumed Federal income tax on competitive products income

''(a) DEFINITIONS.—For purposes of this section—

''(1) the term 'assumed Federal income tax on competitive products income' means the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 on the Postal Service's assumed taxable income from competitive products for the year; and

''(2) the term 'assumed taxable income from competitive products', with respect to a year, refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—

''(A) the only activities of such corporation were the activities of the Postal Service allocable under section 2011(h) to competitive products; and

''(B) the only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.

''(b) COMPUTATION AND TRANSFER REQUIREMENTS.—The Postal Service shall, for each year beginning with the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a)—

''(1) compute its assumed Federal income tax on competitive products income for such year; and

''(2) transfer from the Competitive Products Fund to the Postal Service Fund the amount of that assumed tax.

''(c) DEADLINE FOR TRANSFERS.—Any transfer required to be made under this section for a year shall be due on or before the January 15th next occurring after the close of such year.''.

SEC. 403. UNFAIR COMPETITION PROHIBITED.

(a) SPECIFIC LIMITATIONS.—Chapter 4 of title 39, United States Code, is amended by adding after section 404 the following:

''§ 404a. Specific limitations

''(a) Except as specifically authorized by law, the Postal Service may not—

''(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;

''(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or

''(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any postal service that uses or is based in whole or in part on such information, without the consent of the person providing that information, unless substantially the same information is obtained (or obtainable) from an independent source or is otherwise obtained (or obtainable).

''(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

''(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.''.

(b) CONFORMING AMENDMENTS.—

(1) GENERAL POWERS.—Section 401 of title 39, United States Code, is amended by striking ''The'' and inserting ''Subject to the provisions of section 404a, the''.

(2) SPECIFIC POWERS.—Section 404(a) of title 39, United States Code, is amended by striking ''Without'' and inserting ''Subject to the provisions of section 404a, but otherwise without''.

(c) CLERICAL AMENDMENT.—The analysis for chapter 4 of title 39, United States Code, is amended by inserting after the item relating to section 404 the following:

''404a. Specific limitations.''.

SEC. 404. SUITS BY AND AGAINST THE POSTAL SERVICE.

(a) IN GENERAL.—Section 409 of title 39, United States Code, is amended by striking subsections (d) and (e) and inserting the following:

''(d)(1) For purposes of the provisions of law cited in paragraphs (2)(A) and (2)(B), respectively, the Postal Service—

''(A) shall be considered to be a 'person', as used in the provisions of law involved; and

''(B) shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service.

''(2) This subsection applies with respect to—

''(A) the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946' (15 U.S.C. 1051 and following)); and

''(B) the provisions of section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair or deceptive acts or practices.

''(e)(1) To the extent that the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, engages in conduct with respect to any product which is not reserved to the United States under section 1696 of title 18, the Postal Service or other Federal agency (as the case may be)—

''(A) shall not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof; and

''(B) shall be considered to be a person (as defined in subsection (a) of the first section of the Clayton Act) for purposes of—

''(i) the antitrust laws (as defined in such subsection); and

''(ii) section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

For purposes of the preceding sentence, any private carriage of mail allowable by virtue of section 601 shall not be considered a service reserved to the United States under section 1696 of title 18.

''(2) No damages, interest on damages, costs or attorney's fees may be recovered, and no criminal liability may be imposed, under the antitrust laws (as so defined) from any officer or employee of the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, acting in an official capacity.

''(3) This subsection shall not apply with respect to conduct occurring before the date of enactment of this subsection.

''(f) To the extent that the Postal Service engages in conduct with respect to the provision of

competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.

''(g)(1) Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with 1 of the nationally recognized model building codes and with other applicable nationally recognized codes. To the extent practicable, model building codes should meet the voluntary consensus criteria established for codes and standards as required in the National Technology Transfer and Advancement Act of 1995 as defined in Office of Management and Budget Circular A1190. For purposes of life safety, the Postal Service shall continue to comply with the most current edition of the Life Safety Code of the National Fire Protection Association (NFPA 101).

''(2) Each building constructed or altered by the Postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.

''(3) For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—

''(A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;

''(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

''(C) permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—

''(i) a copy of such schedule before construction of the building is begun; and

''(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding sentence, nor shall anything in this subsection require the Postal Service or any of its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

''(4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.

''(5) In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.

''(6) For purposes of this subsection, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

''(h)(1) Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising, in whole or in part, under any of the following:

''(A) Subsection (d) or (e) of this section.

''(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

''(C) Section 3663 (relating to appellate review).

The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph.

''(2) In any circumstance not covered by paragraph (1), the Department of Justice shall, under section 411, furnish the Postal Service such legal representation as it may require, except that, with the prior consent of the Attorney General, the Postal Service may, in any such circumstance, employ attorneys by contract or otherwise to conduct litigation brought by or against the Postal Service or its officers or employees in matters affecting the Postal Service.

''(3)(A) In any action, suit, or proceeding in a court of the United States arising in whole or in part under any of the provisions of law referred to in subparagraph (B) or (C) of paragraph (1), and to which the Commission is not otherwise a party, the Commission shall be permitted to appear as a party on its own motion and as of right.

''(B) The Department of Justice shall, under such terms and conditions as the Commission and the Attorney General shall consider appropriate, furnish the Commission such legal representation as it may require in connection with any such action, suit, or proceeding, except that, with the prior consent of the Attorney General, the Commission may employ attorneys by contract or otherwise for that purpose.

''(i) A judgment against the Government of the United States arising out of activities of the Postal Service shall be paid by the Postal Service out of any funds available to the Postal Service, subject to the restriction specified in section 2011(g).''.

(b) TECHNICAL AMENDMENT.—Section 409(a) of title 39, United States Code, is amended by striking ''Except as provided in section 3628 of this title,'' and inserting ''Except as otherwise provided in this title,''.

SEC. 405. INTERNATIONAL POSTAL ARRANGEMENTS.

(a) IN GENERAL.—Section 407 of title 39, United States Code, is amended to read as follows:

''§ 407. International postal arrangements

''(a) It is the policy of the United States—

''(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

''(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

''(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services; and

''(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

''(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and shall have the power to conclude postal treaties and conventions, except that the Secretary may not conclude any postal treaty or convention if such treaty or convention would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal services, or any other person.

''(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

''(A) shall coordinate with other agencies as appropriate, and in particular, should consider the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

''(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

''(C) shall maintain continuing liaison with the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives;

''(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

''(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

''(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

''(c) Before concluding any postal treaty or convention that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

''(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services as it deems appropriate, except that—

''(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be binding under international law; and

''(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

''(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

''(2) In exercising the authority under subsection (b) to conclude new postal treaties and conventions related to international postal services and to renegotiate such treaties and conventions, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs

procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

''(3) The provisions of this subsection shall take effect 6 months after the date of enactment of this subsection or such earlier date as the Customs Service may determine in writing.''.

(b) EFFECTIVE DATE.—Notwithstanding any provision of the amendment made by subsection (a), the authority of the United States Postal Service to establish the rates of postage or other charges on mail matter conveyed between the United States and other countries shall remain available to the Postal Service until—

(1) with respect to market-dominant products, the date as of which the regulations promulgated under section 3622 of title 39, United States Code (as amended by section 201(a)) take effect; and

(2) with respect to competitive products, the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

TITLE V—GENERAL PROVISIONS

SEC. 501. QUALIFICATION AND TERM REQUIREMENTS FOR GOVERNORS.

(a) QUALIFICATIONS.—

(1) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking ''(a)'' and inserting ''(a)(1)'' and by striking the fourth sentence and inserting the following: ''The Governors shall represent the public interest generally, and shall be chosen solely on the basis of their experience in the fields of public service, law or accounting or on their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.''.

(2) APPLICABILITY.—The amendment made by paragraph (1) shall not affect the appointment or tenure of any person serving as a Governor of the United States Postal Service under an appointment made before the date of enactment of this Act however, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment. The requirement set forth in the fourth sentence of section 202(a)(1) of title 39, United States Code (as amended by subsection (a)) shall be met beginning not later than 9 years after the date of enactment of this Act.

(b) CONSULTATION REQUIREMENT.—Section 202(a) of title 39, United States Code, is amended by adding at the end the following:

''(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, the President should consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate.''.

(c) 7-YEAR TERMS.—

(1) IN GENERAL.—Section 202(b) of title 39, United States code, is amended in the first sentence by striking ''9 years'' and inserting ''7 years''.

(2) APPLICABILITY.—

(A) CONTINUATION BY INCUMBENTS.—The amendment made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act and such person may continue to serve the remainder of the applicable term.

(B) VACANCY BY INCUMBENT BEFORE 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served less than 5 years of that term, the resulting vacancy in office shall be treated as a vacancy in a 5-year term.

(C) VACANCY BY INCUMBENT AFTER 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served 5 years or more of that term, that term shall be deemed to have been a 5-year term beginning on its commencement date for purposes of determining vacancies in office. Any appointment to the vacant office shall be for a 5-year term beginning at the end of the original 9-year term determined without regard to the deeming under the preceding sentence. Nothing in this subparagraph shall be construed to affect any action or authority of any Governor or the Board of Governors during any portion of a 9-year term deemed to be 5-year term under this subparagraph.

(d) TERM LIMITATION.—

(1) IN GENERAL.—Section 202(b) of title 39, United States Code, is amended—

(A) by inserting ''(1)'' after ''(b)''; and

(B) by adding at the end the following:

''(2) No person may serve more than 2 terms as a Governor.''.

(2) APPLICABILITY.—The amendments made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act with respect to the term which that person is serving on that date. Such person may continue to serve the remainder of the applicable term, after which the amendments made by paragraph (1) shall apply.

SEC. 502. OBLIGATIONS.

(a) PURPOSES FOR WHICH OBLIGATIONS MAY BE ISSUED.—The first sentence of section 2005(a)(1) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title, other than any of the purposes for which the corresponding authority is available to the Postal Service under section 2011.''.

(b) INCREASE RELATING TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS.—Section 2005(a)(1) of title 39, United States Code, is amended by striking the third sentence.

(c) AMOUNTS WHICH MAY BE PLEDGED.—

(1) OBLIGATIONS TO WHICH PROVISIONS APPLY.—The first sentence of section 2005(b) of title 39, United States Code, is amended by striking ''such obligations,'' and inserting ''obligations issued by the Postal Service under this section,''.

(2) ASSETS, REVENUES, AND RECEIPTS TO WHICH PROVISIONS APPLY.—Subsection (b) of section 2005 of title 39, United States Code, is amended by striking ''(b)'' and inserting ''(b)(1)'', and by adding at the end the following:

''(2) Notwithstanding any other provision of this section—

''(A) the authority to pledge assets of the Postal Service under this subsection shall be available only to the extent that such assets are not related to the provision of competitive products (as determined under section 2011(h) or, for purposes of any period before accounting practices and principles under section 2011(h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)); and

''(B) any authority under this subsection relating to the pledging or other use of revenues or receipts of the Postal Service shall be available only to the extent that they are not revenues or receipts of the Competitive Products Fund.''.

SEC. 503. PRIVATE CARRIAGE OF LETTERS.

(a) IN GENERAL.—Section 601 of title 39, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) A letter may also be carried out of the mails when—

''(1) the amount paid for the private carriage of the letter is at least the amount equal to 6 times the rate then currently charged for the 1st ounce of a single-piece first class letter;

''(2) the letter weighs at least 12½ ounces; or

''(3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that permit private carriage by suspension of the operation of this section (as then in effect).

''(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.''.

(b) EFFECTIVE DATE.—This section shall take effect on the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

SEC. 504. RULEMAKING AUTHORITY.

Paragraph (2) of section 401 of title 39, United States Code, is amended to read as follows:

''(2) to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title;''.

SEC. 505. NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.

(a) LABOR DISPUTES.—Section 1207 of title 39, United States Code, is amended to read as follows:

''§ 1207. Labor disputes

''(a) If there is a collective-bargaining agreement in effect, no party to such agreement shall terminate or modify such agreement unless the party desiring such termination or modification serves written notice upon the other party to the agreement of the proposed termination or modification not less than 90 days prior to the expiration date thereof, or not less than 90 days prior to the time it is proposed to make such termination or modification. The party serving such notice shall notify the Federal Mediation and Conciliation Service of the existence of a dispute within 45 days after such notice, if no agreement has been reached by that time.

''(b) If the parties fail to reach agreement or to adopt a procedure providing for a binding resolution of a dispute by the expiration date of the agreement in effect, or the date of the proposed termination or modification, the Director of the Federal Mediation and Conciliation Service shall within 10 days appoint a mediator of nationwide reputation and professional stature, and who is also a member of the National Academy of Arbitrators. The parties shall cooperate with the mediator in an effort to reach an agreement and shall meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, shall direct.

''(c)(1) If no agreement is reached within 60 days after the expiration or termination of the agreement or the date on which the agreement became subject to modification under subsection (a) of this section, or if the parties decide upon arbitration but do not agree upon the procedures therefore, an arbitration board shall be established consisting of 3 members, 1 of whom shall be selected by the Postal Service, 1 by the bargaining representative of the employees, and the third by the 2 thus selected. If either of the parties fails to select a member, or if the members chosen by the parties fail to agree on the third person within 5 days after their first meeting, the selection shall be made from a list of names provided by the Director. This list shall consist of not less then 9 names of arbitrators of nationwide reputation and professional nature, who are also members of the National Academy of Arbitrators, and whom the Director has determined are available and willing to serve.

''(2) The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence in support of their

claims, and an opportunity to present their case in person, by counsel or by other representative as they may elect. Decisions of the arbitration board shall be conclusive and binding upon the parties. The arbitration board shall render its decision within 45 days after its appointment.

''(3) Costs of the arbitration board and mediation shall be shared equally by the Postal Service and the bargaining representative.

''(d) In the case of a bargaining unit whose recognized collective-bargaining representative does not have an agreement with the Postal Service, if the parties fail to reach the agreement within 90 days after the commencement of collective bargaining, a mediator shall be appointed in accordance with the terms in subsection (b) of this section, unless the parties have previously agreed to another procedure for a binding resolution of their differences. If the parties fail to reach agreement within 180 days after the commencement of collective bargaining, and if they have not agreed to another procedure for binding resolution, an arbitration board shall be established to provide conclusive and binding arbitration in accordance with the terms of subsection (c) of this section.''.

(b) NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.—Except as otherwise provided by the amendment made by subsection (a), nothing in this Act shall restrict, expand, or otherwise affect any of the rights, privileges, or benefits of either employees of or labor organizations representing employees of the United States Postal Service under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations within the United States Postal Service, or any collective bargaining agreement.

(c) FREE MAILING PRIVILEGES CONTINUE UNCHANGED.—Nothing in this Act or any amendment made by this Act shall affect any free mailing privileges accorded under section 3217 or sections 3403 through 3406 of title 39, United States Code.

SEC. 506. BONUS AUTHORITY.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3685 the following:

''§ 3686. Bonus authority

''(a) IN GENERAL.—The Postal Service may establish 1 or more programs to provide bonuses or other rewards to officers and employees of the Postal Service in senior executive or equivalent positions to achieve the objectives of this chapter.

''(b) LIMITATION ON TOTAL COMPENSATION.—

''(1) IN GENERAL.—Under any such program, the Postal Service may award a bonus or other reward in excess of the limitation set forth in the last sentence of section 1003(a), if such program has been approved under paragraph (2). Any such award or bonus may not cause the total compensation of such officer or employee to exceed the total annual compensation payable to the Vice President under section 104 of title 3 as of the end of the calendar year in which the bonus or award is paid.

''(2) APPROVAL PROCESS.—If the Postal Service wishes to have the authority, under any program described in subsection (a), to award bonuses or other rewards in excess of the limitation set forth in the last sentence of section 1003(a)—

''(A) the Postal Service shall make an appropriate request to the Board of Governors of the Postal Service in such form and manner as the Board requires; and

''(B) the Board of Governors shall approve any such request if the Board certifies, for the annual appraisal period involved, that the performance appraisal system for affected officers and employees of the Postal Service (as designed and applied) makes meaningful distinctions based on relative performance.

''(3) REVOCATION AUTHORITY.—If the Board of Governors of the Postal Service finds that a performance appraisal system previously approved under paragraph (2)(B) does not (as designed and applied) make meaningful distinctions based on relative performance, the Board may revoke or suspend the authority of the Postal Service to continue a program approved under paragraph (2) until such time as appropriate corrective measures have, in the judgment of the Board, been taken.

''(c) REPORTING REQUIREMENT RELATING TO BONUSES OR OTHER REWARDS.—Included in its comprehensive statement under section 2401(e) for any period shall be—

''(1) the name of each person receiving a bonus or other reward during such period which would not have been allowable but for the provisions of subsection (b);

''(2) the amount of the bonus or other reward; and

''(3) the amount by which the limitation referred to in subsection (b)(1) was exceeded as a result of such bonus or other reward.''.

TITLE VI—ENHANCED REGULATORY COMMISSION

SEC. 601. REORGANIZATION AND MODIFICATION OF CERTAIN PROVISIONS RELATING TO THE POSTAL REGULATORY COMMISSION.

(a) TRANSFER AND REDESIGNATION.—Title 39, United States Code, is amended—

(1) by inserting after chapter 4 the following:

''CHAPTER 5—POSTAL REGULATORY COMMISSION

''Sec.
''501. Establishment.
''502. Commissioners.
''503. Rules; regulations; procedures.
''504. Administration.
''505. Officer of the Postal Regulatory Commission representing the general public.

''§ 501. Establishment

''The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.

''§ 502. Commissioners

''(a) The Postal Regulatory Commission is composed of 5 Commissioners, appointed by the President, by and with the advice and consent of the Senate. The Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration, and may be removed by the President only for cause. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability and Enhancement Act. Not more than 3 of the Commissioners may be adherents of the same political party.

''(b) No Commissioner shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.

''(c) A Commissioner may continue to serve after the expiration of his term until his successor has qualified, except that a Commissioner may not so continue to serve for more than 1 year after the date upon which his term otherwise would expire under subsection (f).

''(d) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

''(e) The Commissioners shall by majority vote designate a Vice Chairman of the Commission. The Vice Chairman shall act as Chairman of the Commission in the absence of the Chairman.

''(f) The Commissioners shall serve for terms of 6 years.'';

(2) by striking, in subchapter I of chapter 36 (as in effect before the amendment made by section 201(c)), the heading for such subchapter I and all that follows through section 3602;

(3) by redesignating sections 3603 and 3604 as sections 503 and 504, respectively, and transferring such sections to the end of chapter 5 (as inserted by paragraph (1)); and

(4) by adding after such section 504 the following:

''§ 505. Officer of the Postal Regulatory Commission representing the general public

''The Postal Regulatory Commission shall designate an officer of the Postal Regulatory Commission in all public proceedings who shall represent the interests of the general public.''.

(b) APPLICABILITY.—The amendment made by subsection (a)(1) shall not affect the appointment or tenure of any person serving as a Commissioner on the Postal Regulatory Commission (as so redesignated by section 604) under an appointment made before the date of enactment of this Act or any nomination made before that date, but, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.

(c) CLERICAL AMENDMENT.—The analysis for part I of title 39, United States Code, is amended by inserting after the item relating to chapter 4 the following:

''5. Postal Regulatory Commission ... 501''

SEC. 602. AUTHORITY FOR POSTAL REGULATORY COMMISSION TO ISSUE SUBPOENAS.

Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding at the end the following:

''(f)(1) Any Commissioner of the Postal Regulatory Commission, any administrative law judge appointed by the Commission under section 3105 of title 5, and any employee of the Commission designated by the Commission may administer oaths, examine witnesses, take depositions, and receive evidence.

''(2) The Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge appointed by the Commission under section 3105 of title 5 may, with respect to any proceeding conducted by the Commission under this title or to obtain information to be used to prepare a report under this title—

''(A) issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and

''(B) order the taking of depositions and responses to written interrogatories by a covered person.

The written concurrence of a majority of the Commissioners then holding office shall, with respect to each subpoena under subparagraph (A), be required in advance of its issuance.

''(3) In the case of contumacy or failure to obey a subpoena issued under this subsection, upon application by the Commission, the district court of the United States for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

''(4) For purposes of this subsection, the term 'covered person' means an officer, employee, agent, or contractor of the Postal Service.

''(g)(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission under a subpoena issued under subsection (f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

''(2) Except as provided in paragraph (3), no officer or employee of the Commission may, with

respect to any information as to which the Commission has been notified under paragraph (1)—

''(A) use such information for purposes other than the purposes for which it is supplied; or

''(B) permit anyone who is not an officer or employee of the Commission to have access to any such information.

''(3)(A) Paragraph (2) shall not prohibit the Commission from publicly disclosing relevant information in furtherance of its duties under this title, provided that the Commission has adopted regulations under section 553 of title 5, that establish a procedure for according appropriate confidentiality to information identified by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service under paragraph (1), the Commission shall balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

''(B) Paragraph (2) shall not prevent the Commission from requiring production of information in the course of any discovery procedure established in connection with a proceeding under this title. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for information furnished to any party.''.

SEC. 603. AUTHORIZATION OF APPROPRIATIONS FROM THE POSTAL SERVICE FUND.

(a) POSTAL REGULATORY COMMISSION.—Subsection (d) of section 504 of title 39, United States Code (as so redesignated by section 601) is amended to read as follows:

''(d) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Postal Regulatory Commission. In requesting an appropriation under this subsection for a fiscal year, the Commission shall prepare and submit to the Congress under section 2009 a budget of the Commission's expenses, including expenses for facilities, supplies, compensation, and employee benefits.''.

(b) OFFICE OF INSPECTOR GENERAL OF THE UNITED STATES POSTAL SERVICE.—Section 8G(f) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating paragraph (4) as paragraph (5);

(2) by redesignating the second paragraph (3) (relating to employees and labor organizations) as paragraph (4); and

(3) by adding at the end the following:

''(6) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Office of Inspector General of the United States Postal Service.''.

(c) BUDGET PROGRAM.—

(1) IN GENERAL.—The next to last sentence of section 2009 of title 39, United States Code, is amended to read as follows: ''The budget program shall also include separate statements of the amounts which (1) the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401, (2) the Office of Inspector General of the United States Postal Service requests to be appropriated, out of the Postal Service Fund, under section 8G(f) of the Inspector General Act of 1978, and (3) the Postal Regulatory Commission requests to be appropriated, out of the Postal Service Fund, under section 504(d) of this title.''.

(2) CONFORMING AMENDMENT.—Section 2003(e)(1) of title 39, United States Code, is amended by striking the first sentence and inserting the following: ''The Fund shall be available for the payment of (A) all expenses incurred by the Postal Service in carrying out its functions as provided by law, subject to the same limitation as set forth in the parenthetical matter under subsection (a); (B) all expenses of the Postal Regulatory Commission, subject to the availability of amounts appropriated under section 504(d); and (C) all expenses of the Office of Inspector General, subject to the availability of amounts appropriated under section 8G(f) of the Inspector General Act of 1978.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 2005.

(2) SAVINGS PROVISION.—The provisions of title 39, United States Code, and the Inspector General Act of 1978 (5 U.S.C. App.) that are amended by this section shall, for purposes of any fiscal year before the first fiscal year to which the amendments made by this section apply, continue to apply in the same way as if this section had never been enacted.

SEC. 604. REDESIGNATION OF THE POSTAL RATE COMMISSION.

(a) AMENDMENTS TO TITLE 39, UNITED STATES CODE.—Title 39, United States Code, is amended in sections 404, 503 and 504 (as so redesignated by section 601), 1001 and 1002, by striking ''Postal Rate Commission'' each place it appears and inserting ''Postal Regulatory Commission'';

(b) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended in sections 104(1), 306(f), 2104(b), 3371(3), 5314 (in the item relating to Chairman, Postal Rate Commission), 5315 (in the item relating to Members, Postal Rate Commission), 5514(a)(5)(B), 7342(a)(1)(A), 7511(a)(1)(B)(ii), 8402(c)(1), 8423(b)(1)(B), and 8474(c)(4) by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(c) AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978.—Section 101(f)(6) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(d) AMENDMENT TO THE REHABILITATION ACT OF 1973.—Section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)) is amended by striking ''Postal Rate Office'' and inserting ''Postal Regulatory Commission''.

(e) AMENDMENT TO TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(f) OTHER REFERENCES.—Whenever a reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, document, or other record of the United States to the Postal Rate Commission, such reference shall be considered a reference to the Postal Regulatory Commission.

SEC. 605. FINANCIAL TRANSPARENCY.

(a) IN GENERAL.—Section 101 of title 39, United States Code, is amended—

(1) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

(2) by inserting after subsection (c) the following:

''(d) As an independent establishment of the executive branch of the Government of the United States, the Postal Service shall be subject to a high degree of transparency to ensure fair treatment of customers of the Postal Service's market-dominant products and companies competing with the Postal Service's competitive products.''.

(b) FINANCIAL REPORTING REQUIREMENTS AND ENFORCEMENT POWERS APPLICABLE TO POSTAL SERVICE.—Section 503 of title 39, United States Code (as so redesignated by section 601 and 604) is amended by—

(1) inserting ''(a)'' before ''The Postal Regulatory Commission shall promulgate''; and

(2) adding at the end the following:

''(b)(1) Beginning with the first full fiscal year following the date of enactment of the Postal Accountability and Enhancement Act, the Postal Service shall file with the Postal Regulatory Commission —

''(A) within 35 days after the end of each fiscal quarter, a quarterly report containing the information prescribed in Form 10–Q of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form;

''(B) within 60 days after the end of each fiscal year, an annual report containing the information prescribed in Form 10–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form; and

''(C) periodic reports within the time frame and containing the information prescribed in Form 8–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form.

''(2) For purposes of preparing the reports required under paragraph (1), the Postal Service shall be deemed to be the registrant described in the Securities and Exchange Commission forms, and references contained in such forms to Securities and Exchange Commission regulations are applicable.

''(3) For purposes of preparing the reports required under paragraph (1), the Postal Service shall comply with the rules prescribed by the Securities and Exchange Commission implementing section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262; Public Law 107–204) beginning with fiscal year 2007 and in each fiscal year thereafter.

''(c)(1) The reports required under subsection (b)(1)(B) shall include, with respect to the financial obligations of the Postal Service under chapters 83, 84, and 89 of title 5 for retirees of the Postal Service—

''(A) the funded status of such obligations of the Postal Service;

''(B) components of the net change in the fund balances and obligations and the nature and cause of any significant changes;

''(C) components of net periodic costs;

''(D) cost methods and assumptions underlying the relevant actuarial valuations;

''(E) the effect of a one-percentage point increase in the assumed health care cost trend rate for each future year on the service and interest costs components of net periodic cost and the accumulated obligation of the Postal Service under chapter 89 of title 5 for retirees of the Postal Service;

''(F) actual contributions to and payments from the funds for the years presented and the estimated future contributions and payments for each of the following 5 years;

''(G) the composition of plan assets reflected in the fund balances; and

''(H) the assumed rate of return on fund balances and the actual rates of return for the years presented.

''(2)(A) Beginning with the fiscal year 2007 and in each fiscal year thereafter, for purposes of the reports required under subsection (b)(1)(A) and (B), the Postal Service shall include segment reporting.

''(B) The Postal Service shall determine the appropriate segment reporting under subparagraph (A), after consultation with the Postal Regulatory Commission.

''(d) For purposes of the annual reports required under subsection (b)(1)(B), the Postal Service shall obtain an opinion from an independent auditor on whether the information listed under subsection (c) is fairly stated in all material respects, either in relation to the basic financial statements as a whole or on a stand-alone basis.

''(e) The Postal Regulatory Commission shall have access to the audit documentation and any other supporting matter of the Postal Service and its independent auditor in connection with any information submitted under subsection (b)(1)(B).

''(f) The Postal Regulatory Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in

accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this section whenever it shall appear that the data—

''(1) have become significantly inaccurate;

''(2) can be significantly improved; or

''(3) are not cost beneficial.''.

TITLE VII—EVALUATIONS

SEC. 701. ASSESSMENTS OF RATEMAKING, CLASSIFICATION, AND OTHER PROVISIONS.

(a) IN GENERAL.—The Postal Regulatory Commission shall, at least every 3 years, submit a report to the President and Congress concerning—

(1) the operation of the amendments made by this Act; and

(2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States.

(b) POSTAL SERVICE VIEWS.—A report under this section shall be submitted only after reasonable opportunity has been afforded to the Postal Service to review the report and to submit written comments on the report. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).

SEC. 702. REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY.

(a) REPORT BY THE POSTAL REGULATORY COMMISSION.—

(1) IN GENERAL.—Not later than 24 months after the date of enactment of this Act, the Postal Regulatory Commission shall submit a report to the President and Congress on universal postal service and the postal monopoly in the United States (in this section referred to as ''universal service and the postal monopoly''), including the monopoly on the delivery of mail and on access to mailboxes.

(2) CONTENTS.—The report under this subsection shall include—

(A) a comprehensive review of the history and development of universal service and the postal monopoly, including how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas;

(B) the scope and standards of universal service and the postal monopoly provided under current law (including sections 101 and 403 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service;

(C) a description of any geographic areas, populations, communities (including both urban and rural communities), organizations, or other groups or entities not currently covered by universal service or that are covered but that are receiving services deficient in scope or quality or both; and

(D) the scope and standards of universal service and the postal monopoly likely to be required in the future in order to meet the needs and expectations of the United States public, including all types of mail users, based on discussion of such assumptions, alternative sets of assumptions, and analyses as the Postal Service considers plausible.

(b) RECOMMENDED CHANGES TO UNIVERSAL SERVICE AND THE MONOPOLY.—The Postal Regulatory Commission shall include in the report under subsection (a), and in all reports submitted under section 701 of this Act—

(1) any recommended changes to universal service and the postal monopoly as the Commission considers appropriate, including changes that the Commission may implement under current law and changes that would require changes to current law, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service;

(2) with respect to each recommended change described under paragraph (1)—

(A) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

(B) an analysis of the likely benefit of the current postal monopoly to the ability of the Postal Service to sustain the current scope and standards of universal service, including estimates of the financial benefit of the postal monopoly to the extent practicable, under current law; and

(3) such additional topics and recommendations as the Commission considers appropriate, with estimated effects of the recommendations on the service, financial condition, rates, and the security of mail provided by the Postal Service.

SEC. 703. STUDY ON EQUAL APPLICATION OF LAWS TO COMPETITIVE PRODUCTS.

(a) IN GENERAL.—The Federal Trade Commission shall prepare and submit to the President and Congress, and to the Postal Regulatory Commission, within 1 year after the date of enactment of this Act, a comprehensive report identifying Federal and State laws that apply differently to the United States Postal Service with respect to the competitive category of mail (within the meaning of section 102 of title 39, United States Code, as amended by section 101) and similar products provided by private companies.

(b) RECOMMENDATIONS.—The Federal Trade Commission shall include such recommendations as it considers appropriate for bringing such legal discrimination to an end, and in the interim, to account under section 3633 of title 39, United States Code (as added by this Act), for the net economic advantages provided by those laws.

(c) CONSULTATION.—In preparing its report, the Federal Trade Commission shall consult with the United States Postal Service, the Postal Regulatory Commission, other Federal agencies, mailers, private companies that provide delivery services, and the general public, and shall append to such report any written comments received under this subsection.

(d) COMPETITIVE PRODUCT REGULATION.—The Postal Regulatory Commission shall take into account the recommendations of the Federal Trade Commission in promulgating or revising the regulations required under section 3633 of title 39, United States Code.

SEC. 704. REPORT ON POSTAL WORKPLACE SAFETY AND WORKPLACE-RELATED INJURIES.

(a) REPORT BY THE INSPECTOR GENERAL.—

(1) IN GENERAL.—Not later than 6 months after the enactment of this Act, the Inspector General of the United States Postal Service shall submit a report to Congress and the Postal Service that—

(A) details and assesses any progress the Postal Service has made in improving workplace safety and reducing workplace-related injuries nationwide; and

(B) identifies opportunities for improvement that remain with respect to such improvements and reductions.

(2) CONTENTS.—The report under this subsection shall also—

(A) discuss any injury reduction goals established by the Postal Service;

(B) describe the actions that the Postal Service has taken to improve workplace safety and reduce workplace-related injuries, and assess how successful the Postal Service has been in meeting its injury reduction goal; and

(C) identify areas where the Postal Service has failed to meet its injury reduction goals, explain the reasons why these goals were not met, and identify opportunities for making further progress in meeting these goals.

(b) REPORT BY THE POSTAL SERVICE.—

(1) REPORT TO CONGRESS.—Not later than 6 months after receiving the report under subsection (a), the Postal Service shall submit a report to Congress detailing how it plans to improve workplace safety and reduce workplace-related injuries nationwide, including goals and metrics.

(2) PROBLEM AREAS.—The report under this subsection shall also include plans, developed in consultation with the Inspector General and employee representatives, including representatives of each postal labor union and management association, for addressing the problem areas identified by the Inspector General in the report under subsection (a)(2)(C).

SEC. 705. STUDY ON RECYCLED PAPER.

(a) IN GENERAL.—Within 12 months after the date of enactment of this Act, the Government Accountability Office shall study and submit to the Congress, the Board of Governors of the Postal Service, and to the Postal Regulatory Commission a report concerning—

(1) the economic and environmental efficacy of establishing rate incentives for mailers linked to the use of recycled paper;

(2) a description of the accomplishments of the Postal Service in each of the preceding 5 years involving recycling activities, including the amount of annual revenue generated and savings achieved by the Postal Service as a result of its use of recycled paper and other recycled products and its efforts to recycle undeliverable and discarded mail and other materials; and

(3) additional opportunities that may be available for the United States Postal Service to engage in recycling initiatives and the projected costs and revenues of undertaking such opportunities.

(b) RECOMMENDATIONS.—The report shall include recommendations for any administrative or legislative actions that may be appropriate.

TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

SEC. 801. SHORT TITLE.

This title may be cited as the ''Postal Civil Service Retirement and Health Benefits Funding Amendments of 2004''.

SEC. 802. CIVIL SERVICE RETIREMENT SYSTEM.

(a) IN GENERAL.—Chapter 83 of title 5, United States Code, is amended—

(1) in section 8334(a)(1)(B), by striking clause (ii) and inserting the following:

''(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph.''; and

(2) by amending section 8348(h) to read as follows:

''(h)(1) In this subsection, the term 'Postal surplus or supplemental liability' means the estimated difference, as determined by the Office, between—

''(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

''(B) the sum of—

''(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

''(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

''(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

''(2)(A) Not later than June 15, 2006, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2005. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a by June 30, 2006. If the result is a

supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing September 30, 2006, which provides for the liquidation of such liability by September 30, 2043.

''(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2006, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C), and any prior amortization schedule for payments shall be terminated. If the result is a supplemental liability, the Office shall establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

''(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

''(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

''(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

''(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.''.

(b) CREDIT ALLOWED FOR MILITARY SERVICE.—In the application of section 8348(g)(2) of title 5, United States Code, for the fiscal year 2006, the Office of Personnel Management shall include, in addition to the amount otherwise computed under that paragraph, the amounts that would have been included for the fiscal years 2003 through 2005 with respect to credit for military service of former employees of the United States Postal Service as though the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) had not been enacted, and the Secretary of the Treasury shall make the required transfer to the Civil Service Retirement and Disability Fund based on that amount.

(c) REVIEW.—

(1) IN GENERAL.—

(A) REQUEST FOR REVIEW.—Notwithstanding any other provision of this section (including any amendment made by this section), any determination or redetermination made by the Office of Personnel Management under this section (including any amendment made by this section) shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this subsection.

(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of pension obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(2) RECONSIDERATION.—Upon receiving the report from the Commission under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

SEC. 803. HEALTH INSURANCE.

(a) IN GENERAL.—

(1) FUNDING.—Chapter 89 of title 5, United States Code, is amended—

(A) in section 8906(g)(2)(A), by striking ''shall be paid by the United States Postal Service.'' and inserting ''shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service.''; and

(B) by inserting after section 8909 the following:

''§ 8909a. Postal Service Retiree Health Benefit Fund

''(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

''(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

''(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

''(d)(1) Not later than June 30, 2006, and by June 30 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

''(2)(A) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year, the Office shall recompute the difference between—

''(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

''(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

''(II) the net present value computed under paragraph (1).

''(B) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year shall recompute, an amortization schedule including a series of annual installments which provide for the liquidation by September 30, 2045, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

''(3) Not later than September 30, 2006, and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund—

''(A) the net present value computed under paragraph (1); and

''(B) the annual installment computed under paragraph (2)(B).

''(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

''(5)(A)(i) Any computation or other determination of the Office under this subsection shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

''(ii) Upon receiving a request under clause (i), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this subparagraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

''(B) Upon receiving the report under subparagraph (A), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

''(6) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8909 the following:

''8909a. Postal Service Retiree Health Benefits Fund.''.

(b) REVIEW.—

(1) IN GENERAL.—

(A) REQUEST FOR REVIEW.—Any regulation established under section 8909a(d)(5) of title 5, United States Code (as added by subsection (a)), shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(2) RECONSIDERATION.—Upon receiving the report under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

(c) TRANSITIONAL ADJUSTMENT FOR FISCAL YEAR 2006.—For fiscal year 2006, the amounts paid by the Postal Service in Government contributions under section 8906(g)(2)(A) of title 5, United States Code, for fiscal year 2006 contributions shall be deducted from the initial payment otherwise due from the Postal Service to the Postal Service Retiree Health Benefits Fund under section 8909a(d)(3) of such title as added by this section.

SEC. 804. REPEAL OF DISPOSITION OF SAVINGS PROVISION.

Section 3 of the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) is repealed.

SEC. 805. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided under subsection (b), this title shall take effect on October 1, 2005.

(b) TERMINATION OF EMPLOYER CONTRIBUTION.—The amendment made by paragraph (1) of section 802(a) shall take effect on the first day of the first pay period beginning on or after October 1, 2005.

TITLE IX—COMPENSATION FOR WORK INJURIES

SEC. 901. TEMPORARY DISABILITY; CONTINUATION OF PAY.

(a) TIME OF ACCRUAL OF RIGHT.—Section 8117 of title 5, United States Code, is amended—

(1) by striking ''An employee'' and inserting ''(a) An employee other than a Postal Service employee''; and

(2) by adding at the end the following:

''(b) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period, except that if the disability exceeds 14 days or is followed by permanent disability, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 8118(b)(1) of title 5, United States Code, is amended to read as follows:

''(1) without a break in time, except as provided under section 8117(b), unless controverted under regulations of the Secretary''.

SEC. 902. DISABILITY RETIREMENT FOR POSTAL EMPLOYEES.

(a) TOTAL DISABILITY.—Section 8105 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1)).

''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of the Postal Accountability and Enhancement Act, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for total disability is converted to 50 percent of the monthly pay of the employee on the later of—

''(A) the date on which the injured employee reaches retirement age; or

''(B) 1 year after the employee begins receiving compensation.''.

(b) PARTIAL DISABILITY.—Section 8106 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (d).''; and

(2) by adding at the end the following:

''(d)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1)).

''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of this subsection, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for partial disability is converted to 50 percent of the difference between the monthly pay of an employee and the monthly wage earning capacity of the employee after the beginning of partial disability on the later of—

''(A) the date on which the injured employee reaches retirement age; or

''(B) 1 year after the employee begins receiving compensation.''.

TITLE X—MISCELLANEOUS

SEC. 1001. EMPLOYMENT OF POSTAL POLICE OFFICERS.

Section 404 of title 39, United States Code (as amended by this Act), is further amended by adding at the end the following:

''(d) The Postal Service may employ guards for all buildings and areas owned or occupied by the Postal Service or under the charge and control of the Postal Service, and may give such guards, with respect to such property, any of the powers of special policemen provided under section 1315 of title 40. The Postmaster General, or the designee of the Postmaster General, may take any action that the Secretary of Homeland Security may take under section 1315 of title 40, with respect to that property.

SEC. 1002. OBSOLETE PROVISIONS.

(a) REPEAL.—

(1) IN GENERAL.—Chapter 52 of title 39, United States Code, is repealed.

(2) CONFORMING AMENDMENTS.—(A) Section 5005(a) of title 39, United States Code, is amended—

(i) by striking paragraph (1), and by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively; and

(ii) in paragraph (3) (as so designated by clause (i)), by striking ''(as defined in section 5201(6) of this title)''.

(B) Section 5005(b) of such title 39 is amended by striking ''(a)(4)'' each place it appears and inserting ''(a)(3)''.

(C) Section 5005(c) of such title 39 is amended by striking ''by carrier or person under subsection (a)(1) of this section, by contract under subsection (a)(4) of this section, or'' and inserting ''by contract under subsection (a)(3) of this section or''.

(b) ELIMINATING RESTRICTION ON LENGTH OF CONTRACTS.—(1) Section 5005(b)(1) of title 39, United States Code, is amended by striking ''(or where the Postal Service determines that special conditions or the use of special equipment warrants, not in excess of 6 years)'' and inserting ''(or such longer period of time as may be determined by the Postal Service to be advisable or appropriate)''.

(2) Section 5402(d) of such title 39 is amended by striking ''for a period of not more than 4 years''.

(3) Section 5605 of such title 39 is amended by striking ''for periods of not in excess of 4 years''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V of title 39, United States Code, is amended by repealing the item relating to chapter 52.

SEC. 1003. REDUCED RATES.

Section 3626 of title 39, United States Code, is amended—

(1) in subsection (a), by striking all before paragraph (4) and inserting the following:

''(a)(1) Except as otherwise provided in this section, rates of postage for a class of mail or kind of mailer under former section 4358, 4452(b), 4452(c), 4554(b), or 4554(c) of this title shall be established in accordance with section 3622.

''(2) For the purpose of this subsection, the term 'regular-rate category' means any class of mail or kind of mailer, other than a class or kind referred to in section 2401(c).

''(3) Rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title shall be established so that postage on each mailing of such mail reflects its preferred status as compared to the postage for the most closely corresponding regular-rate category mailing.'';

(2) in subsection (g), by adding at the end the following:

''(3) For purposes of this section and former section 4358(a) through (c) of this title, those copies of an issue of a publication entered within the county in which it is published, but distributed outside such county on postal carrier routes originating in the county of publication, shall be treated as if they were distributed within the county of publication.

''(4)(A) In the case of an issue of a publication, any number of copies of which are mailed at the rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title, any copies of such issue which are distributed outside the county of publication (excluding any copies subject to paragraph (3)) shall be subject to rates of postage provided for under this paragraph.

''(B) The rates of postage applicable to mail under this paragraph shall be established in accordance with section 3622.

''(C) This paragraph shall not apply with respect to an issue of a publication unless the total paid circulation of such issue outside the county of publication (not counting recipients of copies subject to paragraph (3)) is less than 5,000.''; and

(3) by adding at the end the following:

''(n) In the administration of this section, matter that satisfies the circulation standards for requester publications shall not be excluded from being mailed at the rates for mail under former section 4358 solely because such matter is designed primarily for free circulation or for circulation at nominal rates, or fails to meet the requirements of former section 4354(a)(5).''.

SEC. 1004. SENSE OF CONGRESS REGARDING POSTAL SERVICE PURCHASING REFORM.

It is the sense of Congress that the Postal Service should—

(1) ensure the fair and consistent treatment of suppliers and contractors in its current purchasing policies and any revision or replacement of such policies, such as through the use of competitive contract award procedures, effective dispute resolution mechanisms, and socioeconomic programs; and

(2) implement commercial best practices in Postal Service purchasing policies to achieve greater efficiency and cost savings as recommended in July 2003 by the President's Commission on the United States Postal Service, in a manner that is compatible with the fair and consistent treatment of suppliers and contractors, as befitting an establishment in the United States Government.

SEC. 1005. CONTRACTS FOR TRANSPORTATION OF MAIL BY AIR.

(a) DEFINITIONS.—Section 5402(a) of title 39, United States Code, is amended—

(1) in paragraph (4), by striking ''(g)(1)(D)(i)'' and inserting ''(g)(1)(A)(iv)(I)'';

(2) in paragraph (5), by striking ''(g)(1)(D)(i)'' and inserting ''(g)(1)(A)(iv)(I)'';

(3) in paragraph (6), by striking ''only'';

(4) in paragraph (8), by striking ''rates paid to a bush carrier'' and inserting ''linehaul rates and a single terminal handling payment at a bush terminal handling rate paid to a bush carrier'';

(5) in paragraph (11), by striking ''(g)(1)(D)(ii)'' and inserting ''(g)(1)(A)(iv)(II)'';

(6) in paragraph (13)—

(A) in subparagraph (A)—

(i) by striking ''clause (i) or (ii) of subsection (g)(1)(D)'' and inserting ''subclause (I) or (II) of subsection (g)(1)(A)(iv)''; and

(ii) by striking ''and'' after the semicolon;

(B) in subparagraph (B), by adding ''and'' after the semicolon; and

(C) by adding at the end the following:

''(C) is not comprised of previously qualified existing mainline carriers as a result of merger or sale;'';

(7) in paragraph (18), by striking ''bush routes'' and inserting ''routes''; and

(8) in paragraph (22), by striking ''bush routes'' and inserting ''routes''.

(b) NONPRIORITY BYPASS MAIL.—Section 5402(g) of title 39, United States Code, is amended—

(1) in paragraph (2)(C), by inserting ''or a destination city'' after ''acceptance point and a hub'';

(2) in paragraph (3), by adding at the end the following:

''(C) When a new hub results from a change in a determination under subparagraph (B), mail tender from that hub during the 12-month period beginning on the effective date of that

change shall be based on the passenger and freight shares to the destinations of the affected hub or hubs resulting in the new hub.''; and

(3) in paragraph (5)(A)(i), by striking ''(g)(1)(D)(ii)'' and inserting ''(g)(1)(A)(iv)(II)''.

(c) EQUITABLE TENDER.—Section 5402(h) of title 39, United States Code, is amended—

(1) in paragraph (1), by inserting ''bush'' after ''providing scheduled'';

(2) by striking paragraph (3) and inserting the following:

''(3)(A) Except as provided under subparagraph (C), a new or existing 121 bush passenger carrier qualified under subsection (g)(1) shall be exempt from the requirements under paragraphs (1)(B) and (2)(A) on a city pair route for a period which shall extend for—

''(i) 1 year;

''(ii) 1 year in addition to the extension under clause (i) if, as of the conclusion of the first year, such carrier has been providing not less than 5 percent of the passenger service on that route (as calculated under paragraph (5)); and

''(iii) 1 year in addition to the extension under clause (ii) if, as of the conclusion of the second year, such carrier has been providing not less than 10 percent of the passenger service on that route (as calculated under paragraph (5)).

''(B)(i) The first 3 121 bush passenger carriers entitled to the exemptions under subparagraph (A) on any city pair route shall divide no more than an additional 10 percent of the mail, apportioned equally, comprised of no more than—

''(I) 5 percent of the share of each qualified passenger carrier servicing that route that is not a 121 bush passenger carrier; and

''(II) 5 percent of the share of each nonpassenger carrier servicing that route that transports 25 percent or more of the total nonmail freight under subsection (i)(1).

''(ii) Additional 121 bush passenger carriers entering service on that city pair route after the first 3 shall not receive any additional mail share.

''(iii) If any 121 bush passenger carrier on a city pair route receiving an additional share of the mail under clause (ii) discontinues service on that route, the 121 bush passenger carrier that has been providing the longest period of service on that route and is otherwise eligible but is not receiving a share by reason of clause (ii), shall receive the share of the carrier discontinuing service.

''(C) Notwithstanding the requirements of this subsection, if only 1 passenger carrier or aircraft is qualified to be tendered nonpriority bypass mail as a passenger carrier or aircraft on a city pair route in the State of Alaska, the Postal Service shall tender 20 percent of the nonpriority bypass mail described under paragraph (1) to the passenger carrier or aircraft providing at least 10 percent of the passenger service on such route.'';

(3) in paragraph (5)(A)—

(A) by striking ''(i)'' after ''(A)''; and

(B) by striking clause (ii).

(d) PERCENT OF NONMAIL FREIGHT.—Section 5402(i)(6) of title 39, United States Code, is amended—

(1) by striking ''(A)'' after ''(6)''; and

(2) by striking subparagraph (B).

(e) PERCENT OF TENDER RATE.—Section 5402(j)(3)(B) of title 39, United States Code, is amended by striking ''bush routes in the State of Alaska'' and inserting ''routes served exclusively by bush carriers in the State of Alaska''.

(f) DETERMINATION OF RATES.—Section 5402(k) of title 39, United States Code, is amended by striking paragraph (5).

(g) TECHNICAL AND CONFORMING AMENDMENT.—Section 5402(p)(3) of title 39, United States Code, is amended by striking ''(g)(1)(D)'' and inserting ''(g)(1)(A)(iv)''.

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided under paragraph (2), this section shall take effect on the date of enactment of this Act.

(2) EQUITABLE TENDER.—Subsection (c) shall take effect on July 1, 2006.

Mr. FRIST. Mr. President, I further ask unanimous consent that S. 662, as amended, be returned to the calendar and that it not be in order for the Senate to consider any conference report or House amendments to H.R. 22 if it would cause a net increase in on- or off-budget direct spending in excess of $5 billion in any of the four 10-year periods beginning in 2016 to 2055, as estimated by the Congressional Budget Office.

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

The PRESIDING OFFICER appointed Ms. COLLINS, Mr. STEVENS, Mr. VOINOVICH, Mr. COLEMAN, Mr. BENNETT, Mr. LIEBERMAN, Mr. AKAKA, and Mr. CARPER conferees on the part of the Senate.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. President, I would like to take a moment to comment on the passage of the Postal Accountability and Enhancement Act.

Today's passage of S. 662 is a first step towards meaningful postal reform. The Postal Service forms a crucial part of the backbone of our economy, and I am encouraged by today's action toward bringing meaningful reform to the Postal Service.

I am optimistic that the process of resolving the differences between the Senate and House bills will result in a product that goes even further to ensure that America's Postal Service has the resources and flexibility necessary to remain relevant and competitive in the global marketplace.

I want to thank the chairman of the Homeland Security and Governmental Affairs Committee, Senator SUSAN COLLINS of Maine, and Senator TOM CARPER of Delaware, for their leadership. They worked diligently with their colleagues in the Senate, the U.S. Postal Service, the administration, and kept their focus on the thousands of postal workers in communities across America, and the businesses which rely on the mail system to craft the current compromise.

In the past three and a half decades, the needs of the Postal Service have changed dramatically. Indeed, the way we communicate has been transformed by technology through e-mail, faxes, and my personal favorite, Blackberries.

We can now pay our bills on the Internet. And online shopping is more common than catalog sales.

Nevertheless, the Postal Service remains a critical part of America's economy. Between paper manufacturing, printing, catalog production, direct mailing and financial services, the $900 billion mailing industry employs 11 million workers in America.

And it is fair to say that we rely on the U.S. Postal Service more than any other governmental service. In Nashville and Knoxville, and towns all across the country, the local post office still represents the heart of the community.

In recent years, the Postal Service has undergone some of its most challenging and difficult times. In 2001 and 2003, it was hit with deadly anthrax and ricin bioterrorism attacks. It was a frightening time for our country's postal workers, and shook us all to the core.

The Postal Service has also undergone significant modernization on the business side. These reforms have made the postal service more efficient and productive, and I applaud the leadership of Postal Master Jack Potter who has been a steady, forward-thinking, responsible leader of the U.S. Postal Service.

I have worked with the Postmaster General on a number of occasions. The attacks in 2001 and 2003 brought us together to address the public health risks of mail-born bioterrorism, and to develop better ways of protecting the Postal Service's employees and America's mail.

And most recently, Jack and I announced the transfer of the historic post office on the Mississippi River in Memphis, to the University of Memphis for their new law school. He personally worked with me, the city and the university to get this done for the Memphis community.

The Postal Service is in good hands, and under Jack Potter's leadership has significantly improved its financial performance. But in order for America to have a healthy and stable mail system into the future, the Postal Service needs a less cumbersome rate-setting process and better flexibility to respond to an increasingly competitive and demanding marketplace. S. 662 takes important steps toward that goal.

It grants the Postal Service Board of Governors new authority to set rates for competitive products like express mail and priority mail, and replaces the current rate-setting process for products such as first-class mail, periodicals, and library mail with a more efficient, less litigious rate cap-based structure.

The Postal Accountability and Enhancement Act also transforms the existing Postal Rate Commission into the Postal Regulatory Commission with authority to regulate rates for noncompetitive rates and services, ensure financial transparency, and establish limits on the accumulation of retained earnings, among other things.

I look forward to seeing more work done on this issue, but today's action represents the beginning of real reform to the Postal Service which will benefit the taxpayers, ratepayers, and the thousands of dedicated U.S. Postal Service employees.

Every day, we are working to keep America moving forward.

U.S. POSTAL SERVICE

Mr. HARKIN. Mr. President, I appreciate the work done by Senator COLLINS, Chair of the Homeland Security and Governmental Affairs Committee, by the ranking member Senator LIEBERMAN, and also by Senator CARPER. It has literally taken years to

move this important postal reform legislation.

As my colleagues are aware, the Postal Service faces multiple challenges in our changing economy. One of these challenges is how it should manage its network of processing and logistics facilities. In order to remain competitive and maintain universal service, the Postal Service is currently studying how best to streamline its processing and logistics network and remove excess capacity. The decisions it will make as part of this process will have a long term impact on many of the communities and businesses that it serves.

Sadly, the process that the Postal Service has developed to date to study facility closures and consolidations fails to adequately allow stakeholders, key customers, postal employees or community leaders necessary input. The current process also fails to provide an open and transparent explanation to affected communities for what may be quite compelling reasons underlying the decisions to close or consolidate a facility.

I learned how completely lacking in public participation and transparency this process is from my constituents in Sioux City, IA. Until I convened a meeting with postal officials in my office last week, the Sioux City community had been unable to get any information from the Postal Service about the timing or reasons for the proposed consolidation of a mail processing and distribution center there with a similar facility in another state.

Senators COLLINS, LIEBERMAN, and CARPER have agreed to include language in S. 662 that would ensure that this does not happen. This language does not stop the Postal Service from studying consolidation options for its processing operations. What it does do is require that the Postal Service revise the area mail processing study process by which it analyzes which of its processing facilities should be closed or consolidated.

While the language does not prevent the Postal Service from proceeding with ongoing area mail processing studies on consolidation of specific facilities, it does provide that no facility closing or consolidation may actually be implemented until the Postal Service has met the requirements of public notice, transparency and public input specified in new section 302(c)(3)(D)(i–iv) .

The new language requires that the Postal Service's decisionmaking process be transparent, with any analyses made available to the community upon request. It will also require that the businesses and communities affected by proposed consolidations of Postal Service facilities have the opportunity to provide input and guarantees that their concerns and advice are taken fully into account by the Postal Service before the Postal Service issues a decision on a closure or consolidation.

The first section of the amendment provides that the Postal Service notify an affected community about the potential of a facility being closed or consolidated in their district; such notification will be provided at the beginning stage of the matter or as soon as the Postal Service makes a decision to begin reviewing the matter. The Postal Service should do their best to ensure that this notification reaches all of businesses, residents, employees, government entities, and other organizations that depend on the facility.

The second section will require the Postal Service to make available to the community, upon request, any data, analyses, or other information that is being considered by the Postal Service as part of its decisionmaking process. This will ensure that the Postal Service's decisionmaking analysis on this matter is transparent.

The third section will allow the affected members of the community ample opportunity to provide input on the proposed decision. This will ensure that the community has the chance to provide valuable input into the decisionmaking process.

The fourth section requires the Postal Service to take community input into account prior to making a final decision at the district level. Once the district level decision on consolidation is made, which includes taking the community input into account, the district level recommendation can then be forwarded to the next decisionmaking step at the regional level. It is worth noting that the community served by a postal facility can be a valuable information resource and that it should benefit the Postal Service to listen to the community's suggestions as they seek to arrive at a result that works for them, their customers and those they serve.

Mr. CARPER. While I fully support efforts by the Postal Service to rationalize its processing operations, I also believe that the Postal Service can engage in consolidation decisions that are rational and justified and can withstand public scrutiny. I believe that this language will improve the consolidation process, and I was pleased to work with my colleague from Iowa in drafting it. I believe that the language strikes the appropriate balance by not stopping the Postal Service from studying proposed consolidations of particular facilities, while at the same time requiring the Postal Service to meet some basic obligations to its customer and affected communities before a consolidation can be implemented.

Mr. LIEBERMAN. I am pleased to lend my strong support to adding this provision to S. 622 in order to improve the procedures by which the Postal Service consolidates its mail processing operations. The problems local communities are encountering from the Postal Service's consolidations hit home for me in Waterbury, CT. Connecticut residents affected by the Postal Service's decision to close its Waterbury mail processing center have a right to participate in a process that is transparent and open. This new provision in S. 622 will help ensure that, when the Postal Service streamlines its mail processing or logistics network, it gives adequate public notice and takes other steps to be sure that those who are potentially affected—including postal customers, postal employees, and other businesses and individuals in the community—have an opportunity to understand and provide input into the Postal Service's decision before facilities are consolidated or closed.

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.

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

The PRESIDING OFFICER (Mr. VITTER). Without objection, it is so ordered.

OIL DRILLING

Mr. NELSON of Florida. Mr. President, I wanted to call to the attention of the Senate that over the past couple of days the question of drilling for oil off the coast of Florida has been joined. Indeed, the question and the debate has accelerated.

Yesterday, the Department of the Interior offered their proposed new alignment of the Gulf of Mexico and the central planning area where drilling for oil will occur and the eastern planning area where oil drilling will not occur.

As we have speculated for some period of time, when the Department of the Interior published in the Federal Register that State boundaries were going to be redrawn so that the boundaries of the State of Louisiana, indeed, went into the waters off of the State of Florida, we could well speculate, with some justification, that indeed that was going to be the plan. That, in fact, was the plan offered yesterday by the Secretary of the Interior, Gale Norton, for the next 5 years in the Outer Continental Shelf.

The Secretary's plan increases the drilling in the eastern Gulf of Mexico off the State of Florida by 2 million acres. That was simultaneously followed by the filing of a bill by the chairman of the Energy Committee, the Senator from New Mexico, which would encompass almost the entirety of an area not included in the moratorium on the Outer Continental Shelf, known as lease sale 181.

The essence of the proposal by the Senator from New Mexico is to drill for oil and gas in an area of 4 million acres, in a bulge which bulges out from the imaginary Florida-Alabama line into the waters off the State of Florida.

This senior Senator from Florida, joined by my colleague, Senator MARTINEZ, recognizing this was coming, laid out a plan last week—a plan that would allow some drilling in a part of

lease sale 181 but far from the Florida coast—indeed, 260 miles west of Tampa Bay and Clearwater Beach, that from Pensacola, FL, in the panhandle, would be 150 miles to the south but then would honor the so-called ''military mission line,'' about which Secretary of Defense Don Rumsfeld stated in a letter before Christmas that oil and gas drilling in that area, which has been restricted space because we train and test our military weapons, would not be compatible; to use his words: It would be incompatible with military objectives, with military preparedness through our training and testing in the waters, off the waters, and around the waters of the Gulf of Mexico off Florida.

Therefore, Senator MARTINEZ and I proposed a line that would honor the request of the Department of Defense. That request was corroborated the day before yesterday in front of the Senate Armed Services Committee, when this Senator put the question to Secretary Rumsfeld, again in the form of thanking him for his clear statement, and he acknowledged that statement again.

Where does this leave us? We must continue to have this fight.

We have the prodrilling forces, as evidenced by Senator DOMENICI and his proposal wanting additional drilling off the coast of Florida. We have a more modest proposal by the Secretary of the Interior, who consulted with a couple of dozen oil companies and their proposal, and we have the proposal of the two Senators from Florida, recognizing there is much at stake beyond drilling.

The stakes are very high, not even to speak of Florida's economy, which is certainly evidenced by a $50 billion a year tourism industry which depends on pristine beaches, without oilspills the likes of which occurred last week in Alaska.

When people say: Oh, it is gas that we want to drill, not oil, ignoring the fact that one of the largest and most costly oil spills occurred when a gas rig blew off the coast of California in 1968, causing this massive oilspill, which led to the enactment of a moratorium of all drilling off the Continental Shelf of the United States.

Certainly, economic interests of our State are clearly one component. But there is another component; that is, we have bays and estuaries where so much of our marine life is spawned where the delicate environment would be savaged with an oilspill.

People said it would be far from Florida shores, but winds and currents do not understand mileage. Indeed, there is that current that comes up into the Gulf of Mexico in a northward arc off of the Yucatan Peninsula of Mexico and then turns southward and comes around the Florida Keys, then northward it is the current known as the Gulf Stream.

The idea that long distances are going to protect the delicate environment, I hope that can be recognized as a false argument.

Another component of the argument is simply that there is very little oil out there. They have had several dry holes. The geology shows there is not very much oil. The oil, in fact, in the Gulf of Mexico, is where the 4,000-plus oil rigs are, which is the central gulf and the western gulf off of, primarily, Louisiana and Texas.

But then, of course, there is the fourth component of why we should not drill in the eastern gulf. That is our military preparedness. If you fly commercially from Tampa to New Orleans, you do not fly across the gulf. You hug the coast of Florida. Why? It is restricted space. It is the largest testing and training area for our U.S. military. It is what Secretary Rumsfeld memorialized in the letter to the Senate Committee on Armed Services in December saying: Do not drill east of that military mission line.

We are testing weapons systems such as the F/A–22. All pilot training is being done at Tyndall Air Force Base in Panama City. Why? Because the Gulf of Mexico is restricted space. In a dog fight with the F/A–22, compared to the F–15, the F/A–22 is engaging in air-to-air combat at a speed of 1.5 mach, not like the F–15 and the F–16 at .75 mach, three-quarters of the speed of sound. In other words, the new stealth fighter is engaging in air-to-air combat at twice the speed of our present fleet of aircraft. Therefore, the training area has to be so much larger.

We are testing right now a laser weapon shot from a ship, which goes several hundred miles. We have to have restricted space. Secretary of Defense Rumsfeld said oil and gas rigs are incompatible with the military uses of that space.

That is four components. Senator MARTINEZ and I took all those components into consideration in suggesting our plan. And we added a 20-mile cushion since that military mission line that Secretary Rumsfeld referred to was established in 1981, and the weapons have gotten more sophisticated and, as I stated, require much more space in which to test and to train our military.

That is the line we have drawn which is in effect from Clearwater Beach, right there at Tampa Bay, St. Petersburg Beach, 260 miles to the west from a position further south of Florida, like Fort Myers or Naples. It is in excess of 300 miles from the coast of Florida.

To my knowledge, as of today every newspaper editorial page in the State of Florida, save for one newspaper, has editorialized in favor of Senator MARTINEZ and my proposal from last week. I don't have the exact count, but that is something upwards of 20 editorial pages.

As we come here for the fights that are going to occur, Senator MARTINEZ and I are looking for a practical line that will accommodate the interests of everyone, including our military preparedness. That is why we cannot have a bill that was offered in the House of Representatives last fall that says leave it up to the States. We can't leave it up to a State to set military policy. We cannot leave it up to an individual State legislature to determine whether the U.S. military is going to be prepared in this long war on terror. That is why Senator MARTINEZ and I have said these boundaries ought to be permanent, not in some 5-year plan that is now being offered but permanent.

We are going to continue the fight. I can tell the Senate there is no daylight between Senator MARTINEZ, who sits on that side of the aisle, and this senior Senator of Florida, who sits on this side of the aisle. We will employ every opportunity we have under the rules of the Senate to try to get others who disagree to understand the practicality and the wisdom of the proposal we have laid out to accommodate all of the interests, including the military interests of this country.

I share that with the Senate. This is not going to be the last time we will discuss that, but I make this Senator's position unalterably clear. I thank the Senate for this opportunity to share these thoughts.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Montana.

Mr. BAUCUS. What is the pending business before the Senate?

The PRESIDING OFFICER. The Senate is on S. 852, the asbestos legislation.

Mr. BAUCUS. I ask the Presiding Officer, is there an amendment pending?

The PRESIDING OFFICER. There are several amendments pending.

Mr. BAUCUS. Is one of the amendments the Cornyn substitute?

The PRESIDING OFFICER. There are two Cornyn amendments pending. There is a perfecting amendment pending and a second degree to that perfecting amendment.

Mr. BAUCUS. I thank the Chair.

Mr. President, I strongly oppose the Cornyn amendment to the underlying bill. I want the record to reflect my deep disappointment in those two amendments. I am deeply concerned we are losing sight of what is at stake.

What is that? Making sure that people who are sick, who are likely to become sick from exposure to tremolite asbestos are not denied the ability to fight for their rights against the persons or companies that injured them. That is absolutely the bottom line. If these amendments are agreed to, people in the small county of northwest Montana will not get justice. These people will not get relief. They will not get support. They will not be able to pay for needed health care as they die.

We are talking about hundreds of sick and dying people. This amendment turns our back on them. It will hurt them while they are already down. It will hurt the people of Libby. The people in Libby are proud. They have had more than their share of hard knocks. They just keep going, getting up and

keep trying. They are good, proud people. But they have been injured. They have been deceived. They have been wronged. They have been lied to.

They have tried to put their faith in our Congress and in our legislative process to make things right. They are survivors. I am privileged to know them so well and to represent them.

Let me tell you about the first time I went to Libby. It was January of the year 2000. I traveled to Libby to meet with 25 extremely ill people for the first time. I had been briefed a number of times on what I might expect to hear that night. These kind men and women, some of whom are no longer with us, gathered to share huckleberry pie and coffee in the home of Gayla Benefield.

They opened their hearts. They poured out unimaginable stories of suffering and tragedy on a scale that absolutely stunned me. Entire families—fathers, mothers, uncles, aunts, sons, and daughters—all sick, hundreds are dead—they are all bound together by their exposure to the company mine, exposure to tremolite asbestos mined by W.R. Grace.

This is an isolated community of a few thousand people located as far away from Washington, DC, as you could possibly get, way up in northwest Montana.

I will never forget a man I met that night. He has become my dear friend. His name is Les Skramstad. I mentioned Les yesterday. Let me tell you about our first introduction.

At that meeting in the home of Gayla Benefield, Les watched me closely all evening. He was weary and came up to me after his friends and neighbors finished speaking and said to me:

Senator, a lot of people have come to Libby and told us they would help, then they leave and we never hear from them again.

Max, please, as a man like me, as someone's father, too, as someone's husband, as someone's son, help me. Help us. Help us make this town safer for Libby's sons and daughters not even born yet. They should not suffer my fate, too. I was a miner and I breathed that dust in.

And what happened to me and all the other men and women who mined wasn't right—but what has happened to the others is a sin. Every day I carried that deadly dust home on my clothes. I took it into our house. I contaminated my own wife and each of our babies with it too. Just like me, they are sick and we will each die the same way.

I just don't know how to live with the pain of what I have done to them. If we can make something good come of this maybe I will stick around to see that, maybe that could help make this worthwhile.

That is what Les said to me that evening. It riveted me. I told him I would do all that I could, that I would not back down, and I would not give up. I said to myself that evening, if I do anything, I am going to help get justice for the people of Libby, MT.

Les accepted my offer and then pointed his finger at me and said: I'll be watching, Senator.

Les is my inspiration. He is the face of thousands of sick and exposed folks in this tiny Montana community. When I get tired, and I see the difficulties we face to try to get justice for the people of Libby, I think of Les, and I cannot shake what he asked me to do. In all my years as an elected official, this issue of doing what is right for Libby is among the most personally compelling things I have ever been called on to do.

Doing what is right for the community and making something good come of it is my mission in Libby. I thank Les Skramstad every day for handing me my marching orders. My staff and I have worked tirelessly for Libby—not for thanks, not for recognition but because the tragedy is that gripping. There is no other choice. It is a no-brainer. We do all we can. It is such a tragedy for the people of Libby.

The extent of asbestos contamination in Libby, the number of people who are sick and who have died from asbestos exposure is staggering. The people of Libby suffer from a deadly asbestos-caused cancer, mesothelioma, at a rate 100 times greater than the rest of the Nation. Mr. President, 1 in 1,000 residents of Libby suffers from this disease. The national average is 1 out of 1 million. Libby residents suffer from all asbestos-related diseases at a rate of 40 to 60 times the national average.

So how could this happen? Well, a company named W.R. Grace owned and operated a vermiculite mining and milling operation in Libby. It just so happened the vermiculite was contaminated by a deadly form of asbestos called tremolite asbestos. It is much more pernicious than the ordinary chrysotile asbestos. Tremolite asbestos is so bad, it gets into your lungs. It has hooks in it. It stays there and does not ever get out.

Mr. President, 5,000 pounds of tremolite asbestos was blown over the town every day. Every day this dust contaminated the air. Dust settled in the town of Libby, on cars, on homes, in gardens. Think of it. You get up in the morning to go outside, and there is this tremolite asbestos dust on your car. It is on your home. It is everywhere, your garden. It settled on children as they played in the parks. Workers brought the dust home on their clothes and exposed their families. Hundreds have died, hundreds more are sick.

The very worst part about this story is that W.R. Grace knew exactly what it was doing and did not tell anyone. It was making a buck while it was hurting people. It knew that the vermiculite dust was contaminated with deadly tremolite asbestos. Yet it had told workers in the town it was harmless. It was just dust, they said. W.R. Grace not only said it was harmless, then what did it do? To add insult to injury, it bagged this stuff. It put all this tremolite asbestos in bags and then gave bags to residents for their gardens and to the high school for covering for the high school track and for parks and playgrounds.

Well, W.R. Grace filed for bankruptcy. Before they did that, what did they do? They transferred almost all their assets away to other companies so they could not be sued. So people in Libby could not get justice. Through all of this, W.R. Grace has yet to step up and do the right thing for Libby.

So I stepped up. I stood up for the people of Libby. And I am standing up now for Les and his family to do all I can to help him and those other people in Libby.

I worked hard with the Judiciary Committee, especially my colleagues, Senator SPECTER and Senator LEAHY, to tailor a solution that addresses the unique problems in Libby. I am extremely grateful to Senator SPECTER, the chairman of the committee, and Senator LEAHY, the ranking member, for all their work to help protect Libby. I spent a lot of time explaining to them the problems of Libby, and to their credit, they listened and put provisions in the bill, the underlying bill, that address the very unique, special problems of the tragedy in Libby.

The original medical criteria in the bill did not address the specific needs of Libby because disease resulting from exposure to tremolite asbestos progresses differently than disease from exposure to the traditional form of asbestos. Tremolite asbestos, the latency period is a lot longer. You cannot detect it until much later. It is also a pernicious kind of asbestos that causes much more injury and makes it much more difficult to breathe. It is wicked stuff.

So we worked hard, and we included medical criteria that specifically address the unique needs of Libby. My colleagues, I hope, understand—they must understand; the right thing to do is to understand—this whole community was exposed, not just the mine workers but everyone.

W.R. Grace mined the raw vermiculite in the mines of Libby and then milled that vermiculite to remove up to 96 percent of the tremolite asbestos contained in the vermiculite. That milling process then shot 5,000 pounds of tremolite asbestos into the air each and every day. That asbestos blanketed the town. The asbestos did not discriminate where it fell. It covered the school playground and little league baseball field. And it is now growing in the bark of trees, if you can imagine. It is everywhere.

I am offended some of my colleagues think they know best. I am offended some of my colleagues, who think they know better, have not taken the time to know the issue, to travel to Libby, to understand what is going on there, to open up their minds and their hearts, to try to understand. They have not taken the time to meet the people, to understand there are different types of asbestos or that the disease from exposure to tremolite asbestos progresses very differently and is much more pernicious.

So if you do not support the bill, I ask my colleagues to say so. But do not

hold the people and the community of Libby hostage. Whatever we do, however we deal with the underlying asbestos bill, we cannot hold the people of Libby hostage. Do not ask the innocent people of Libby to do your bidding for you.

And if this amendment passes—the Cornyn amendments—I will have to go back to Libby. I will look into the eyes of that community, and I will tell them that their Nation turned its back on them.

Let me be very clear. I will keep fighting for Libby until they get the help that is desperately needed and long overdue. Until they get the compensation they deserve, I am going to keep fighting. We are going to find a way, eventually, to give these people the justice they deserve.

Thank you, Mr. President.

I see the chairman of the committee on the floor. I thank him for his help and his recognition of the unique differences in Libby, MT. I tell him, I appreciate that.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the Senator from Montana for those comments and for his leadership in structuring the bill now on the floor, S. 852. He has accurately described the very serious situation in Libby, MT, where many people have been exposed to asbestos in a dreadful situation, a situation where the W.R. Grace Company sent this deadly substance into the atmosphere knowing its dangers.

The bill which has been structured would compensate the people there. The Senator from Montana accurately and forcefully articulates the reasons why the pending amendment for medical criteria is totally insufficient. It simply does not cover people such as those in Libby, MT. It does not cover the thousands of people who worked for companies which were bankrupted—77 of them. It does not cover the veterans of America who are suffering from exposure to asbestos. It does not cover the real core of the issue and the problem at hand.

I have talked to Senator CORNYN about scheduling a vote. We would like to have a vote reasonably soon. A vote is always a salutary method of getting Senators to the floor to move the bill along in other respects. Senator CORNYN wanted to have some time for discussion and argument. And a few minutes after 2, I said I would try to accommodate him on what he wanted to do in that respect. But I hoped we could have a vote no later than 3 o'clock. That is still my hope, and to get there, I am going to be brief.

I see Senator LEAHY on the floor, and I yield to him.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, did the Senator from Montana wish to say something?

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I do not care who has the floor, but I wish to say I appreciate the comments of the chairman of the committee and, also, how much I appreciate the efforts of the ranking member of the committee, Senator LEAHY from Vermont. He has also, as has the chairman of the committee, been very receptive in his understanding of the issue.

I might say, I thank again the Senators. They sent staff to Montana to get a firsthand understanding of what is going on. I thank the chairman. I also again thank the Senator from Vermont for his deep understanding. He has taken the time and effort to learn the problems that face Libby, MT. I again thank both Senators.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank the distinguished senior Senator from Montana for his comments. I should note that from the first day Senator SPECTER and I started talking about this legislation, the distinguished Senator from Montana was there visiting with us. He made it very clear he wanted to make sure that whatever we passed took care of what is an extraordinary and unique situation in Libby, MT. His help and his counsel have been extraordinarily important throughout.

We had so much testimony that said the same thing, that said the current system for compensating asbestos victims is broken. Victims are dying. Ironically, they are dying while they are waiting for their day in court—a day that will not come. Even for those who finally receive their day in court, they often receive only a small percentage of the costs involved in our tort system. Of course, if the defendant has been forced to file for bankruptcy, or decided to file for bankruptcy, these victims receive little or no compensation.

I think, as both Chief Justice Rehnquist and Justice Ruth Bader Ginsburg have said, this cries out for a solution outside of the court system that streamlines the claims process for victims, to make sure they receive timely and fair compensation relative to the severity of their injuries. That will protect compensation they receive from subrogation by insurance companies.

Actually, we find from the most recent RAND study asbestos victims receive an average of only 42 cents for every dollar spent on asbestos litigation. What may surprise some, 31 cents of every dollar goes to defense costs. A somewhat smaller amount, 27 cents, goes to plaintiffs' attorneys and other related costs. All that is eaten up before the victim, the one suffering, sees anything.

I think the enactment of a medical criteria bill, such as the amendment the distinguished Senator from Texas, Mr. CORNYN, has proposed, for asbestos would fail to reduce the high transaction costs of the asbestos tort system.

Medical criteria bills do nothing to protect businesses from going bankrupt or victims who were injured by bankrupt companies to receive fair compensation.

The plain fact—the plain and easy fact—is many of these asbestos manufacturers are in bankruptcy proceedings and, therefore, are immune from suit. Victims, such as our Nation's veterans, are unable to recover for asbestos exposure while serving their country in the current tort system. Think of that, our veterans.

We received the following testimony from Hershel Gober, the national legislative director of the Military Order of the Purple Heart. He said:

> We believe the compensation fund approach is the only solution that will provide veterans suffering from asbestos-related illnesses with fair [with fair] and certain compensation.

But he also pointed out:

> The avenues open to veterans to seek compensation through the tort system, however, are very limited. The Federal government, as the members of this Committee know, has sovereign immunity, thereby restricting veterans' ability to recover from the government; and most of the companies that supplied asbestos to the Federal government have either disappeared or are bankrupt and, therefore, are only able to provide a fraction of the compensation that should be paid to asbestos victims, if anything at all.

This distinguished veteran went on to say:

> Even if there is a solvent defendant company for a veteran or his/her family to pursue, there remains the lengthy, costly, and uncertain ordeal of filing a civil lawsuit and going through discovery and trial, where the plaintiff bears a heavy burden of proof and often has the very difficult to impossible task of establishing which defendant's product caused their injuries.

Criteria bills, such as that of the distinguished Senator from Texas, will do nothing to compensate victims such as our Nation's veterans who are injured by bankrupt companies during their service to our great country. Legislation imposing medical criteria on the tort system is inherently unfair to victims. These measures don't alleviate the delays victims face when they are confronted with overwhelmed court dockets. Criteria bills, such as the Cornyn amendment, allow defendants and insurers to enjoy the delays of litigation and maintain all of their defenses in the tort system. They are far away from streamlining a procedure to help people who are sick and dying, and they impose new hurdles for plaintiffs and continue to require the identification and proof of the manufacturer or entity responsible for exposing them to asbestos decades ago.

In contrast, the bill Senator SPECTER and I have brought to the floor will not require victims to identify and prove the manufacturer or entity that exposed them to asbestos. They only have to show the suffering they have had from asbestos. They will not have to hope that the entity responsible for their exposure is still in existence or financially solvent. They will recover

compensation under the fund in proportion to their impairment or disease. The current system for compensating victims of asbestos exposure is inefficient and inequitable.

This medical criteria amendment is not a solution. It actually operates within that same broken tort system.

I could go further, but I know the distinguished chairman hopes we will come to a point where we can vote. I would note that this amendment will preempt the silica claims of thousands of victims. I understand that the AFL–CIO and other labor unions representing thousands of workers, like this distinguished veterans association, oppose the Cornyn amendment.

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. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COLEMAN). Without objection, it is so ordered.

Mr. HATCH. Mr. President, I rise in support of S. 852, the bipartisan Fairness in Asbestos Injury Resolution Act of 2005. Over the last several days, several of the opponents of this legislation have made serious, misleading claims, and I would like to take a moment to respond.

Opponents of this bill have claimed that it amounts to a bailout of big business generally, and asbestos manufacturers specifically. Guess what. They are, as usual, almost right. Webster's Dictionary defines ''bailout'' as a rescue from financial distress. It is true that we are trying to save 90 percent of this country's industry from financial distress. It is also true that we are trying to rescue literally hundreds of thousands of asbestos victims from the plague of uncertainty that advances from the efforts of asbestos attorneys and the cruelty of asbestos bankruptcies. So using the word ''bailout'' is not a complete mischaracterization of what this bill does.

This bill saves an overburdened legal system. We have been asked by no less than the Supreme Court of the United States of America three times to do something about this mess. If we don't do something about this mess, we are going to have a severe economic crises in this country, driven by this approach that is literally bankrupting some very innocent companies.

This bill saves asbestos victims from unfair and untimely compensation. This bill saves ordinary Americans from the tremendous strain on our national economy. And this bill saves veterans who have nowhere else to turn. I ask my colleagues if they know that once vibrant companies, now bankrupt due to asbestos liability, employed over 200,000 workers—200,000. The asbestos crisis affects over 85 percent of the U.S. economy. Over $200 million in lost wages—$200 million—gone. Almost no one has been spared. Mr. President, 75 out of 83 industrial sectors in this country are affected.

Has not this body been working for several years now to save domestic jobs and help our industries? Not a single Senator questions the fact that this Nation faces an immediate crisis. Not a single Senator disputes the fact that our legal system cannot handle the thousands upon thousands of asbestos claims. And, hopefully, not a single Senator questions that we must do something, and do it now, and this is the only vehicle we have.

Too much time has passed, too many people have died, too many people have lost their jobs, too many people have gone uncompensated, and too many asbestos lawyers have private jets and luxurious yachts as a result.

Some colleagues claim this bill lets defendant companies off the hook. I believe the distinguished senior Senator from Massachusetts said yesterday that S. 852 would shift more of the financial burden onto the backs of injured workers. I share my colleague's concern for injured workers. I disagree with his assessment of how this bill works.

The FAIR Act does not add to the burden on injured workers; it lessens it. This bill will ensure that asbestos victims are compensated over a 3- to 4-year period. Individuals with exigent claims will receive their compensation within 1 year.

Moreover, asbestos victims under this bill will receive the entire award themselves instead of giving enormous percentages to attorneys in transaction costs. Of course, claimants may elect to utilize an attorney, in which case attorney's fees are capped at 5 percent, rather than 40 percent. That is a far cry from some of the exorbitant attorney's fees that are being charged today.

I wholeheartedly believe attorneys should be compensated for their efforts, but I also believe that such compensation should be reasonable. Under the FAIR Act, defendant companies are not let off the hook. Defendant companies, along with insurers and reinsurers, do not get a free ride under S. 852—unless one thinks a combined $136 billion obligation constitutes a free ride. Defendant companies are responsible for payments up to $90 billion over the life of the fund. Insurer participants are responsible for payments up to $46 billion. That is not pocket change. Indeed, as some of my colleagues have pointed out, there are companies and insurers who oppose this bill because of this obligation.

I ask my colleagues: Why would some of these companies oppose this legislation if it amounted to a free ride? This brings me to my next subject.

Some of my colleagues have alleged that taxpayers will be footing the bill for the FAIR Act—$140 billion, they claim. That would be a truly frightening allegation if it were true. Fortunately for us, if you read this bill, it is not true. The FAIR Act is entirely funded by private means. American taxpayers do not pay one dime. Although an argument could be made that during the war our Government used asbestos in shipbuilding and so many other ways. And I am just talking about the war. You can extrapolate way beyond that. But we haven't asked the Federal Government to pay anything. This bill does not require any payments by the Federal Government—not one nickel, not one penny.

The truth is, as I mentioned before, private entities provide the funds for this bill—$140 billion—and none of it comes from the coffers of the United States of America. Defendant companies pay $90 billion, participant insurers pay $46 billion, and the remaining $4 billion? Bankruptcy trusts: At present, there is somewhere in the range of $4 billion to $7 billion that sits in bankruptcy trust. This bill would consolidate those moneys and fold them into the trust it creates.

It is true that some of those trusts do not relish this idea. I don't blame them. I do not like living in the shadow of this problem either. But the fact is, Congress can and should consolidate the existing bankruptcy trusts as part of the comprehensive solution to a critical national problem.

Let me also say this: If we don't do something about this—and this is just step 1. We have to get the House to do something. I doubt seriously they are going to do this bill. If they don't do this bill, they have to come up with one of their own. When they do, that means we have to go to conference and hopefully work out any of the problems we uncover between now and then.

If we don't do this bill, then I personally believe the economy is going to be very badly damaged and ultimately hurt. I hate to be a doomsayer, but I really believe that is what is going to happen. I think virtually everybody in this body knows we need to do something. This is the vehicle that we have to get through the Senate, and then we are going to have to, hopefully, get the House to come up with a similar vehicle, or at least whatever they think is the best way of doing this. Then we have to go to conference, and people working with goodwill have to try to solve these problems, hopefully using the best things in this bill and the best things in a House bill so we can solve this problem for our country, for our economy, for our workers, and for companies so that in the future they aren't going to go bankrupt.

When I first started working on this, there were only 30 companies in bankruptcy. Today there are almost 80. That is just a few years. It is going to get worse.

As I understand it, the problem is going to get worse because of superficialities and a tort system run amok, and because we are unwilling to stand together and do something about it, and because of special interests. No,

not special interests down at K Street, special interests that are the largest hard-money supporters of our friends on the other side today.

As I understand the situation, there are two primary claims against including the existing bankruptcy trusts in this legislation. The first argument amounts to a finality claim. Some argue that Congress should let sleeping dogs lie. Critics in this camp believe we should not undo what has been done in the bankruptcy court since victims in those circumstances have been compensated to a degree and the channeling injunction that accompanies a 524(g) trust effectively terminates residual liability.

There are problems here. In many instances the sleeping dog here is, in fact, a very sick puppy. It cannot take care of itself. The Manville Trust, for example, pays only pennies on the dollar and it does not address the global problem. In fact, the Supreme Court has, on more than one occasion as I have said, struck down attempted global settlements while simultaneously calling upon Congress to act.

The fact is, the Supreme Court is right. The asbestos problem is a horrific mess and it is time for Congress to intervene. I understand why companies on the receiving end of a channeling injunction would not want to upset the balance they have struck. But they will have the protections of this bill while simultaneously providing much needed funding that will be used to compensate the true victims of the asbestos crisis.

One further point on existing asbestos bankruptcy trusts. For reasons I will explain in a moment, most bankruptcy trusts in this context were established by the plaintiffs' trial bar. The provisions of 11 United States Code 524(g) do not permit a channeling injunction unless 75 percent of the claimants approve of the measure. That means that plaintiffs' attorneys in these cases—and there are about 12 major law firms, that is what it comes down to—have a very big say in how the trust is set up and, more troubling, how they, the asbestos lawyers in these 12 firms, basically are compensated. I can see why the asbestos plaintiffs' bar would not like to see this change. Can you blame them? This is a cow they want to milk. It is high quality milk at that.

The second problem is a little more complicated. Certain asbestos bankruptcy trustees have argued that the inclusion of their assets in the larger trust established under the FAIR Act constitutes an unlawful taking in violation of the fifth amendment to the Constitution. I admit I was surprised when I discovered that my friend Professor Laurence Tribe and I actually agree on a point of constitutional law. But it is true. He was correct to say:

It is a well-settled rule that legislatures may act rationally to modify or abolish causes of action, impose assessments, and create new compensation programs without violating due process or triggering the right to just compensation under the Takings Clause.

I also agree with Professor Tribe's assessment:

The bankruptcy process, and in particular the confirmation of a plan of organization, does not provide a debtor or a resulting trust with ongoing immunity from the operation of federal law as it might evolve over time.

In a nutshell, there is not a final property interest at issue in this context. I agree with Mr. Carter G. Phillips:

Any property rights arising from the trusts are contractual in nature and the law is well established that contracts, however expressed, cannot fetter the constitutional authority of the Congress.

I do not believe a valid takings claim can exist in a vacuum of property rights.

In the interest of time, I will not bore my colleagues with a more detailed legal explanation on the takings issue, but I wish to submit two letters for the RECORD, the first dated February 6, 2006, from Professor Laurence H. Tribe, and the second dated February 7, 2006, from Mr. Carter G. Phillips. I ask unanimous consent they be printed in the RECORD.

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

CAMBRIDGE, MA,
February 6, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER, I am writing in response to your request for my current views of the constitutional questions posed by S. 852, the Fairness in Abestos Injury Resolution Act (''FAIR.''). The bill was voted out of committee on May 26, 2005, with a bipartisan majority of 13–5, and is scheduled for floor debate in the near future.

As I testified before the Committee on June 4, 2003 (and as I reiterated in subsequent responses to questions from members of the Committee), Congress has ample constitutional authority to replace the current avalanche of asbestos litigation with an administrative compensation scheme to minimize transaction costs and to allocate responsibility more rationally than the badly broken status quo. Carte G. Phillips of Sidley Austin Brown & Wood, LLP, and former Solicitor General Seth P. Waxman, now of Wilmer Cutler & Pickering, joined in my conclusions at the hearing in 2003.

Nothing since that time has led me to alter my legal views. I continue to believe that Congress possesses clear constitutional power to use past histories of payments for asbestos-related judgments, combined with current revenues, to substitute predictable fiscal obligations for unpredictable future liabilities. The aim of S. 852 is to apportion liability according to likely responsibility, tempered by some attention to ability to absorb the burden—not (as in cases like Eastern Enterprises v. Apfel, 524 U.S. 498 (1998)) to saddle one company with liability because it is the last remaining solvent defendant. Indeed, a principal aim of S. 852 is precisely to avoid such a scenario, which is currently being played out in the tort system.

Urging Congress to let the litigation avalanche continue lest the Supreme Court invalidate the proposed alternative makes little sense. After all, it was that Court that wrote in 1997, in a landmark asbestos case I successfully argued, ''a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.'' In 1999 and 2003, the Supreme Court repeated this invitation to congressional action.

In your latest request of me, you have called special attention to the transfer of assets held by certain bankruptcy trusts to the FAIR Fund. In particular, former Senator Don Nickles argued in a February 1, 2006 oped on behalf of a group of existing trusts that ''[m]ore than $7 billion currently set aside to compensate 524(g) beneficiaries would be taken from the trusts and paid to the national fund created by S. 852. This represents a 'taking' of property by our government without just compensation, which is expressly prohibited by the Fifth Amendment.'' With all respect to Senator Nickles, I believe his objection has no merit as a constitutional matter.

First, it is not enough to assert that S. 852 changes the rules applicable to bankruptcy trusts. After all, the bill changes the rules applicable to other participants as well. It abrogates insurance contracts, eliminates causes of action, and overrides numerous existing legal entitlements. All of these changes could be said to upset expectations regarding future liabilities and tort recoveries. But none of the changes states a takings claim, in light of the well settled rule that legislatures may act rationally to modify or abolish causes of action, impose assessments, and create new compensation programs without violating due process or triggering the right to just compensation under the Takings Clause. See Logan v. Zimmerman Brush Co., 455 U.S. 422, 432–33 (1982); Martinez v. California, 444 U.S. 277, 281–83 (1980). State workers' compensation laws, federal pension regulation, and the Black Lung D1sability Trust Fund, 30 U.S.C. §901, et seq., all rely on this principle. ''[L]egislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations . . . even though the effect of the legislation is to impose a new duty or liability based on past acts.'' Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 16 (1976).

Second, it is well settled that the bankruptcy process, and in particular the confirmation of a plan of reorganization, does not provide a debtor or a resulting trust with ongoing immunity from the operation of federal law as it might evolve over time. Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Protection, 474 U.S. 494, 502 (1986). See NLRB v. Bildisco & Bildisco, 465 U.S. 513, 534 (1984) (bankrupt debtor not relieved of labor law obligations); In re Baker & Drake, Inc., 35 F.3d 1348, 1353–55 (9th Cir. 1994) (reorganization plan does not immunize debtor from state law on ongoing basis); see also City & County of San Francisco v. PG & E Corp., 2006 WL 44315, *9 (9th Cir. Jan. 10. 2006) (governmental regulatory actions are exempt from bankruptcy court jurisdiction).

This principle is particularly salient with respect to bankruptcy trusts, which are themselves the specialized creatures of the federal Bankruptcy Code. Having responded to the asbestos litigation crisis by creating such trusts in 1994, Congress is not in any way disabled from taking further legislative steps toward reform a decade later. Cf. Dames & Moore v. Regan, 453 U.S. 654, 674 n.6 (1981) (President's action in nullifying government-created attachments of Iranian assets pursuant to hostage release agreement did not effect a taking of property in violation of Fifth Amendment).

Bankruptcy trusts are subject to the longstanding rule that ''[p]rospective relief under

a continuing decree remains subject to alteration due to changes in the underlying law.'' Miller v. French, 530 U.S. 327, 344 (2000). ''The provision of prospective relief is subject to the continuing supervisory jurisdiction of the court, and therefore may be altered according to subsequent changes in the law.'' Id. at 347.

Otherise, the bankruptcy system would create a whole constellation of black holes in the fabric of the U.S. Code. To avoid such profound disruption of innumerable federal statutory regimes—from product liability reforms to telecommunications auctions, from energy conservation legislation to coal safety laws—courts have routinely applied statutory changes to debtors in ongoing reorganization plans, even post-confirmation, and even when the effect has been to leave the estate without property that private parties expect to receive. For example, the 1996 amendment to 28 U.S.C. §1930(a)(6), governing the imposition of quarterly fees for the United States Trustee in certain Chapter 11 bankruptcy reorganizations, has been repeatedly applied even to debtors in confirmed reorganization plans that had made no provision for the payment of such fees.

In exactly the same way, S. 82 represents an intervening change in federal law that is neutral in design and general in application and accordingly must be accommodated prospectively by bankruptcy trusts. If bankruptcy trusts won some special exemption or immunity on a prospective basis from intervening changes in federal law in relation to asbestos liability, there would be no field within the broad reach of Congress' legislative power that would not be compromised by the unpredictable appearance of a potentially limitless number of financially crippling gaps.

An order establishing a bankruptcy trust hardly resembles a final judgment for money damages, of the kind that creates ''vested'' rights. Bankruptcy trusts are ongoing administrative entities created for the processing and payment of claims. They typically pay claims at a small fraction of their face value, and those rates may change overtime. For example, the Manville Trust is paying out claims at approximately 5% of their face value. In fact, the Supreme Court has squarely rejected any analogy between bankruptcy orders and final judgments for money damages. In Tennessee Student Assistance Corp. v. Hood, 541 U.S. 440 (2004), the Court held that, precisely because bankruptcy orders are completely unlike judgments for money damages, a confirmation order can bind a nonconsenting state under the Eleventh Amendment, even if the state does not participate in the bankruptcy process. The Court used much the same reasoning in Central Virginia Community College v. Katz, 2006 WL 151985 (U.S. Jan. 23, 2006), to hold that states are subject to in rem bankruptcy proceedings to recover preferential transfers.

Finally, any ''takings'' claim by bankruptcy trusts would be ill-founded because any assets they hold are uniquely dedicated to the payment of asbestos-related claims. Yet S. 852 would eliminate the trusts' liability in that regard. It is difficult to understand why the trusts would have a reasonable expectation of retaining property in the situation where their pertinent liabilities have been eliminated. See Keystone Bituminous Coal Ass'n v. DeBenedictis. 480 U.S. 470, 488 (1987) (noting that ''reciprocity of advantage'' ''has been recognized as a justification of various laws'' to defeat takings claims) (quoting Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415 (1922) (Holmes, J.); Penn Central Transportation Co. v. New York City, 438 U.S. 104, 140 (1978) (no compensation due where there is a ''reciprocity of advantage'').

For all these reasons, I adhere to my conclusion that S. 852 falls well within Congress' constitutional authority to enact.

Sincerely,

LAURENCE H. TRIBE.

SIDLEY AUSTIN LLP,
Washington, DC, February 7, 2006.

Re S. 852 Fairness in Asbestos Injury Resolution Act.

Hon. ARLEN SPECTER,
Chairman, U.S. Senate, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR SPECTER: On April 28, 2005, I submitted a letter explaining my views that S. 852's requirement that the assets of asbestos bankruptcy trusts be transferred to the national compensation fund was fully constitutional. You have asked whether my views have changed in the interim, and also how I would respond to the points raised by former Senator Nickles in his recent editorial, Let Existing Trusts Opt Out Of Asbestos Plan (Feb. 1, 2006), available at http://thehill.com/thehill/export/TheHill/Comment/OpEd/201006_oped.htl (attached as an addendum to this letter (''Add.'')).

My views have not changed in the interim. As more fully set forth in my letter of April 28, 2005, which responded to arguments raised by Theodore B. Olson, there are multiple reasons why S. 852 presents no constitutional difficulties. Asbestos trusts created under section 524(g) of the Bankruptcy Code, 11 U.S.C. §524(g), even when they assume the form of state law trusts, are prospective federal judicial remedies authorized and defined by Congress to administer the ongoing payment of asbestos-related injury claims, present and future. They are claims-paying mechanisms subject to the ongoing superintendence of the federal court during the pendency of the bankruptcy case, as the terms of confirmation orders and reorganization plans creating asbestos trusts generally reflect. See Findley v. Blinken (In re Joint E. & S. Dists. Asbestos Litig.), 982 F.2d 721, 750 (2d Cir. 1992) (noting that the Johns-MansviUe Trust, after which section 524(g) trusts were modeled, ''is not an ordinary private undertaking of a settlor to carry out private preferences. It is the mechanism established under the auspices of the Bankruptcy Court to implement a plan of reorganization. The Bankruptcy Court has continuing responsibilities to satisfy itself that the Plan is being properly implemented''). There are no separation of powers concerns when Congress modifies the law applicable to such trusts. As the Supreme Court has repeatedly declared, ''[p]rospective relief under a continuing, executory decree remains subject to alteration due to changes in the underlying law.'' Miller v. French, 530 U.S. 327, 344 (2000). A bankruptcy confirmation order itself is not kindred to a final and unappealable judgment for damages in federal court; moreover, to the extent other aspects of a confirmation order may be deemed to create some vested rights, there is certainly no finality in a prospective claims-paying mechanism. See United States Tr. v. CF & I Fabricators of Utah, Inc. (In re CF & I Fabricators of Utah, Inc.), 150F.3d 1233, 1239 (10th Cir. 1998); Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n, 997 F.2d. 581, 587 n.11 (9th Cir. 1993); Findley v. Trustees of the Manville Personal Injury Settlement Trust (In re Joint E. & S. Dists. Asbestos Litig.), 237 F. Supp. 2d 297, 316–17 (B.D.N.Y. 2002). Just like any other prospective remedial decree, the trust is subject to the continuing jurisdiction of the federal district court, and thus subject to the power of Congress to change the governing law that the court will apply in exercising that jurisdiction.

Furthermore, any property rights arising from the trusts are contractual in nature, United States Tr. v. Craige (In re Salina Speedway, Inc.), 210 B.R. 851, 855 (10th Cir. B.A.P. 1997), and the law is well established that ''[c]ontracts, however expressed, cannot fetter the constitutional authority of the Congress.'' Norman v. Baltimore & Ohio R.R., 294, U.S. 240, 307–08 (1935). For all the foregoing reasons, nothing in the decrees creating asbestos trusts under section 524(g) create property rights that would be subject to a federal takings analysis.

Finally, the only ''property right'' that an asbestos plaintiff can colorably claim is the right to file a claim with the trust and to prove that his injury meets the criteria for compensation; no individual beneficiary of the trust with an unliquidated claim has a property right in the trust assets themselves. In essence, a bankruptcy court creating a section 524(g) trust converts the plaintiff's claim against the debtor under state tort law into a claim against the trust. While a claim for relief is a species of property right, it is not a vested right that entitles the plaintiff to compensation under the Takings Clause if abrogated. Indeed, if the law were otherwise, Congress could not pass legislation preempting accrued state or federal law claims without federal takings liability. That is not the rule; rather '' 'a legal claim affords no definite or enforceable property right until reduced to final judgment.' '' Arbour v. Jenkins, 903 F.2d 416, 420 (6th Cir. 1990) (quoting Sowell v. Am. Cyanamid Co., 888 F.2d 802, 805 (11th Cir. 1989)); see also, e.g, Hammond v. United States, 786 F.2d 812 (1st Cir. 1986) (no vested right ''until a final, unreviewable judgment is obtained''). Finally. as more fully reviewed in my April 28, 2005 letter, even if all these hurdles could be overcome, asbestos claimants would have no right of recovery under regulatory takings analysis.

Former Senator Nickles' editorial lacks force because it does not recognize these legal principles. Senator Nickles characterizes the bankruptcy court orders as ''final court judgments approving reorganization plans that resolved asbestos claims against debtor companies].'' Add. 1. However, as noted above, bankruptcy reorganization plans (and especially settlement trusts) are subject to the continuing jurisdiction of the bankruptcy court and are not final in the constitutional sense; they do not limit the power of Congress to change governing law. Nor do the confirmation orders themselves ''resolve claims'' against the debtor; instead, they crate a new prospective remedial mechanism and new form of claim that must be proven in order to secure payment. Beneficiaries with the right to file a claim against federal asbestos trusts are not ''entitled to timely compensation from those trusts,'' and they have no greater property right (and no more ''certainty and security'' against abrogation by Congress in the public interest) than any other asbestos plaintiff. Add. 1, 2. Senator Nickles asserts that the transfer of trust assets is an unconstitutional ''taking of trust beneficiaries' property'' without just compensation, Add. 2, but that claim cannot withstand legal analysis.

Senator Nickles is absolutely right that Congress must be vigilant against legislation that results in the unconstitutional taking of vested property rights; however, those doctrines are not implicated here. In essence, S. 852 requires all asbestos defendants to contribute substantial assets to a national fund to create a uniform federal administrative remedy; the requirement that the assets of asbestos trusts (which were originally the assets of the debtor) be transferred to the national fund serves the same end of marshaling defendant assets for the

benefit of injured parties. Not only are no vested property rights of trust claimants ''taken'' under the Fifth Amendment, but there is no inequity in having plaintiffs all treated the same, regardless of whether the defendant who allegedly injured them happened to have sought bankruptcy protection. S. 852's requirement that the assets of asbestos trusts be transferred to the national fund is not only perfectly legal, but it is also highly just and equitable.

Sincerely,

CARTER G. PHILLIPS.

Mr. HATCH. I wish to close by taking a brief moment to address the budgetary issues. Earlier I spoke to the private versus public funding issue. Some of my colleagues believe the taxpayer is on the hook for this bill and I wish to help explain how that is not the case. These are serious concerns, but the FAIR Act does not use Federal funds. It is privately funded—lock, stock, and barrel.

Those of you who might be watching at home might be wondering why some people are worrying about the FAIR Act, if it is privately funded, and in the spirit that underlies this bill I will try to explain it. To my knowledge, there is only one way by which the FAIR Act may touch Federal funds and that is through the borrowing mechanism. The administrator created by this act may borrow such funds as are necessary to maintain the liquidity of the fund, but—and this is a big ''but''—the administrator may not borrow amounts which exceed the fund's ability to repay. So the bottom line is that American taxpayers do not pay for this fund. The defendant companies and insurer participants do.

At the end of the day, asbestos victims cannot wait any longer. Veterans cannot wait any longer. The overburdened legal system cannot wait any longer. The only group that does not mind waiting consists mainly of 12 law firms filled with asbestos lawyers who do not mind exploiting a broken system because of the billions of dollars that are in it for them. You can hardly blame them. It is a plum tree waiting to be picked. They are slow walking this bill. I have to implore my colleagues to resist these efforts.

Before I conclude my remarks, I wish to speak briefly to Senator CORNYN's medical criteria amendment. I agree with my colleague from Texas that the FAIR Act is not a perfect bill. I think Senator SPECTER has made that clear. Others have made it clear. We have done the best we can through the Judiciary Committee. This is the first step in a number of steps that simply have to be taken. I have several concerns of my own about this bill, and I suppose most everybody does. But I have to say, as much as I agree in principle with Senator CORNYN, I am not sure his approach does the trick.

I might add, my colleague from Utah raises the point that there are some companies that will go bankrupt if we pass this bill. That may be the case. I will do everything in my power through the whole process here to make sure that doesn't happen, and I believe Senator SPECTER is dedicated to doing everything in his power to make sure that doesn't happen. I personally believe Senator LEAHY will do everything in his power to make sure that doesn't happen. I believe there are 435 Members of the House who will do everything in their power to make sure that doesn't happen. I believe any conference committee that comes up is going to make sure that doesn't happen. I wouldn't tolerate that, in the end.

But we have to have a vehicle. We have to have a bill. If we do not have a bill, we have nothing. And, we have a future prospect of a number of very fine companies—with the loss of hundreds of thousands of more jobs—going into bankruptcy at a cost to our economy that may be overwhelming after a while—all because of a runaway tort system that basically is out of whack.

In my opinion, the medical criteria approach fails to help too many sick and injured people. It does nothing for the mesothelioma victims. These are the ones who deserve compensation. First and foremost, the reason we basically started this bill, was to help those who are going to die because they have mesothelioma. They are going to die. Once they are diagnosed, it is just a matter of months, and their families are left with nothing. They didn't cause this problem and they are the ones who deserve compensation. Yet they are the ones who, if we do nothing, are left out while others—hundreds of thousands—who are not sick at all are going to get rewards. This is wrong.

In my opinion, as I say, the medical criteria approach fails to help too many sick and injured people. Let me give another illustration. The veterans, for example, have very few places to turn under a medical criteria bill. We just had 10 veterans organizations on Capitol Hill holding a press conference this week—I was there with them—making it clear that of all people who deserve to be compensated, they do. This medical criteria approach does nothing for them. This is the main reason why we switched to the trust fund approach; so we can take care of the truly sick—those who really have difficulties.

But, as I do with every amendment, I am going to give the medical criteria approach a very hard look as we go through this process. In an ideal world we could run with my colleague's idea. But, unfortunately, the realities of the asbestos crisis prevent a medical-criteria-only solution. There may be, down the line, a way of doing a medical criteria bill that will take care of people who truly deserve to be taken care of. This amendment is not that. But I am willing to work with my colleague from Texas and see what we can do to come up with something that will work as well, if not better, than what we have here. But right now this is it.

This is a bill that is well thought out in spite of the difficulties with it. But I submit that any bill this size is going to have some difficulties.

As I say, this is step No. 1 in what always has been a legislative process that does not end here. It starts here. If we do not start it, we don't have a chance of correcting these tremendous ills to our society that could swamp us. So it is very important that we support Senator SPECTER and Senator LEAHY and get this bill out of the Senate. If we don't, I have to say I believe this is probably the last chance to resolve issues that deserve to be resolved, and to do justice instead of continue the injustices that are currently resulting from the current out-of-control asbestos tort system.

I commend my colleagues for their steadfastness in working on this very difficult, complex set of issues. It is a difficult problem for us. There are very sincere and good people on both sides of this issue. There are very sincere and good people on both sides of this aisle. I have tremendous respect for my colleagues.

On the other hand, for those who are voting against the bill because the trial lawyers are their largest hard-money supporters, I don't think that is a good enough reason. I admit it is a powerful reason, but not if you are interested in the country, not if you are interested in our economy, not if you are interested in the people who have suffered from asbestosis and from all of the derivatives of asbestosis, not if you are interested in helping these mesothelioma victims who deserve help, helping the veterans who did nothing to cause these problems but are left high and dry.

This is an effort by the leadership of the Judiciary Committee, led by Senator SPECTER and Senator LEAHY, to do justice. It is an effort to comply with at least three requests by the U.S. Supreme Court: Congress, please do something about this awful issue because we can't.

They can't legislate from the bench to resolve this issue. Some people think individual States can resolve this issue. That might be so, if you had absolutely honest judges and absolutely nonpartisan judges down the line, and if they were willing to work hard, and if every State would do it. But only a few are going to. Only a few are going to pass laws that possibly will help in this area. It is up to us to get this done.

I hope our colleagues who want to do something right here will realize this is step one. You have to go ahead with it. Good people of good values, well-intentioned people are going to be able, hopefully, in the end to get this so it works; so no company is going to be hurt by it, but the economy as a whole will be helped by it. But above all, people who deserve compensation will receive compensation with a minimum of charges that reduce that compensation, compared to the almost 60 percent attorneys' fees and transaction costs it is costing us today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, we have been trying to set a vote here on the amendment offered by Senator CORNYN since about 2, 2:15. I had hoped to vote at 3, and then I had hoped to vote at 3:30. The Senator from Illinois advised me a few moments ago that his preference would be to vote at 4:15. We are willing to accommodate that preference unless there is some inclination to vote sooner than 4:15.

Therefore, I ask unanimous consent that we set the vote on the Cornyn amendment for 4:15, with the time equally divided between now and then.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Reserving the right to object, is this a vote on the Cornyn amendment? My understanding was there was going to be a tabling motion. If it is on the Cornyn amendment, I don't agree, but if it is on the tabling motion, I am willing to agree to 4:15. But if it is on or in relation, I am not willing to do that at this time.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. I withdraw my request. I suggest the absence of a quorum.

The PRESIDING OFFICER. The request is withdrawn. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. 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. SPECTER. Mr. President, after lots of discussion, as usual around here, I ask unanimous consent that at 4:45 I be recognized for a motion to table Cornyn amendment No. 2748, and that the time between now and then be equally divided between the two managers or their designees.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, the manager on this side of the aisle is Senator DURBIN. I wonder if the distinguished Senator from Pennsylvania would change the unanimous consent request so the time would be divided between Senator DURBIN and Senator SPECTER.

Mr. SPECTER. I agree.

Mr. REID. Mr. President, I have a very brief statement on an unrelated matter. Could I be recognized?

The PRESIDING OFFICER. Is there objection to the request as modified?

Mr. CORNYN. Mr. President, reserving the right to object, I want to make sure I have an opportunity to address the debate, and under the unanimous consent request there is ample opportunity given to me.

Mr. SPECTER. Mr. President, the way the sides are aligned here, we need a scorecard to figure out who will give Senator CORNYN time. I think the manager in favor of Senator CORNYN's amendment would give him time, and that turns out to be Senator DURBIN.

The PRESIDING OFFICER. Is there objection to the request as modified? Without objection, it is so ordered.

Who yields time?

Mr. DURBIN. Mr. President, I hope to restate the unanimous consent request which was agreed to accurately. It is my understanding that at 4:45 we will have a vote on the motion to table the pending amendment by Senator CORNYN of Texas, and that the time be equally divided between now and then, which would be 60 minutes, 30 minutes to each side; that I am controlling the 30 minutes in opposition to the motion to table. I will yield from that amount 15 minutes to Senator CORNYN to speak during the same period. He can use that time, even if I don't have to give him the floor at the moment.

We have to understand what we are considering. I am sure people who are watching this debate wonder why we take so much time going into quorum calls and talking among ourselves trying to come to some agreement about what we are going to do. That is the way the Senate operates. We operate by unanimous consent. Everyone has to agree. Think about that—100 different Senators coming to an agreement. However, we have managed, at least to the point of bringing this to a vote.

The vote is important because the bill before the Senate right now is a bill about asbestos. Everyone knows asbestos is a lethal substance which, if inhaled, can kill you. It can cause your lungs to stop functioning, you can start to suffocate, and you can develop something like lung cancer called mesothelioma and die. People all across America, since we started using asbestos in products, have been exposed to it. Some are fortunate and they do not get sick. Others, with very minor exposure inhaling these asbestos fibers, have set off little timebombs in their lungs, and they never know when they will detonate. Victims can go for 10, 20, 30, 40 years after exposure and nothing happens; then something terrible happens. How do they know it is asbestos that causes it? Some of these conditions are only related to asbestos. Mesothelioma is one of them.

People who have been exposed to asbestos over the years have gone to court and said: The companies that exposed me to products that harmed me should be held accountable. Some courts and some juries have said, yes, they should pay; others have said, no, they should not pay. But what is the nature of our system of justice? You go to a court for your day in court, you tell them how you were injured, and you let a judge or jury of your neighbors and peers decide your fate. It happens every day across America in thousands and thousands of courtrooms.

Now comes this bill, Senate bill 852, which wants to change the way people across America will be able to recover for their injuries from asbestos. The first thing it does is to eliminate your option to go to court. As an American, you could be injured from exposure to some toxic chemical and go to court, have your day in court, and let the court decide. But if you have been exposed to this substance, to asbestos, if this law is passed, you will no longer be able to go to court.

What happens to you? This bill creates a brand new approach—replacing the courtrooms of America with a trust fund created by this bill, administered by an agency which does not exist at this moment, which will handle hundreds of thousands of people who have been exposed to asbestos.

Some Members come to the floor skeptical that we can change a judicial system in America and eliminate access to court to hundreds of thousands of people and get it right. If we do not get it right, the losers are not going to be embarrassed Senators; the losers are going to be victims across America, people whose lives have been changed and in some cases ended because of asbestos.

I don't know of a single person in America who said: Listen, I know asbestos will kill me; let me take a whiff of it. Not one. Virtually all the victims and families I have run into were unsuspecting people—workers on the job; a mechanic putting in an asbestos brake lining; somebody trying to put in a heating duct in a home and using an asbestos substance; asbestos shingles on your roof; asbestos tile on the floor—grinding it, cutting it, powder flying in every direction. Who knew? Who had any idea what was going on? So these victims, innocent victims, are the ones who will be affected by this bill.

It is a large bill, a bill of 393 pages. It should be because it is changing the basic system of justice in America. But this morning, this bill has become a dead letter. We are no longer considering that bill. We have a new bill. We were handed this bill this morning. It is 392 pages. It includes some 40 significant changes to the bill we had on our desks when we came to work this morning. We knew it was coming, we knew there would be a change, but these changes are significant.

Many Members believe that before we start enacting laws that are going to impact millions of victims across America, before we close down the courtrooms of America and say to people, what you used to assume was your right as an American citizen is no longer your right, we ought to be careful and we ought to take the time to get it right.

Some of the things that have been filed with this bill reflect the fact that even those preparing it really do not have it quite clear in their minds how it is going to work.

One of the amendments filed this morning, amendment 2747 by the chairman of the Judiciary Committee—I am

certain this was inadvertent—inadvertently included the following on lines 7 through 9:

(Note: I recognize that this may not be the most adequate indicator of insurance matching liabilities—however, it is a political reality that must be addressed.)

Does that sound like a sentence out of a law? I am sure it is not. It is a sentence from a staffer who, in preparing this language, notified someone that they were not sure what they were writing would achieve the goal they want to achieve. That happens all the time. I expect my staff to be candid with me when they are preparing a law. But it tells something. By inadvertently including this staff note with this amendment, it is clear that the people writing this bill are not sure what is in it. They are not sure what the impact will be.

What is driving this debate? Why are we so hellbent on passing this legislation at this moment? There are many good reasons, and there are many real reasons. One of the real reasons is that for many of the major corporations in America, this bill is a windfall.

This morning, Senator BENNETT, a Republican from Utah, brought a chart to the Chamber and showed 10 of the major corporations in America, corporations that could be taken to court today because people were exposed to their products and have asbestos disease. He calculated how much they would pay into this trust fund under this bill against what they have said they would have to pay if they went to court. Those 10 corporations will save, with this bill, $20 billion. Do you think they want to see this bill passed? Why, of course they do. They have an economic interest in it. But the obvious question is: If they do not pay the $20 billion to victims, who will? Other companies?

Senator BENNETT brought to the Senate another chart of companies that have never been sued for asbestos, never been held liable. Those companies will end up paying into this fund even though they never, ever have been sued successfully.

There is a basic unfairness here. There is a transfer of wealth in this bill from some of the largest corporations in America and a burden to smaller companies, not to mention that at the heart of this issue are hundreds of thousands, perhaps millions, of asbestos victims.

Now comes Senator CORNYN of Texas. He says: Consider another approach. Consider an approach that will look to what the States are currently doing to deal with this. Are there ways to change asbestos lawsuits so that victims get more, so that people are treated fairly, so that those who are trying to rip off the system on either side are not advantaged? And he turns to State laws. There have been several State laws, including Texas, Florida, and Ohio.

He says in his amendment: Let's establish medical criteria so that if you want to go to court, we know you are truly sick. Perhaps you cannot go shopping around for the friendliest court in your State or the Nation. He goes through a variety of different scenarios. All of them are worthy of debate.

The good thing about Senator CORNYN's amendment is it is based on the fundamental American right to have your day in court. Senator CORNYN is trying to achieve a procedural change in the courts of America which will not extinguish a basic American right to have your day in court.

I believe he filed the amendment early this afternoon, maybe late this morning. I am not certain. And now the other side is saying: That is it, we do not want to talk about that amendment anymore, let's get rid of it. They want to table that amendment.

As it is currently written, I could not support the amendment by the Senator from Texas, but I will stand with him to keep this amendment on the floor so we can try to find a bipartisan solution which does not have such great damage to our judicial system and to the people who rely on it. There will have to be significant changes in the Cornyn amendment before I would support it. But he has said to me that he is willing to sit down on a bipartisan basis in good faith to work out those differences, and he tells me there is significant support on the Republican side of the aisle for that effort.

Wouldn't that be the best outcome—an outcome that is bipartisan, one which tries to work out differences between both sides, keeping in mind the innocent victims, tries to make this system a little fairer, not basically abandoning our judicial system, which this new bill, new version of the bill we have been handed, would do? That is a sensible approach.

I am going to support the efforts of Senator CORNYN at this moment to resist a motion to table, with the understanding that before I will make any commitment to vote on his final amendment, we will have to sit down and try to work out our differences. It is not too much to ask.

Do you know how long this program is supposed to affect America? For 50 years. Is it worth a few hours, maybe even a day, to get it right? I believe it is.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I believe this is one of those situations where there is broad bipartisan consensus that we need to find a solution to this national crisis which not only affects people who are sick with asbestos-related diseases, including cancers, but also the companies that are in bankruptcy because they have been put underwater by the huge volume of claims from people who are not yet sick but who are worried the statute of limitations will run and bar them from bringing their claims in the future.

I am proud of the work the Judiciary Committee has done under Senator SPECTER's leadership to try to bring us this far. On many of the differences we have had, he has ably negotiated a resolution. Where we are today is much better than where we were a year ago.

There was a strategic decision made, as there had to be, whether to go with the trust fund approach or with a medical criteria approach. Frankly, the trust fund approach left the station, and everyone put their hopes and their work and effort into that approach. I am sorry to say that notwithstanding the hard work and effort which has gone into the bill, I still believe the trust fund is fundamentally flawed for reasons I have already talked about.

There are problems with regard to the allocation; that is, the long arm of Uncle Sam will reach out and send you a bill for a lot of money to pay into this fund. We have been told by a number of companies that in order to pay that bill, they will simply have to shut their doors and go out of business, put their employees on the streets, possibly causing pension funds to be jeopardized. People who have come to rely on the solvency of those companies and their ability to pay their retirees the benefits they have agreed to, we are told they would be seriously jeopardized by this trust fund as currently written.

Then there is the issue of, how do we know how much money should go into the trust fund? That has been a subject of a lot of negotiations, and $140 billion is where we are today. As we have heard before, there is a wild variation on estimates by very smart people as to how much the claims for this fund will total, ranging from $120 billion to $695 billion, which is the high number. Just having a predictable bill we can vote for with some confidence that we believe will actually work as intended is lacking.

Of course, there is the huge bureaucracy that will be created within the Department of Labor to administer this fund. We have no idea what that will look like, but it will be a new addition to the bureaucracy in Washington, DC. I can tell you, the last thing I want to do, coming from my State to the Senate, is to grow the size of the bureaucracy in Washington, DC, unless there is no other option. I do not want to do that.

Then there is the issue of the medical criteria, where here again the chairman had to negotiate carefully in order to keep his votes on the committee. But it is my contention that the medical criteria in the trust fund are way too loose—authorizing the payment of substantial funds under the claim to people who are not demonstrably sick from asbestos-related disease, thus further jeopardizing the solvency of the fund.

In response to my colleague, Senator HATCH of Utah, who expressed concern for the veterans who could benefit

under the fund but who would not directly, anyway, benefit under a medical criteria approach, I think it would be a cruel joke—a cruel joke—for our veterans, if we built their expectations up, that they were going to receive benefits under the trust fund, only to have it explode or go bankrupt in a year or two and dash those hopes to the ground.

So I am as concerned as anyone is about our veterans. But I certainly do not want to give anyone unrealistic hope or expectation that this is going to be a panacea, because of the concerns I have raised.

I would agree with the Democratic whip that we have only today seen a substitute for the underlying bill filed which totals almost 400 pages. While a number of us have been working on asbestos legislation for a long time, neither I nor my staff, I am confident, had a chance to read each and every one of those 393 pages, I believe it was, to determine what is in it and to determine whether there are amendments we need to file in response. Likewise, I would say, as to the 50-page bill we filed this morning, the amendment that contains the medical criteria approach, people are only now beginning to understand what their choices are.

Basically, what this amendment presents is a choice, either for a trust fund or an alternative medical criteria bill or, third, no bill at all, a continuation of the current crisis, about which I think we have a bipartisan consensus that it is a scandal and needs to be addressed.

So I believe the amendment does present a good alternative. But I would like to have a chance for my colleagues to look at it further. We have had a number of good discussions across the aisle. I have talked to a number of colleagues on the other side of the aisle, and they said, well, they would like to keep the amendment alive. They want to vote against the motion to table, but they are not yet ready to vote for the amendment because they may want to try to negotiate and work out some minor differences so they can support it. I would like to have the opportunity to do that with them.

I would, by the way, point out, I guess as further evidence of what I am talking about—Senators reading the bill, coming to understand now they are not left with either the trust fund or nothing at all, that they have a third choice with the medical criteria bill—we have had two additional Senators come forward and ask to cosponsor it.

Mr. President, I ask unanimous consent that Senator SAXBY CHAMBLISS and Senator MIKE ENZI be added as cosponsors to the Cornyn amendment.

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I believe, given adequate time, there will be other Senators who will be interested in this alternative approach. Here again, I believe we are all committed to trying to find a solution. I hope we are because we know the status quo is a scandal. Here again, it is with great respect and admiration for the long and arduous effort put into this by the chairman that I hesitated even to offer this alternative. But I do believe that based on the merits, based on the choice it provides to the Members of the Senate, and based upon the need to have a little bit more time for Members of the Senate to understand what is in the amendment and to negotiate perhaps agreement so we can come back with some modification and an up-or-down vote on that, that I urge my colleagues to vote against the motion to table, both on the merits and based on the need for more time for deliberation and adequate consideration.

I yield the floor and retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, when the Senator from Texas says the status quo is a scandal, he is right. But the medical criteria bill is a ''scandal lite.'' It is a light scandal. You hear about Coke and Coke Lite. Well, this bill is a scandal in its own right, not quite as big a scandal but a scandal nonetheless.

The only change which this medical criteria bill makes that is an improvement over the present system is that it does not allow collection by people who have been exposed but who are not yet sick. But this medical criteria bill does not go to the heart of the problem; that is, the thousands of people suffering deadly and serious injuries who have no one to sue.

This bill is directed to protect the veterans of America who have been exposed to asbestos in a variety of contexts, sometimes during work at shipyards, sometimes during work at other governmental facilities, but they have no one to sue. This bill is directed to provide compensation to employees of some 77 companies which have gone bankrupt, where they have no one to sue because the company is in default and the company is bankrupt.

This bill, similarly, does not answer the grave problem of the economy of the United States, with companies continuing to go bankrupt because litigation continues. You still have the costs of going to court—the costs of filing papers, the costs of depositions, discovery, interrogatories, taking the case to trial.

And then you continue to have the lawyers taking the lion's share of the compensation. The fact is that only 42 cents of every dollar spent on asbestos litigation goes to the victims. The fact is, surprisingly, more money goes to defense costs—31 cents of every dollar—and 27 cents of every dollar goes to plaintiffs' attorneys. That is a statistic compiled by the reliable RAND Corporation.

So the medical criteria bill does nothing at all to deal with the real problems with regard to asbestos litigation but is designed, pure and simple, to defeat the trust fund concept which is on the floor.

When the Senator from Illinois and the Senator from Nevada argue strenuously against the trust fund proposal, they do not want this bill. It is window dressing and a red herring to cite the companies which are going to save money because the thrust of the bill is to make an equitable allocation, which we think we do here. There has never been any real attack on that, except this wild talk about secrecy, which is unfounded. And you continue to have the problem of companies going bankrupt and people not being able to collect because there is no one from whom to collect.

When the Senator from Illinois and the Senator from Texas complain about the new bill, there again, it is something they know better. They have the original bill. We had managers' amendments totaling some 47. And as a tactical matter, the Senator from Illinois and the Senator from Nevada said they would put us through every one of these amendments individually. The procedural way to deal with it was to put them all in another bill called the substitute bill. But they know what is involved. They know what bill is involved. And the substance is before them. So you have one charade after another.

And you have a system which is scandalous. Nobody who has addressed this problem disagrees with the nature of the problem. Scandal is a good characterization for it. Scandal is an equally good characterization for the medical criteria bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I respect my colleague from Texas and those others who believe this amendment will be a preferable way to deal with the asbestos morass we now have. I, however, based on my best judgment, cannot agree. It perhaps will make some businesses happy and some plaintiffs' lawyers happy, but the one group I clearly think will not be as well treated and will not have the same guarantees and protections will be the victims.

We are not here to represent any one group. We are here to look at a litigation problem that has gone wild. It has lost control. It is not operating properly. I think the trust fund concept is the only way to make this thing have any sanity about it.

As I understand it, the medical criteria will help a great deal in making sure that claims by people who are not sick are not maintained in court, that they can be dismissed short of trial. That would be a tremendous benefit. I will not dispute that. It would certainly reduce those kinds of lawsuits.

However, it would have no coherence. It seems to me that two people could file a lawsuit, and one could draw a favorable judge or favorable jury and win

$50 million and the other one, I suppose, could win nothing or $1 million. I do not know that it would represent any predictability for the defendant companies so they could show on their balance sheets precisely what they are going to be looking at in the future as they go forward.

It also would maintain the current litigation method of handling the lawsuits. That, to me, is where we have had the most difficulties because 60 percent of the money that is being paid out is being eaten up by lawyers. So if you have lesser numbers of lawsuits but they are bigger and will be more intensely litigated, the defendant companies have to hire expensive attorneys to defend themselves, and the plaintiffs' attorneys, facing top defense attorneys, will charge their normal high fees, as the case may be, and you end up back where we are, as the RAND Corporation said, with 60 percent—58 percent—of the money being paid out in expenses, which is what I would like to see avoided.

The attractiveness of the legislation that is before us is we take the 60 percent that has been eaten up and we take probably 50 percent of that and allow it to go to the victims. They get it, with certainty, in an equal amount. So if you have mesothelioma, a deadly disease, under this system, you could file your claim, with a doctor's certificate stating you have mesothelioma—a fairly indisputable diagnosis—and you get $1.1 million; half of it within 30 days and I believe the other half within 6 months before you die.

As I noted before, why have we had so many mesothelioma widows here? It is because these lawsuits take years. I am not just saying that. This is a fact. These cases take years, and people die of diseases or become disabled without receiving money.

Under this bill, you will be able to get your money promptly. The proposal, as I understand it, will not necessarily fix that. Maybe the cases could be settled.

Again, I say to my distinguished colleague from Texas, we agree on so much of this. I certainly will say this. His proposal would be far better than the current system.

There is no doubt about that. The current system is absolutely indefensible. It is to the point that it is immoral, and the Congress has no higher responsibility than to make sure our legal system is working effectively. It is not happening that way.

I believe the medical criteria in the base bill before us is not tight enough, that it will still allow a large number of people to maintain lawsuits for diseases they were going to get anyway from other natural causes or misbehavior such as smoking. They were going to get those diseases anyway, and they want the asbestos fund to pay for it. When it is connected to asbestos exposure, and it can be shown scientifically, this bill allows for that. It actually allows for people to draw on the fund who probably shouldn't qualify for it.

I am for tightening up those criteria. I am for eliminating the frivolous, baseless lawsuits where people are not sick, which this Cornyn bill would do. But I do believe it would undermine one of my highest goals in this legislation, and that is that we would be in a position where you make a claim like you would in workers' compensation. You have so much injury, you get so much money, and you get it promptly. And the maximum attorney's fee would be 5 percent.

I don't see how you can limit attorney's fees if you are going to have a long, competitive trial. The victims are going to need top-flight attorneys, and the defendants are going to need top-flight attorneys. The juries are going to be calling these cases. Some of them are going to say big verdicts, and some of them are going to say little verdicts. We will have more inconsistencies, more jackpot justice than I would like to see.

I am reluctantly of the opinion that this would not be the best approach. If this bill gets any worse, I would certainly see that the suggestions of the Senator from Texas would be preferable. If this bill were to flounder and isn't successful, I certainly would agree that his proposal is better than the current law and would support it. Right now, the Specter legislation is preferable.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I find myself in an unusual position of both agreeing and disagreeing with my colleague from Alabama. That probably typifies how most of us feel about the proposed solution in the trust fund. If my colleague from Alabama and I could sit down and hammer out some meaningful tort reform, we would not have any trouble doing it, if it were just he and I. I know he is concerned about the scandal that 58 cents on the dollar for every asbestos recovery there is goes to transaction costs, attorney's fees for the plaintiff, attorney's fees for the defendant, court costs, and the like. And that is not just in asbestos litigation. That is common, unfortunately, in personal injury litigation generally. If we could get 60 votes to get cloture on some meaningful tort reform and have an up-or-down vote, we could be in business and address his concerns, with not only asbestos but with our civil justice system generally. It is out of sync and benefits too few people at the expense of the many.

My colleague from Alabama mentioned our effort to try to reduce attorney's fees because this is, under the trust fund, a system where an individual does not even need a lawyer to make a claim against the fund. So we decided in committee to keep it down to 5 percent. But it is my understanding, and my colleague can check me on this, that in the managers' amendment, that negotiated provision on attorney's fees was changed to further expand the recovery of attorney's fees under the trust fund bill.

My point is that for every time the chairman, Senator SPECTER, tries to address one concern, he has to address another concern that loses or undermines support by someone else. After spending a long time trying to come to terms with this and understand it and be constructive about a solution, I came to the reluctant conclusion that it was futile, that the trust fund was fatally flawed. That is why I have offered my colleagues a choice. In addition to a choice between the trust fund and nothing at all, I have offered them another choice, and I would like to have a chance for more colleagues to think about it, to consider it, and to work with us to try to make it even better. That is why I urge my colleagues to vote no on the motion to table.

Finally, one of the other things we have not spent much time on, there is actually a huge amount of money, hundreds of thousands of dollars, put in the trust fund to look for new claimants. It pays for screening of people who have not voluntarily come forward but basically goes out and looks for more claimants, which further stresses the fund and increases the likelihood that it will go under because of an overwhelming number of claims that have not been taken into account in arriving at the amount of the fund or the medical criteria for which claims would be paid and which would be excluded.

I hope my colleagues, both on the merits and on the basis of process, the need for more time to carefully consider our alternatives and come up with the best possible solution, will vote no on the motion to table.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I rise in support of the Cornyn substitute amendment to S. 852. I thank the Senator from Texas for his work on this issue. He is someone who comes to this debate with great knowledge of the subject matter and has modeled his legislation after what has been a very successful model in the State of Texas.

As the Senator from Texas has noted, this is a problem that needs to be addressed. Out-of-control asbestos litigation has become a disease in our economy. It threatens to drive scores of companies into bankruptcy. It diverts compensation away from legitimate victims of asbestos. It discourages investment in companies under suit and drives stock values down and diverts funds away from expansion and growth and results in job loss. In short, it has become an obstacle to economic recovery.

Few of us in this Chamber can disagree with those very basic facts. However, I am not persuaded that creating

a new Federal program, yet another entitlement program, one more compensation program, is the right solution. We need to seriously assess the wisdom of Congress's growing inclination to create more of what are virtually uncapped entitlement funds. The problem is in the courts. That is where the solution should be. We cannot continue to have the Government take every litigation quagmire out of the court system and put the problem on the back of the Federal Government and ultimately on the backs of the taxpayers. We cannot continue to do so.

I voted to proceed to debate on this bill because this is a problem. It needs to be solved. Indeed, Congress must act. But what is the best solution? Should we create yet another entitlement trust fund or should we reform the tort system by imposing reasonable medical criteria standards in the courts?

We need to find a solution that protects both the economy and the legal rights of those truly injured by asbestos or who will develop asbestos-related injuries in the future. It is my belief that it would be a mistake to establish an asbestos trust fund. I know this fund relies on private financing. Unfortunately, this may turn out to be only the seed money and unable, over time, to sustain the fund for very long, creating a high risk that Congress, at some point in the future may have to step in to keep it operating. The last thing we need is another uncapped Government entitlement, especially with our existing deficits.

The major problem with the trust fund is that the private funding is capped but the potential liability is not. We have to face reality. This fund will go insolvent. I don't believe it is a question of if; it is a question of when. The underlying bill supposedly answered that by putting in a sunset provision that, when the fund goes insolvent, sends all unpaid claimants back to the tort system, the same broken tort system that we have today. Does anybody really believe that will happen? This Senator certainly does not.

With hundreds of thousands, perhaps millions of unpaid claimants, would those claimants be happy about going back into a court system to spend 3 or more years litigating a case for an award that probably would be less than they could have received under this trust fund bill? I don't think they will do that.

Political pressure on Congress from union and victims groups to bail out the trust fund and sustain it would be immense. These liability trust funds typically do not go back to the tort system. Trust funds in general rarely ever go away, not after creating an entirely new class of entitled people. So let's not delude ourselves.

President Reagan once said that the closest thing to immortality on this planet is a government program. Once we create a whole new class of entitled people, it will be very difficult to go back or in any way sunset this program. The result would be the taxpayers being left on the hook. That is why I support the Cornyn substitute amendment.

I ask my colleagues to seriously consider where Congress is going if it creates such a fund. What kind of precedent is this creating and where will this end?

There has been a dangerous inclination by Congress to rescue segments of our economy from out-of-control litigation by simply taking claims out of the courts and creating a Government-administered liability trust fund. The solution should be commonsense tort reform, not to have the Government become some gigantic claims processing and payment agency.

The best solution, one that has no cost to the Treasury, that does not require the creation of new Government agencies or battalions of Government administrators and one that will have immediate positive effect for both business and victims is a simple solution that, one, establishes reliable and verifiable medical criteria standards in the courts; two, tolls the statute of limitations to protect future victims; and, three, prohibits abusive venue shopping. That is it. It is simple. It is not loaded up with tort reform that our friends on the other side of the aisle often object to. And importantly, many trial lawyers who represent malignant claims of asbestos exposure have in the past endorsed this approach.

It is time to consider a more modest solution. It may not provide the grand, comprehensive solution that many have wished for, but it takes a substantial bite out of the problem and is certainly better than nothing, which is what all parties will have if we continue to pursue the impossible.

I ask my colleagues to vote against the motion to table and to support the Cornyn substitute amendment.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I ask unanimous consent that Senator HAGEL be added as a cosponsor of the amendment.

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

Mr. CORNYN. I yield the floor and retain the remainder of my time, if any exists.

The PRESIDING OFFICER. The Senator has no time remaining.

Mr. CORNYN. I thank the Chair.

Mr. SESSIONS. Mr. President, how much time is left?

The PRESIDING OFFICER. There is 15 minutes.

Mr. SESSIONS. Mr. President, I will yield the floor when Senator SPECTER returns. I will say a couple of things. First, under this criteria bill—which has good criteria and some very good provisions in it—veterans are not going to be able to recover. Veterans don't have anybody to sue, and they would be very much disadvantaged. That is why they oppose it.

No. 2, we would still have litigation, and the reason litigation now ceases to be wise is because the defendants are prepared to pay. It is basically not a question so much of how they are responsible—whether anybody is responsible for damages; they are prepared to pay, but they want to know a predictable amount that they are paying, No. 1, and they want to have it paid fairly.

Under this system, if you meet the illness criteria and you are able to proceed with your litigation, one person with asbestosis, who seriously has a disability, maybe is on oxygen—as I have known people to be as a result of breathing asbestos—they might get $100 million, literally. Another person may get zero. So I think we have this aberrational way that a certain limited amount of resources would be utilized to help people who are sick.

We are at a point now where we have created a circumstance that would allow a fairly even workmen's compensation type distribution of it. Secondly, it allows the litigation spasm to continue. Yes, it will take out the bogus claims from people who are not sick and who don't need to be in court. Those claims will be able to be removed. But they will have large numbers of trials of those who actually are injured by asbestos, and the lawyers on both sides have to be compensated. We know today that those compensation arrangements turn out to eat up 58 percent of the cost of what the defendant companies pay out. In other words, many of these companies that are in bankruptcy, and many more on the verge of bankruptcy and could be pushed into bankruptcy, are paying out to victims, but only 42 percent of what they are paying out gets to the victims.

So I was hoping in this legislation—my vision has always been, how can we not fix this system? How hard is it to take this 60 percent, allow the business community some predictability and certainty over 30 years, and get more money to the victims quicker and faster? If, instead of 300,000 pending lawsuits, let's say you have now 150,000 pending lawsuits, that is a lot of lawsuits. That is a lot of lawsuits. And they are pending by the thousands in certain districts in America. People are not going to get trials right away. They are not going to be able to say I want to have my trial today; I have a serious asbestosis; I am on oxygen; I may die soon, or I have mesothelioma, and this is a deadly disease, and the doctors say I only have 9 months to live, and I want to have my case tried. It is not going to happen that way. It is not happening that way now, and it will not under this bill.

Therefore, people are going to die and suffer in poverty for years before they get any payment; whereas, in this bill, we can get the money to the victims promptly and fairly, in an objective way, with plaintiffs similarly injured, similarly situated, getting similar amounts of money—generous amounts

of money. As I noted, a mesothelioma case gets $1.1 million. Half would be paid within 30 days, without any need for an attorney whatsoever. You go in with a medical claim, and if an attorney is involved, the maximum he could get is 5 percent.

My colleague from Texas said we modified the attorney fee rule, and I was at fault for that. Senators SPECTER and LEAHY and others asked we consider the fact that when cases are appealed, they tend to become complex and require quite a bit of lawyer time, and we ought to allow lawyers to have more than that, if the judge approves it. So I thought that was a reasonable request. We have amended it only to that small degree. It is not an opening up of attorneys' fees under this bill.

I am concerned that some of the primary advantages of asbestos reform would not be availed under this amendment. That is why I am reluctantly not able to support it. I hope we can continue with the bill and that other people will bring forth thoughtful amendments, as Senator CORNYN has, and those who joined with him and presented it in a thoughtful way. But as I have stated, I don't believe it is the proper vote.

I yield the floor.

Mr. SPECTER. Mr. President, how much time remains?

The PRESIDING OFFICER. There is 8½ minutes.

Mr. SPECTER. For the opponents of the amendment?

The PRESIDING OFFICER. That is correct.

Mr. SPECTER. Mr. President, as we wind down on this debate, I want to emphasize to my colleagues the importance of this vote because this amendment, essentially, after looking at it in some detail, is a poison pill. If this amendment is not defeated, the whole thrust of the compensation program for victims of asbestos who cannot now collect one penny will be defeated. The whole thrust of this trust fund was to compensate victims whose employers had gone bankrupt, compensate veterans who have served the country, who have no one to sue, and to stop the rush of bankruptcies, now totaling some 77, resulting in a loss to the economy estimated at some $300 billion.

This proposal for a medical criteria bill doesn't even rise to the level of being palliative. It doesn't do anything except defer the claims of people who have been exposed until they become ill. It doesn't do anything about the rash of bankruptcies. It doesn't do anything about the people who suffer from mesothelioma, which is a deadly ailment, where they have no one to sue. So when the sponsor of the bill characterizes the current system as scandalous, that approbation could apply equally well.

This is one of the many votes on the floor of the Senate where the outcome is uncertain. There is a curious alliance here, with some on one side of the aisle and some on the other side of the aisle. Trial lawyers may be for this amendment if it can be modified because they see the medical criteria bill as a way of continuing to bring cases to court, and to continue with the current structure. I don't criticize the trial lawyers. I don't criticize anybody. I don't criticize the trial lawyers for exercising whatever rights the current system allows. But it is up to the Congress of the United States to make the determination as to what is the appropriate public policy. That is a congressional decision to make.

Mr. LEAHY. Will the Senator yield for a moment?

Mr. SPECTER. I am delighted to.

Mr. LEAHY. Mr. President, the Senator from Pennsylvania is absolutely right; it will not be a party-line vote. I hope the Senator from Pennsylvania succeeds. It is interesting, the people who represent victims and people who don't have legal representation support the Senator from Pennsylvania. Just about every labor union supports the Senator from Pennsylvania, as veterans groups do. I will not go through the list again. Just about every veterans group that has spoken on this issue supports the Senator from Pennsylvania. There are a lot of others who support the Senator from Pennsylvania, but I mention veterans and labor as an interesting coalition. They are speaking for people who would not have a voice otherwise. They support what the Senator from Pennsylvania is doing, as do an awful lot of businesses, I might add. I hope he is successful.

Mr. SPECTER. If the Senator will yield for a question, to pinpoint what the Senator said about labor's support. The AFL–CIO, which represents labor, the working men and women of America, has been a party to the discussion for 2½ years, at some 36 meetings, which Judge Becker and I have presided over. When they heard about this medical criteria bill, they were alarmed at the impact it would have on the working men and women and the veterans, their constituency, and they put out an all-points to those people as to what was going on.

I wonder if the Senator from Vermont would care to amplify, as the senior Democrat and principal cosponsor of the Leahy-Specter bill, as to what labor is doing in this area.

Mr. LEAHY. It is interesting. We have a lot of labor unions coming out foursquare for the bill. Some held back and they want a couple of changes they are looking for. It is interesting that all of them are against this amendment—those who haven't yet endorsed the bill and those who have endorsed the bill. It is the same with the veterans groups. I think they know that this amendment, no matter how well intentioned it would be, if it went through, basically kills the chances of people to recover anything. It puts us back into the decades of litigation where, as people across the spectrum were saying, from the late Chief Justice William Rehnquist to Ruth Bader Ginsburg, we need a solution on the floor.

Mr. SPECTER. If the Senator will yield further, as to what happened in today's maneuvering and negotiations on the floor, where we have had initially the trial lawyers being against this amendment. If people were wondering what all the maneuvering and negotiation was about, why we could not have an up-or-down vote, but a tabling motion, that is because the trial lawyers think that the amendment offered by Senator CORNYN may be better for them, but they want to change it around so that if this motion to table is not defeated, they will have time to rework it to their satisfaction.

That is the way the system works, and if that happens—this is now Thursday afternoon at 16 minutes to 5—there will be frantic negotiations between now and Tuesday, when we come back to work on this bill—or perhaps Monday afternoon—to come to an alliance. I won't call it an unholy alliance, but it will be an alliance in very curious ways, where people who oppose the bill do so out of the mistaken notion that it is going to cost the Government money. This bill is ironclad not to cost the Government money. People on my side of the aisle who are opposed to it don't want to have the Government undertake an obligation, and I agree with that. This bill accomplishes that, with no governmental obligations. Now the issue is whether sufficient trial lawyers on your side of the aisle may come to a majority.

Mr. LEAHY. Well, if the Senator will yield, like him, I was a trial lawyer. But I know with all trial lawyers, there are times when you have a superb settlement before you, you take it. The bill the Senator from Pennsylvania and I put together, after countless hours, months, and years of work, is a lot better settlement than going to a jury. I will support the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I move to table the Cornyn amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. ENSIGN. 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.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. ENSIGN. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue with the call of the roll.

The assistant legislative clerk continued with the call of the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

The question is on agreeing to the motion. The yeas and nays have previously been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Kansas (Mr. BROWNBACK) and the Senator from Arizona (Mr. MCCAIN).

Mr. DURBIN. I announce that the Senator from Colorado (Mr. SALAZAR) is absent due to family illness.

The PRESIDING OFFICER (Mr. CORNYN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 70, nays 27, as follows:

[Rollcall Vote No. 13 Leg.]

YEAS—70

Akaka	Durbin	Nelson (FL)
Alexander	Feingold	Nelson (NE)
Allen	Feinstein	Obama
Baucus	Frist	Pryor
Bayh	Harkin	Reed
Biden	Hatch	Reid
Bingaman	Inouye	Roberts
Bond	Isakson	Rockefeller
Boxer	Jeffords	Santorum
Burns	Johnson	Sarbanes
Burr	Kennedy	Schumer
Byrd	Kerry	Sessions
Cantwell	Kohl	Shelby
Carper	Landrieu	Snowe
Chafee	Lautenberg	Specter
Clinton	Leahy	Stabenow
Cochran	Levin	Stevens
Coleman	Lieberman	Talent
Collins	Lincoln	Vitter
Dayton	Lugar	Voinovich
DeWine	Menendez	Warner
Dodd	Mikulski	Wyden
Domenici	Murkowski	
Dorgan	Murray	

NAYS—27

Allard	DeMint	Inhofe
Bennett	Dole	Kyl
Bunning	Ensign	Lott
Chambliss	Enzi	Martinez
Coburn	Graham	McConnell
Conrad	Grassley	Smith
Cornyn	Gregg	Sununu
Craig	Hagel	Thomas
Crapo	Hutchison	Thune

NOT VOTING—3

Brownback	McCain	Salazar

The motion was agreed to.

Mr. REID. Mr. President, I know the distinguished majority leader filed cloture on Eric S. Edelman to be Under Secretary of Defense for Policy. Senator LEVIN has indicated he is agreeable to letting that go forward on a voice vote. We are ready to do that as soon as necessary when the majority leader believes it is appropriate.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that the pending amendments be set aside so the Senator from Arizona, Mr. KYL, may be recognized to lay down an amendment.

Mr. REID. Reserving the right to object.

Mr. DURBIN. Reserving the right to object.

Mr. REID. Mr. President, I know there is no consent order in effect. We were of the understanding that we were going to go back and forth with amendments—there would be a Republican amendment, a Democratic amendment. If that is not the case, I am certainly willing to live by that, but I thought that was the agreement. I certainly have not spoken to the managers of the bill, Senator SPECTER and Senator LEAHY, nor did I, in fact, speak to Senator DURBIN, but that was my understanding.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, as the Senator from Nevada has said, there has been no understanding. It is agreeable with me to have an understanding as to that effect in the future. I have already talked to Senator KYL, who is poised to offer this amendment. I am glad to enter into such an understanding. There is not one at the present time. I would like to proceed with Senator KYL and alternate.

Mr. REID. Mr. President, if I could, we have no problem with Senator KYL offering the next amendment. The only problem is we have not seen it. Could we have some idea of what it is all about?

I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SPECTER. I yield the floor for the purposes of letting the Senator from Nevada be recognized.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from Arizona is recognized.

AMENDMENT NO. 2754 TO AMENDMENT NO. 2746

Mr. KYL. I send an amendment to the desk.

The PRESIDING OFFICER. Is there objection to setting aside the pending first-degree amendment?

Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 2754 to amendment No. 2746.

Mr. KYL. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To reduce the impact of the trust fund on smaller companies and to expand hardship adjustments)

SEC. I. PROPORTIONAL PAYMENTS.

(a) At page 171, after line 5, insert new (c) as follows (the subsection references assume that the required renumbering has occurred):

''(c) LIMITATION.—For any affiliated group, the total payment in any year, including any guaranteed payment surcharge under subsection (m) and any bankruptcy trust guarantee surcharge under section 222(c), shall not exceed the lesser of $16,702,400 or 1.67024 percent of the revenues of the affiliated group for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation is applied, whichever is greater. For purposes of this subsection, the term ''affiliated group'' shall include any defendant participant that is an ultimate parent. The limitation in this subsection shall not apply to defendant participants in Tier I or to any affiliated group whose revenues for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation applied, whichever is greater, exceeds $1,000,000,000. The revenues of the affiliated group shall be determined in accordance with section 203(a)(2), except for the applicable date. An affiliated group that claims a reduction in its payment in any year shall file with the Administrator, in accordance with procedures prescribed by the Administrator, sufficient information to allow the Administrator to determine the amount of any such reduction in that year. If as a result of the application of the limitation provided in this subsection an affiliated group is exempt from paying all or part of a guaranteed payment surcharge or bankruptcy trust surcharge, then the reduction in the affiliated group's payment obligation due to the limitation in this subsection shall be redistributed in accordance with subsection (m). Nothing in this subsection shall be construed as reducing the minimum aggregate annual payment obligation of defendant participants as provided in section 204(i)(1).''

(b) Renumber subsections following new subsection (c).

(c) Subsequent to renumbering the subsections following new subsection 204(c), make the following cross-reference changes:

At page 142, line 7, replace ''204(g)'' with ''204(h)''

At page 151, line 20, replace ''204(i)(6)'' with ''204(j)(6)''

At page 160, line 21, replace ''204(l)'' with ''204(m)''

At page 167, line 24, replace ''204(d)'' with ''204(e)''

At page 170, lines 21 and 22, replace ''(d) and (m)'' with ''(e) and (n)''

At page 171, line 22, replace ''(i)(10)'' with ''(j)(10)''

At page 172, line 3, replace ''(j)'' with ''(k)''

At page 177, line 12, replace ''(j) with ''(k)''

At page 178, line 25, replace ''(j)(3)'' with ''(k)(3)''

At page 179, line 2, replace ''(k)(1)(A)'' with ''(l)(1)(A)''

At page 182, line 16, replace ''(i) with ''(j)''

At page 183, line 6, replace ''(i)'' with ''(j)''

At page 186, lines 7 and 8, replace ''(d), (f), (g), and (m)'' with ''(e), (g), (h) and (n)''

At page 186, line 11, replace ''(d) and (m)'' with ''(e) and ''(n)''

At page 186, line 20, replace ''(d) and (m)'' with ''(e) and ''(n)''

At page 186, line 23, replace ''(l)'' with ''(m)''

At page 187, line 8, replace ''(f)'' with ''(g)''

At page 196, line 20, replace ''(d)'' with ''(e)''

At page 196, line 22, replace ''(m)'' with ''(n)''

At page 197, line 13, replace ''(h)'' with ''(i)''

At page 198, line 11, replace ''(d)'' with ''(e)''

At page 198, line 16, replace ''(h)'' with ''(i)''

At page 198, line 17, replace ''(j)'' with ''(k)''

At page 198, line 23, replace ''(d)'' with ''(e)''

At page 199, line 10, replace ''(h)'' with ''(i)''

At page 199, line 12, replace ''(d) and (m)'' with ''(e) and (n)''

At page 199, line 20, replace ''(k)'' with ''(l)''

At page 199, line 22, replace ''(h)'' with ''(i)''

At page 200, line 3, replace ''(h)'' with ''(i)''

At page 200, line 7, replace ''(d), (f), (g), and (m)'' with ''(e), (g), (h) and (n)''

At page 200, line 22, replace ''(d), (f), and (g)'' with ''(e), (g), and (h)''

At page 201, line 5, replace ''(i)(9)'' with ''(j)(9)''

At page 203, line 6, replace ''204(i)'' with ''204(j)''

At page 204, line 23, replace ''204(d)'' with ''204(e)''

At page 205, line 11, replace ''(i)(10)'' with ''(j)(10)''

At page 205, line 16, replace ''204(h)'' with ''204(i)''

At page 248, line 21, replace ''204(f)(3)'' with ''204(g)(3)''

At page 261, line 14, replace ''204(i)(10)'' with ''204(j)(10)''

At page 266, line 14, replace ''204(f)'' with ''204(g)''

At page 289, line 9, replace ''204(i)'' with ''204(j)''

At page 289, line 11, replace ''204(d)'' with ''204(e)''

At page 289, line 12, replace ''204(m)'' with ''204(n)''

At page 289, line 19, replace ''204(i)'' with ''204(j)''

At page 289, line 20, replace ''204(d)'' with ''204(e)''

At page 289, line 21, replace ''204(m)'' with ''204(n)''

At page 289, line 23, replace ''204(i)(10)'' with ''204(j)(10)''

At page 334, line 8, replace ''204(f)'' with ''204(g)''

SEC. 2. HARDSHIP ADJUSTMENTS.

(a) Strike page 172, line 6, through page 173, line 17, and insert the following:

''(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

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

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

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

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

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

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

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

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

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

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

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

(D) PROCEDURE.—

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

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this sub-paragraph.

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

(b) Conforming changes.

At page 177, line 10, strike ''hardship and''

At page 178, lines 19–20, strike ''financial hardship adjustments under paragraph (2) and''

At page 178, lines 22–23, strike ''—(A).''

At page 179, line 2, insert a period after ''(k)(1)(A)'' and delete; ''or''

At pages 179—181, strike line 10 on page 179 through line 2 on page 181.

At page 181, at line 3: Insert ''RULEMAKING AND'' before ''ADVISORY''

At page 181, line 5: Strike ''shall'' and insert ''may''

At page 181, following line 14, insert: ''The Administrator may adopt rules consistent with this Act to make the determination of hardship and inequity adjustments more efficient and predictable.''

At page 197, line 8, strike ''HARDSHIP AND''

At page 197, line 15, strike ''hardship and''

At page 197, line 19, strike ''hardship and''

At page 197, lines 24 and 25, strike ''severe financial hardship or''

SEC. 3. STEPDOWNS.AND F.UNDING HOLIDAYS

(a) At page 205, line 20, strike ''The'' and insert: ''Except as otherwise provided in this paragraph, the''

(b) At page 205, lines 22 through 24 strike: '', except with respect to defendant participants in Tier I, Subtiers 2 and 3, and class action trusts'' and insert the following:

''. The reductions under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reduction under this subsection exceeds the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reduction provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reduction provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.''

(c) At page 207, line 10 through 12, strike the text following ''except'' in line 10 and insert ''as otherwise provided under this paragraph. The reductions or waivers provided under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions or waivers under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reductions or waivers under this subsection exceed the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reductions or waivers provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the

amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.''

Mr. KYL. Mr. President, I will be brief.

For those who have been involved in this issue, it has been discussed actually since last August and deals with the small companies or businesses that would be paying into the fund that is the subject of this bill. The amendment is designed to reduce the impact of the trust fund on the small- and medium-sized companies and to ensure that the fund does not drive them into bankruptcy.

It does principally two things.

First, it provides across-the-board relief to small- or midsized companies, those with annual gross revenues of less than $1 billion, by limiting their trust fund contributions to 1.67 percent of their gross revenues. This per se relief should resolve most ability-to-pay problems that are created by the fund with certainty and without administrative burdens.

For those who do not qualify for this across-the-board relief or for whom it is not enough, the amendment provides a second form of hardship relief. It authorizes the administrator to reduce the company's fund assessments if the company otherwise would go out of business and would be unable to pay its bills. To be exact, under the amendment, a company can qualify for an adjustment if it can show that its fund payments ''would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.'' Under this amendment, access to this form of relief would be unlimited.

This amendment does not solve all of the problems with the trust fund allocation of payments. I anticipate there will be other amendments to address some of those issues, and I support some of those amendments, as well. I believe this amendment does go a long way toward solving the problem I identified.

What this amendment does do is shave off some of the roughest edges of this bill. This amendment makes the hardship adjustment a real and predictable guarantee. The way that the bill currently is written, some small- and medium-sized companies will be hit with trust fund payments that will constitute a major portion of their gross revenues. These companies obviously will not be able to make these payments. While the bill currently authorizes an insolvency hardship adjustment, that hardship adjustment is vaguely stated and includes limitations that undercut its usefulness for many companies on the margins. Literally, companies faced with crushing payments under the bill would be forced to tell potential creditors or capital markets, ''yes, we will be required to pay 25 percent of our gross revenues into the trust fund under the FAIR Act, but we might be able to get a hardship adjustment.'' You can see why these companies might have trouble getting a loan. Under my amendment, these same small- and medium-sized companies will be able to tell the banks and potential investors that they will not be forced to pay more than one and two-thirds of a percent of their gross revenues into the fund. By providing guaranteed reasonable limits on assessments, this amendment will make it possible for these companies to continue to engage in normal business transactions.

This amendment does not directly affect the availability of inequity adjustments under the trust fund. The amendment does, however, indirectly expand the availability of inequity adjustments by making hardship adjustments into a separate category that is not drawn from the $300 million that is currently set aside for both kinds of adjustments. That $300 million will now be set aside solely for equity adjustments.

Also, the amendment does not in any way affect the fund's guarantee of producing $3 billion a year for compensating victims. Under the bill as it is currently written, in the event of any shortfall in reaching that $3 billion, a guaranteed payment surcharge is imposed on all defendant participants in order to make up the difference. Thus, to the extent that relief received by any defendant pursuant to this amendment prevents the fund from reaching the $3 billion target, that gap will be filled by the payment surcharge. This amendment, therefore, in no way adversely affects the FAIR Act's funding guarantee.

Allow me to describe in greater detail exactly how this amendment works. Under the amendment, no defendant participant, other than a Tier I participant, with 2002 revenues of less than $1 billion is required to contribute more than the greater of 1.67 percent of its revenues as of December 31, 2002, or 1.67 percent of its revenues for the most recent 12-month fiscal year. The revenue cap employed by this amendment matches the 1.67 percent of gross revenues that is the measure of Tier I contributions. Also, only companies that elect to report on a consolidated basis may take advantage of this revenue cap.

This amendment's revenue cap is only a rough measure of ability to pay. It is, however, easy to administer, and it is less subject to manipulation than other measures, such as net income.

As for the amendment's changes to the hardship adjustment, first, there currently are two hardship provisions in the bill—section 204(d)(2), which provides relief generally for severe financial hardship and which is subject to the $300 million hardship and inequity cap, and section 204(d)(5), which allows the cap to be exceeded if otherwise a company would be forced into insolvency. My amendment would rewrite (d)(2) to provide clearer standards, eliminate (d)(5), and make clear that there is no cap on hardship relief. The result is a simpler proposal more attuned to the needs of potential hardship-adjustment applicants.

Under the amendment, any defendant participant can apply for hardship relief, whether it is in Tier I or not, and whether or not it reports on a consolidated basis. However, in the case of defendant participants that do not file on a consolidated basis, the administrator must examine the real financial situation of the defendant participant by taking into consideration the financial position of the affiliated group.

Again, under the revised hardship adjustment in this amendment, the Administrator may grant an adjustment if he concludes that the amount of a defendant participant's payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. The amount of relief would be limited to the amount necessary to avoid the problem.

In determining whether to grant an adjustment under this revised provision, the administrator will required to consider, among other things: the historical audited financial statements for the defendant participant or affiliated group for the three years immediately prior to the application for relief; projected financial statements for the 3 fiscal years following that application; an analysis of capital spending and fixed charge coverage on a historical basis for the 3 fiscal years preceding and the 3 fiscal years immediately following the application; any payments or transfers of property made, or obligations incurred, by the defendant participant during the 6 fiscal years prior to the application to or for the benefit of any insider; any extraordinary transactions of the defendant participant, including payments of extraordinary salaries, bonuses, or dividends, within the 6 fiscal years prior to the application; the defendant participant's ability to satisfy its payment obligations to the fund by borrowing or financing with equity capital, or through issuance of securities to the fund; and the defendant participant's ability to postpone discretionary capital spending for a reasonable period.

The term of any adjustment under the amendment shall be 5 years, unless the administrator determines that a shorter or longer period is appropriate in light of the financial condition of the defendant participant. Any adjustment under the amendment may be renewed upon a showing that it continues to be justified—and it is automatically terminated if the defendant participant files for bankruptcy protection.

The amendment also eliminates provisions for recapture of hardship adjustments, except in cases of fraud. The current bill's provisions for frequent review of hardship adjustments and potential for giving adjustments back

have significantly reduced the usefulness of these adjustments in addressing the concerns of companies on the margins. If these adjustments aren't reasonably predictable, they are not useful either.

Finally, under the amendment, companies that have received discounts off their tier/subtier allocation because of the cap or hardship adjustments would only get the benefit of cumulative step downs to the extent that the step downs exceeded the amount of the discounts the company already had. The same rule applies for hardship adjustments.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the Senator from Arizona for offering this amendment.

This is a good amendment. There has been a great deal of concern that smaller businesses—although we are talking about businesses which are substantial, but they are smaller than many in the field—should not pay more than they can afford to pay. This amendment achieves that result.

I add that Senator KYL has been an outstanding member of the committee for many years, and in the past year and a half since I have become chairman, he has been a stalwart and has worked tirelessly on this bill. I don't know how many meetings he and I and others, including the presiding Senator, Mr. CORNYN, have had. This has been a matter very much on the Senator's mind and many others who have suggested many other provisions. It is a very good amendment. I thank and compliment the Senator.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I make a point of order that the pending bill violates section 407 of H. Con. Res. 95, the concurrent resolution on the budget for fiscal year 2006.

Mr. SPECTER. I move to waive the point of order under the applicable provisions of the rules and statutes.

The PRESIDING OFFICER. The motion to waive is debatable.

Mr. SPECTER. Mr. President, the essence of this issue is that the point of order should not be sustained because there is no Federal money involved. All of the money involved comes from private sources. This is a make-or-break issue for this bill.

The Federal budget is not involved in this bill. To repeat, which I don't like to do, but for emphasis, the Federal budget is not involved in this bill. The money comes from private sources. It goes through the Department of Labor as a conduit. Technically, there is a Federal expenditure, but it is not the Federal Government's money. Now, the only issue which has been raised is that at some point in the future, the Federal Government might seek to bail out this trust fund. The bill is emphatic in a number of places that the Federal Government has no obligation to pay out any money. If the trust fund runs short, there are provisions to meet that situation. It is a complicated provision, but the administrator makes an analysis, and if he sees the necessity to make some modifications in the trust fund, he can take it to a committee and the committee can then make a recommendation to Congress. The Congress has to act.

The real safety valve is the one provided by the Biden amendment in July of 2003 that if the fund runs out of money, claimants can go back to court. So the claimants are no worse off going back to court if the trust fund runs out of money than they are now. But in the interim, thousands of people who suffer from deadly diseases—mesothelioma and exposure to asbestos—will be paid where they cannot be paid now because their companies are bankrupt or they are veterans and there is no one to sue.

The consideration that some future Congress, decades down the road, in the year 2030, might have a different view is up to the Congress in that year. We cannot bind them as to what they are going to do, nor should we try to bind them. But what we do here does not implicate or involve the Federal Treasury. To say that there may be a temptation in the future for some Congress to spend Federal funds is not something we should do. It is not within our purview. It is not within our responsibility. In fact, we ought to keep our hands off the future Congresses. We should not presume that we know enough in the year 2006 to tell the Congress in the year 2026 what to do. They will be elected. They may well be a lot smarter than this Congress. Perhaps it is hard not to be. But it is up to them at that time.

This is a convenient maneuver to defeat the bill by requiring 60 votes. That is like the motion to proceed, the filibuster, to try to structure a vote for 60 votes, to try to find enough people who do not like the bill; only takes 41 who do not like the bill to defeat the bill on this kind of a maneuver, whereas it takes 51 to defeat this bill otherwise.

The administration is for it. If this bill goes 50–50, the Vice President votes for it. The President issued a statement of support on S. 852. There are caveats in it. He said there are concerns. I don't know of any Member of this Senate who does not have some concerns about this bill. But that is what the debate is for. That is what we are here to consider. We will not be able to consider this if this point of order is sustained.

I yield to the real expert on budgets, a man who was chairman of the Committee on the Budget for 73 years.

Mr. DOMENICI. I am 73 years old, but I didn't chair it all the time.

Mr. SPECTER. I thought he chaired it his entire life. Senator DOMENICI was the chairman of the Committee on the Budget the day I was sworn in. I have great respect for Senator GREGG, chairman of the Committee on the Budget today, but I yield to the chairman of the Committee on the Budget emeritus.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. So that I understand, I am speaking on my own time now; is that correct?

The PRESIDING OFFICER. The Senator is recognized in his own right.

Mr. DOMENICI. Right. First, let me say the Senator who is raising the point of order has every right to raise the point of order. The question is, is this a real point of order? I want to tell the Senate, I am not the Parliamentarian. I am not the Congressional Budget Office. But if I were either, I would say this point of order does not even lie, not that we should defeat it, it just does not lie. It is not a proper interpretation of the existing budget law to say this point of order can be raised and can invalidate this bill because the bill violates the budget.

I want the Senators who are worried about voting to waive this point of order to understand this is not a budgetary issue. This is a technical point of order that got to the Senate because the Congressional Budget Office, I assume, or the Parliamentarian in consultation with the Congressional Budget Office, ruled that any expenditure of money exceeding $5 billion over a baseline in the year 2016 cannot be sustained.

You see, Senator BYRD, this was done by our distinguished new chairman of the Budget Committee because he found that budgets were being broken in future years by putting in a program that ran at $2 or $3 billion a year and increased, way out there in future years, up to $10 or $15 billion.

Now, fellow Senators, what I have described was perfectly valid until the distinguished chairman, within his rights, decided that this was a problem he wanted to solve. Now, you see, the goal is to prevent the bump-up of expenditures in future years that are unexpected by everybody voting today—unexpected because the increase comes along 10 years later and costs much more than what you thought you were voting for.

Now, I cannot explain it any better than that. That is about the best I can do. Somebody must have determined that this budget rule applies because there is no way to disburse this trust fund money without going through the Department of Labor. That must be it. Because some Government agency must take this money—not tax money, not Federal money—and run it through their books and write the checks, somebody has decided that this fear of a bump-up in some future year applies.

My good friend from Nevada is absolutely right to bring up this point of order if what he wants to have happen to this bill is for it to be proven by 60 votes. That is fine. But I want everybody to know, if the point of order is not sustained and this bill goes forward, I don't think the deficit of the United States is going to be affected in 2016 by one dollar if this $5 billion estimate is true because the money is not

really on the Federal books. The trust fund has no real relationship to the expenditure of Federal money.

So in considering this budget rule—I have explained it to you—I ask: how are we going to break the budget when this money is not even part of the budget? It is not on the budget. The money is going to be collected and then go through the Department of Labor, but it is not Federal money.

I say to Senator BYRD, when they send the budget up in 2016, there is not going to be any of this trust fund money. This money might get a footnote. The Department of Labor is going to have to run the trust fund, but it cannot add to or subtract from the deficit because the Government is not spending its money. And it is not tax money.

So let me say, if you want to kill this bill based upon a point of order that is—it is almost not a point of order, it is just a little, tiny technicality—it gets in by the skin of its teeth on an interpretation—then vote for it. If you are worried about saving money, and being a tightfisted budgeteer, then understand that this has nothing to do with being a tightfisted budgeteer because there is no budgeting involved.

So I thank the good chairman who has worked so hard on this bill. I have never sat on the committee that produced this bill in my 34 years here. I never chose to go on the Judiciary Committee, so I am not intimately knowledgeable about this. But I know we better do something about asbestos. We run around talking about fiscal responsibility and helping business and cutting taxes so we will have more business. If we do not do anything about asbestos, and leave it in the courts, it will be the biggest abuse of the court system that we have ever known.

If you want to tell these new countries becoming democracies, ''boy, are we a gifted country, we have this great rule of law, this fantastic court system,'' please, don't let them ask about asbestos because they will laugh: Why should they be like America? Why should they have a legal system that is so messed up that there are hundreds of thousands of claimants running around this country with scores of lawyers who, when we were practicing law, would not even have been lawyers? You could not run around soliciting these cases when I was sworn into the bar. You could not run around hiring these doctors when I was a member of the bar. You could not run around saying: Go get your neighbors and sign them up.

That is American law today. It is business. It is entrepreneurial law. That is what we have. But it is not very orderly and it is not very ''due'' in terms of due process. Nor is it very fair because the claimants do not get very much money. The lawyers get a lot.

I do not know why we would want to kill this bill. Lawyers get less. There is an orderliness involved. There is a way to adjudicate claims instead of waiting around for years. So with this point of order, while I think it is not even a point of order in the sense of what we intended with the 10-year-out rule—let's call it that; the 10-year-out rule—I do not know what we are even trying to protect against. It is not going to affect anything except to possibly kill the bill.

So with that I thank the Senate for yielding me a few minutes. I regret having to intervene before the proponent got to speak. But I thank the Senate nonetheless.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I have listened with great interest to the interpretation of my colleague on the Budget Committee. I must say, I come to a totally different conclusion based on the law and based on the Congressional Budget Office's own reports.

Here is the report from the Congressional Budget Office itself with respect to the issue of whether the point of order raised by the Senator from Nevada has merit or not. The Congressional Budget Office, which is nonpartisan, has said very clearly that this does involve Federal direct spending, does involve deficit spending. A point of order clearly lies.

Mr. ENSIGN. Mr. President, will the Senator yield for a question?

Mr. CONRAD. Yes, I will be happy to yield to the Senator.

Mr. ENSIGN. Is the Senator aware, the ranking member on the Budget Committee, that the current Republican chairman of the Budget Committee has indeed ruled that the point of order I raised today is actually valid?

Mr. CONRAD. Yes. I have talked directly to the chairman of the Budget Committee, and he has said to me he believes that clearly this budget point of order does lie. And he is buttressed, I might say to my colleague, by the Congressional Budget Office itself, which says on page 2 of their report on this legislation called S. 852, the Fairness in Asbestos Injury Resolution Act, in the last paragraph:

Pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting S. 852 would cause an increase in direct spending greater than $5 billion in at least one 10-year period from 2016 to 2055.

That is the point of order raised by the Senator from Nevada. It is absolutely appropriate, and it clearly lies.

People can come out and be unhappy about the result, but the reality is we have a problem. And we have a big problem here. Why? Well, we have done an analysis, my professional staff. Here is what they found. The claims and administrative expenses will likely exceed the contributions to the trust fund. No. 2, that upfront claims will far exceed contributions, so the trust fund will have to borrow substantial amounts. I have heard over and over it stated on the floor that there is no Federal money, there is no Federal money. Really? Why is it, then, that in the legislation they provide for borrowing Federal money? Why is that? Because everybody knows that point No. 2 is true, that the upfront claims are going to greatly exceed the revenue, and the result will be borrowing. And guess who they are going to borrow from. They are going to borrow from the Federal Treasury.

It is also our conclusion that small adjustments in the amount and timing of the assumptions quickly bankrupt the trust fund; and, finally, that it is unrealistic to assume the trust fund will ever terminate. Because the other thing they are saying is: Well, the legislation provides, if they run out of money, we will terminate the trust fund. Let's think about that for a moment. Companies will be on the hook for tens of billions of dollars that they will have to pay back that have been borrowed, and then they are thrown back in the court system too. Can you imagine the outcry that will come from them?

Let me go to the next chart. I had hoped to not be engaged in this debate, frankly, but we were asked to do a report. And we have done that report. Professional staff did it. These are the conclusions. They looked at the CBO estimates, and here is what we found. CBO did not score many items that are likely to increase the costs, including dormant claims. Those are claims that are not currently being pursued but would have a possibility of getting recovery if they went after this pot of money.

No. 2, exceptional medical claims. There are nine categories that people can fit into. But if you do not neatly fit into those, there is an opportunity for the costs to rise.

And third, CBO did not score any claims of family members of workers who were exposed to asbestos.

We also—the professional staff found that CBO's estimate of the number of future cancer claims is likely to be too low. The CBO analysis concluded there would be 78,000 new cancer claims. The Tillinghast study—which we believe is the most objective study out there, which was done by the Johns Manville trust—ran 14 different scenarios. They found, on average, 133,000 new cancer claims is the likely result, not 78,000. By the way, if they are right, if the midpoint of their range is correct, the increase in cost will be very dramatic. Finally, CBO's estimate of the percent of nonmalignant claims that will receive a cash award is likely too conservative.

In this legislation, there are five tiers for non-malignant claims. Tier 1 gets medical monitoring. They do not get money. Tier 2 gets cash awards of $25,000; tier 3, $100,000. CBO has estimated only 15 percent of claimants will get cash awards.

When our people went out and talked to experts, they said the range is 10 to

40 percent. Our people took the midpoint of that range, 25 percent. The Tillinghast study suggests it will be in the range of 23 or 24 percent. That increases the cost over CBO's analysis.

The conclusion of the Budget Committee staff on the minority side is that the shortfall over the period of the fund will be $150 billion, the net present value difference being $50 billion. In other words, the $150 billion shortfall is over the life of the fund. That turns into a net present value of $50 billion. But to show you how sensitive this is, we were very conservative in terms of new cancer claims. CBO said 78,000. Our study said 90,000. Tillinghast, in 14 different scenarios, on average found 133,000 new cancer claims. If they are right, this number is not $150 billion, it is $295 billion, with a net present value of $85 billion.

Let's reality test for one moment. We went out and looked at what has happened in other cases where funds were set up, what the initial estimates were and then what actually happened. In the case of the Manville trust, the original range was that there would be on the low end 50,000 claims and on the high end, they said 200,000 claims. Here is how many there have actually been to date—not 50,000, not 200,000—there have already been 690,000 claims. That is not the end of it. They now estimate there will be another 1.4 million claims on top of that, for a total of over 2 million claims. So what is the result? The result is, people who were promised certain recovery are getting 5 cents on the dollar. That is what they are getting now, 5 cents on the dollar.

We also looked at the black lung fund. In the black lung fund they projected at the beginning, the original estimate, it would cost $3 billion. Here is what it has cost so far—$41 billion. That is through 2004.

The assertion has been made that CBO has said this is paid for. That isn't their conclusion. CBO said this in the letter:

> The proposed trust fund might or might not have adequate resources to pay all valid claims. 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.

If you look at the numbers behind the numbers, I think it is very hard to conclude anything other than what my professional staff concluded. The strong likelihood is that this fund is way under water. Our conclusion is $150 billion under water. It is entirely possible——

Mr. SPECTER. Will the Senator from North Dakota yield for a question.

Mr. CONRAD. I would be happy to, when I have finished my sentence. It is entirely possible that it is $295 billion under water. I regret to conclude it may be more serious than that.

With that, I am happy to yield.

Mr. SPECTER. Mr. President, I have noted the chart. If you could put the chart back up, please.

Mr. CONRAD. Which one?

Mr. SPECTER. The last one. The one the Senator from North Dakota is talking about, the one that has the letter going to Senator ARLEN SPECTER. I received that letter. You may be surprised to know that I read that letter.

Mr. CONRAD. I am not surprised at all.

Mr. SPECTER. Senators receive lots of letters; relatively few are read.

My question to the Senator from North Dakota is, isn't it true that the two sentences which you left off following the chart you have read:

> There is some likelihood that the fund's revenue would be sufficient to meet those needs.

Isn't it true that that is the next sentence in the letter?

Mr. CONRAD. That is the next sentence in the letter. It is also true that the CBO analysis is very clear. They have not even attempted to put a cost behind a whole series of things that they have told us are very likely to cost money and increase the cost in a way that puts this fund over into insolvency.

I regret being in this situation. I have no desire to be involved in this debate, but we are here.

Mr. SPECTER. If the Senator will yield for another question.

Mr. CONRAD. I am happy to yield.

Mr. SPECTER. Isn't it true that following the sentence I just read, which was ''there is some likelihood that the fund's revenues would be sufficient to meet those needs,'' the next sentence reads:

> The final outcome cannot be predicted with great certainty.

Isn't that pretty much standard CBO, where they are making projections, and the thrust of what CBO has said and the Senator from North Dakota has cited is that you don't know ''with great certainty''? And isn't it true that in any projection of this sort you cannot have ''great certainty,'' that you don't even have that on proof for the death penalty in a first-degree murder case where it is only proof beyond a reasonable doubt? Isn't it true that CBO in the letter which they sent to me, dated August 25, made a projection that the cost would be between $120 and $150 billion, and the final line on page 8 was $132 billion which is well within the $140 billion figure?

Mr. CONRAD. Let me say to my colleague, the problem with that is, it doesn't include debt service. It doesn't include any additional amount for dormant claims. It doesn't include any additional amount for exceptional medical claims. It doesn't include any additional amount for claims of family members. CBO's estimate of the number of future cancer cases, we believe, is likely to be far too low. And CBO's estimate of the percent of nonmalignant claims that will receive a cash award is likely far too low.

I will go further in answering my colleague and say, when you reality test all of these things against what has happened in other funds like this, what we see is a consistent pattern, a very consistent pattern, that the initial estimates of how many claims there will be have been vastly understated.

Mr. SPECTER. Will the Senator yield for another question?

Mr. CONRAD. I am happy to.

Mr. SPECTER. As the Senator from North Dakota outlines the situation, CBO is incompetent, grossly incompetent. When the Senator from North Dakota shows different conclusions which his staff has reached, why wouldn't it be sensible to disband the Congressional Budget Office and just rely on his staff?

Mr. CONRAD. Because first, I say to my colleagues, those are his words and his conclusions. I have great respect for the Congressional Budget Office. I think the Senator knows that is the case.

I say this in seriousness. They have been very clear with us. They have said there are areas that are extremely difficult to predict. I accept that. It is very difficult to know how many dormant claims will come out of the woodwork. But to suggest there are not going to be any is unrealistic. To say that the number of future cancer claims is going to be 78,000, when the Tillinghast study that was paid for—not by the trial bar, not by the labor unions, not by any of the companies who are against this legislation—it was paid for by the Manville trust, they said they ran 14 different scenarios, and on average there were 133,000 new cancer claims. That one change, if they are right, increases this fund from being under water by $150 billion to being under water by almost $300 billion.

Finally, CBO's estimate of the percentage of nonmalignant claims—again, this is a hard thing to know—the Tillinghast study suggests that the range will be 10 to 40 percent. The midpoint of that range is 25 percent. If you think about it, people come in and they go to their doctor and you have a situation in which they might qualify for $25,000 or even $100,000. There is going to be a tremendous tendency to push them into those categories. It is human nature.

Again, if we reality test and go back to what has happened with these other funds, there is a very consistent pattern. Black lung, they said it was going to cost $3 billion. It cost $41 billion, 14 times as much.

I reluctantly come to the conclusion that this is not only under water by the amount my professional staff came to—they came to the conclusion it was $150 billion—I think it is entirely possible, even likely, that it is at least $295 billion under water, and it may be a multiple of that because the history of these things is so clear. When you stack up a bunch of money and you say, come and get it, guess what. People come and get it. All of a sudden there are all kinds of people coming forward and making a case that they are owed money.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I am somewhat querulous at the representation of the reluctance of the Senator from North Dakota to take the position which he has articulated. It is certainly obvious that he wasn't prepared to take the position, certainly obvious that this point of order, which was articulated this afternoon, has taken him by surprise. As I look at his elaborate charts, I think he has been anticipating this moment for some time, which doesn't necessarily impugn his comment that this is with reluctance, but it looks to me as if it is with calculation.

I am not unaware of the obvious facts of life—that colleagues of the Senator from North Dakota on the Democratic side of the aisle are not too fond of this bill. I am not unaware of that. I won't go into the reasons behind it, but it happens to be a fact.

Senator CONRAD is experienced and articulate. He has been chairman of the Budget Committee and ranking member for a long time and a distinguished Senator, after having been elected in 1986. I have served with him in this body for 20 years now. But when he talks about the Tillinghast study and when he projects what his own staff has done, he is undercutting the Congressional Budget Office which puts this $140 billion well within the ballpark. I put these letters in the RECORD—I have already done that today—where there is the comprehensive analysis of the Congressional Budget Office, in a letter to me, dated August 25, 2005, and a letter dated December 19, 2005. The long and short of the Congressional Budget Office analysis is that you are dealing in a range of $120 to $150 billion, and the point they struck on is 132, which is $8 billion under the 140.

When the Senator from North Dakota talks about dormant claims, he doesn't know how many dormant claims there are. Nobody does. You can't sit here in the year 2006 and speculate about how many other claims there are that he has articulated. We are not going to vote on this issue tonight. There aren't enough Senators in the Chamber to vote tonight. We are going to have a battle royal of charts by the time we revisit this issue a few days from now. We are going to have fancier charts than the Senator from North Dakota has. This whole bill may turn on who has the fanciest charts. We have some pretty good chart makers ourselves.

When the Senator from North Dakota says it will be terrible if, after companies have paid money into this trust fund, the trust fund becomes exhausted and they are asked to pay more money going back to court—well, the companies who committed to pay $140 billion understand that. Don't feel sorry for them. They know what they are getting into.

The reality is this: As Mr. Thomas Donahue, head of the U.S. Chamber of Commerce, has estimated, they are dealing with a $500 billion issue here, which can be accommodated with $140 billion because you cut out transaction costs, because when claimants only get 42 cents on the dollar, $140 billion may be enough, when it may cost as much as $500 billion otherwise. The economy has already suffered to the extent of $300 billion. So don't feel sorry for the companies. If the trust is terminated because we believe Senator BIDEN was right when he offered his amendment, which I supported in committee, that the claimant should not bear the risk if the fund was insufficient, that claimants ought to have the right to go back to court, that is the real safety valve if we are wrong.

But I don't think we are wrong, because we are going to have some fancy charts in a few days that will show the decline of asbestos claims. Senator SESSIONS is usually erudite, but he is especially erudite on that subject, as to how the claims have gone down and how the projections show that we will realistically being paying out less, certainly well within $140 billion.

I know Senator ENSIGN and Senator SESSIONS want to speak, so I will reserve some of my time.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. It was with great reluctance that I raised this budget point of order. I have a great deal of respect for Senator SPECTER and believe there is a great need to enact asbestos legal reform. There are companies that are shutting down. Many of the current tort claims are fraudulent. There are victims who are not getting the compensation they need and deserve.

The asbestos crisis is a serious problem that is threatening the economy of the United States. I recognize that. I voted for the Cornyn substitute because I believed it was a better answer to help the United States, our economy, and the victims. The Hippocratic oath, to first do no harm, has been mentioned on this floor before. Unfortunately, this Chamber has, on many occasions, done more harm than good. There is so much unpredictability in this bill that my fear is we are considering doing far more harm than the current system.

In the December 19 letter written to Senator SPECTER from the Congressional Budget Office, that Senator SPECTER and Senator CONRAD were just talking about, it says:

> 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. There is also some likelihood that the fund's revenues would be sufficient.

So there is a significant likelihood that they won't be enough and some likelihood that they will. CBO's final conclusion is that they cannot predict the Budget impact of this bill with any degree of certainty. We have all seen the Congressional Budget Office or the Joint Tax Committee's work product. It is put together by hard-working folks who do their best to estimate. But I have not seen their estimates turn out to be accurate very often. This is because what they do is an incredibly inexact science. What they are trying to estimate in this bill is even less precise, less exact of a science than what they normally do. Just a given example with respect to JCT, I had a tax provision about a year and a half ago that had to do with bringing money from overseas back into this country. The CBO estimated it would result in $125 billion to $140 billion coming back into this country for investment. We thought that estimate was very low. It turns out we were right. To date over $350 billion has been reinvested in the United States, far in excess of the estimate.

Now if CBO's estimate is off on this particular legislation to the degree that the estimate was on my legislation, we are in serious trouble. That is why the CBO says, and the Democratic ranking member and the Republican Budget Committee chairman say, the point of order is valid and lies on this bill.

I think there are problems with this bill. One problem has to do with the medical criteria. It allows all kinds of people to recover without any degree of certainty as to how many future claimants there will be. The potential is huge. So despite my strong desire to fix this legislation, I believe that it cannot be fixed. I wish Senator CORNYN's substitute would have passed. I thought that was the right place to start working on solving the asbestos crisis. This body could have worked with that legislation. We could have made sensible changes to move that version forward. I don't think that the underlying piece of legislation can be fixed to provide any certainty. I don't see how we can ensure that the taxpayers do not end up with a huge mess that includes a great deal of debt for future generations.

When will the uncertainty occur? Will it be 8, 10, 12, or 15 years from now? I don't know. When the uncertainty comes, the debt that the taxpayers will be asked to shoulder could be enormous. And this bill could come due at exactly the wrong time. When we can least afford it. It will come due when the baby boomers start affecting Medicare, Medicaid, and Social Security. I respect the chairman of the Judiciary Committee a great deal for the work he has done, and I know he has tried to work in a bipartisan fashion and with many industries. They say politics makes strange bedfellows. This legislation proves that to be true. When the positions that we take on this bill or on the point of order do not break down by party lines and when liberals and conservatives are likewise divided, you know that this bill has strange dynamics. Industries that are normally allies are also split on this

bill. Trial lawyers are split on this bill. The reasons for such a split are a result of the uncertainty about this piece of legislation.

I appreciate the indulgence of my colleagues to allow me to speak for a few minutes. I look forward to the debate on this point of order. I am not sure exactly when we will vote on it, but I hope the point of order is sustained.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I serve as a member of the Budget Committee, and I am very pleased that Chairman GREGG put in language that allows for this budget point of order. I think it has a potential in many of our entitlement programs to help rein in abusive spending. But this is quite a different matter, I say to my distinguished colleague, Senator ENSIGN. He is such a terrific asset to this Senate, a great member of the Budget Committee, and is rightly engaged in trying to make sure we don't throw away money. I hope I have been an ally with him in that process.

But this is not Government money. This is money put up by the defendants who are paying out every day in judgments and lawsuits all over America. They have said: We are tired of having 58 percent of the money we pay out not get to the victims. Only 42 percent gets to the victims. We ought to create a system to allow victims to get more money, and we can have a little certainty as to what we pay out. So they agreed to pay into this fund. It is not the Government's money. It simply would be administered by the Department of Labor and, therefore, apparently the experts say it qualifies for this objection.

Let me say what happens if there is a shortage. What happens is the fund fails, the FAIR Act ends, and the plaintiffs get to go back to court, as they are today, and file their lawsuits. And the Government is not on the hook for that money, if there is a shortfall, No. 1.

Senator ENSIGN correctly guesstimated that more money would come back from foreign company profits into the United States with his tax relief bill than CBO did. Well, I would say this. I can guesstimate this. At one point, I represented plaintiffs. I see that the lead plaintiff lawyer in the history of this litigation has made an estimate on it and he has concluded there is plenty of money in this trust fund. Why is it likely, in my opinion, that there is enough money? People say there is not enough money here and it is going to fail. Why would I conclude that may not be so, that probably the fund may survive?

First, those who are putting money into it think it is enough. They would not subject themselves to this if they didn't think it would work. Second, CBO estimates it, and why would they estimate something in this nature? The reason is, somewhere in the 1970s—probably early 1970s—people became sensitized to the dangers of asbestos. They learned about it and crackdowns were undertaken to limit exposure. By the time 1980 got here, very strict rules were imposed—and that was 26 years ago—on how to handle asbestos, and exposure today is nil compared to what it was in the 1940s and 1950s, when people were unknowingly placed in positions where their health was destroyed as a result of massive exposure to asbestos fibers.

So it is obvious we have very little asbestos in our society today. If you even see somebody take asbestos out of a building today, they have masks on. All of this stuff is required by OSHA so that not one fiber will touch them. I think the likelihood is that we are going to see a continued decline in the asbestos claims and, as a result, I think it is possible—although I am certainly not an expert—that CBO, plaintiff lawyer Dicky Scruggs, and others are correct to conclude there is enough money in the fund to make it go.

There are a few things we need to do, however. We need to tighten up several of the medical criteria issues in this legislation so it will be sure to be successful. If we allow people to come into the fund because at one time or another they were exposed to some asbestos and they may contract some cancer or some other disease, and they can then claim they are, therefore, owed payment from the asbestos fund, we will never have enough money. The criteria we have today are far better than exist in the courts of America, but I think there needs to be some further tightening up, so that people who are sick from asbestos get paid and paid generously, but people who contract other diseases are not unjustly enriched by being paid out of a fund that is designated for people who have contracted disabilities and diseases as a result of asbestos. That is what is fair and just. That is what the fund should do. I hope we will be successful in reaching that.

I say again that I respect this point of order and I respect Senator ENSIGN for raising it. I point out this is indeed technical in the sense that the monies in this fund are not Federal Government money, and that if the fund runs out of money, the Government doesn't put in extra funds. It goes back into the litigation system and the plaintiffs continue their lawsuits in that fashion. Therefore, I think it would be wise under these circumstances to waive the Budget Act.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from Alabama for his comments, and I thank him for his extensive work on the committee, especially on this bill and especially for being on the floor so much this week and making such very strong arguments.

Our general counsel said to me in the corridor a few hours ago: JEFF SESSIONS has been around all the time. He is doing the work, and he used a four-letter word, a blank of a good job. I thank Senator SESSIONS for his work.

I wish to make a few comments in closing. We probably lost a few people who watch C–SPAN2, in any event. We certainly lost the Senators.

When the Senator from Nevada, Mr. ENSIGN, made a comment about unpredictability, there is one thing which is not unpredictable, and that is the suffering of the mesothelioma victims and the other victims from asbestos exposure. We talk a lot about mesothelioma—abbreviated to meso but that is a fatal disease which is caused by exposure to asbestos, and there are many gradations.

When we talk about unpredictability, we also ought to talk about predictability, about the tens of thousands of asbestos victims who are not being compensated today because their companies are bankrupt. There are tens of thousands of veterans who are not being compensated because they have no one to sue, even though they contracted illnesses from asbestos in the service of their country. We know of the 77 companies that have gone bankrupt, and more are on the way. We do know that predictability.

When the Senator from Nevada, Mr. ENSIGN, talks about estimates which are inexact, that is true. You can fault the Congressional Budget Office, but they do the best they can. We do know of the exact estimates, exact reality of the people who are suffering.

I believe the conclusion is that we have a duty to do something about that. When private companies are willing to put up $140 billion to compensate those victims of asbestos to save future bankruptcies, to save and eliminate and cure pain and suffering, we ought to take that.

We are not infallible. If we are wrong and we do not have enough money, they understand the consequence of going back to court. But I think it all points to the conclusion that we ought to pass this bill. We ought to consider a number of problems that we have in the floor debate and improve this bill. Then when we have come to the end of the rainbow on improving this bill as much as we can, we have to make a judgment: Is this bill, albeit not perfect, albeit not satisfying everybody's interests, better than the current chaotic system?

It has to be an enormously terrible bill to be worse than what we have today. That we know with certainty.

When you don't meet the Congressional Budget Office test of ''great certainty,'' that is all of life. Again, I analogize the standard for a death penalty in a criminal first-degree murder case is proof beyond a reasonable doubt, and in a civil case is more probable than not. And in our legislative judgment, we have done the most we can do in good faith to craft legislation

to meet a pressing problem, on which everyone agrees—the Senator who is advancing this point of order starts off conceding the terrible problems of asbestos and the pain and suffering to the victims and the terrible blight on the economy.

We will be debating this some more in the days ahead. I urge my colleagues to consider this issue very carefully because this is an issue which will kill the bill if this point of order is not defeated.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I am glad we have finally come to this portion of the argument because it reinforces a lot of things that have been said on this Senate floor over the last several days. It really comes down to a very basic question, the question as to whether this bill has been carefully crafted, whether it contains enough money in the trust fund to compensate the hundreds of thousands of asbestos victims who will have to count on it.

I have raised this issue repeatedly as to the $140 billion figure. There are reliable estimates of the actual cost over a 50-year period of time that almost double the amount of this trust fund, some even higher.

Senator KENT CONRAD on our side of the aisle is well respected as the ranking member of the Senate Budget Committee. His background as the head of taxes in his State of North Dakota, his own personal education and experience give him extraordinary credibility when it comes to issues of cost and issues involving accounting. He has made a convincing case to our caucus and to those who are listening on both sides of the aisle that the $140 billion that is part of this trust fund is not nearly adequate to the task.

Of course, if it isn't, what choices do we have? Senator SPECTER suggested on the floor the other day that if $140 billion wasn't enough to pay the victims, then we will pay the victims less. Today when I asked him a similar question, he said there are other options. You can say to these victims, if you have taken away their lawsuit that they worked on for a year or two, they have to stop their case in court. Then put them into this new trust fund system, and then the trust fund system fails them at some later date and doesn't pay them all they are entitled to, you can say to these victims: You can go back and start over in court now.

That is cold comfort to a family that is doing its best to take care of medical bills and lost wages and burial expenses for someone they love.

They have made a point over and over that under no circumstances will the Federal Government step in and make up the difference. I guess that verbal assurance is good, but we know there is always that possibility at some later date if this program doesn't work, if it fails, that someone will say we can't go back to the companies and ask them to put more money in the trust fund; we can't turn the victims loose; the right, compassionate thing to do is for the Federal taxpayers to step in.

It is not a farfetched argument, and it is one we have to consider as a possibility.

Now a Republican Senator steps forward, Senator ENSIGN of Nevada, raising a valid point of order, a point which goes to the heart of the funding of this bill and how it will pay out any benefits that might accrue in the future.

I would like to note some of the points that have been made during the course of this debate that I think are worthy of repetition and, for those following the debate for the first time, worthy of note.

The Congressional Budget Office has warned us of the significant likelihood that this asbestos trust fund will fail.

In a letter to the chairman, who spoke just before me, they wrote:

> The proposed trust fund might or might not have adequate resources to pay all valid claims. 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.

So we are saying to hundreds of thousands of victims and their families: Trust us, we have created a trust fund, and with that trust fund, we will take care of your needs in the future. There is enough money, the proponents of this legislation say, but the Congressional Budget Office, looking at the victims, their injuries, and the compensation promised in this bill, came to a different conclusion. They concluded:

> There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims. . . .

As Senator SPECTER said on the floor the other day, one of the options, then, is to pay the victims less.

One of the reasons we need to take a look at this trust fund shortfall is when we look at the elements that are behind it, the claims and administrative expenses are likely to exceed contributions to the asbestos trust fund. The upfront claims will far exceed contributions.

Understand, people who are told they have to leave the courthouse and can no longer pursue a claim in court will have to turn to this trust fund. There is no place else to go. They will come in large numbers, but the amount that is being contributed to the fund by businesses is not going to match the demand. At the outset, claims will far exceed contributions, so the trust fund will have to borrow substantial amounts of money.

How much? The trust fund is supposed to be $140 billion. There are estimates that the interest and administrative costs may reach $52 billion, more than a third.

Small adjustments in amount and timing of assumptions quickly bankrupt the trust fund. If you guess wrong how many people are sick and how often they will file their claims and in what numbers, the estimates of the solvency of the trust fund could fail. It is unrealistic to assume that the trust fund will ever terminate.

The reasons for likely trust fund shortfalls: The Congressional Budget Office didn't count dormant claims that may surface once this trust fund is created, exceptional medical claims, or claims of family members of workers exposed to asbestos.

CBO's estimate of the number of future cancer claims is likely to be too low, according to consulting firms that have taken a look at their formulation.

The CBO's estimate of the percent of nonmalignant claims that will receive a cash award is likely to be very conservative.

Take a look at this chart. This chart tells the story. The red part of the graph is trouble. The red part of the graph reflects the liability, the amount that should be paid out that cannot be covered by the revenues coming into the trust fund.

So we make a promise to people. We say to them: Give up your claim in court, come to this trust fund and trust us. Yet when we project the needs of these victims against the revenues coming into the trust fund, we see a dramatic shortfall.

The fund stops paying claims in 2009. Claims filed in 2009 and all later years will not be paid. Too many claims, not enough revenue into the fund.

Let me indicate what this shortfall can mean. Mr. President, $150 billion—remember, this trust fund is funded at $140 billion—to fall short $150 billion is a substantial miscalculation. In present value terms, it means we would have to put $50 billion into the fund today to cover the $150 billion shortfall over the 30-year life of collections and 50-year life of disbursements under this trust fund. So this is a significant shortfall.

Keep in mind that we are saying to people: You cannot continue to go to court to be compensated; you have to turn to a trust fund with a hole in the pocket.

Let me tell you how badly others have miscalculated the number of asbestos cases that can be filed.

I remember Johns Manville, a big company, based in Colorado. They were one of the first firms hit because they sold a lot of asbestos products. When they went bankrupt, they tried to create a separate fund to pay off all the victims of Johns Manville products, their workers, and others. They set aside money, and in order to set aside a proper amount they had to speculate and give some calculation about how many people would be making claims for asbestos injuries.

The original range of claims went from 50,000 to 200,000. That is what they said they would ultimately have to cover. The claims received through the summer of last year were almost 700,000. They had estimated a high of 200,000. Almost 700,000.

The recent estimate of the total number that could be paid is 2.1 million. So how can those who have written this bill say with any degree of reasonable certainty that we know how many people were exposed to asbestos at some point in their lives and will later come and make a claim? Because for many people, they will live a long time with asbestos fibers in their lungs, ticking timebombs that could go off 10, 20, 30, 40 or 50 years after exposure. There could be anyone on the Senate floor today harboring in their lungs asbestos fibers. Those fibers may or may not cause a problem. We just don't know because for years no one paid close attention.

Many people were told it is safe. Expose yourself to asbestos, it can't be a problem. Some were misled. Some operated out of ignorance. But the fact remains. Johns Manville, in calculating its liability for its own trust fund, blew it. Instead of 200,000, it was 2.1 million.

(Mr. COBURN assumed the Chair.)

Mr. DURBIN. This is not the only case of miscalculation. For coal miners, we created a program called black lung. I know it pretty well because I have met a lot of coal miners suffering from it in my home State of Illinois. Exposure to coal dust, inhalation of coal dust causes lung problems, so we tried to set up a separate fund for these miners to take care of it. We estimated it was going to cost us about $3 billion to compensate all these coal miners. Our actual black lung payments through 2004 are $41 billion.

So if some of us come to this floor skeptical of this trust fund, skeptical of this $140 billion, and wonder if we can say to victims in good conscience, we are going to stop your going into court and force you into a trust fund which will pay you, when we know full well how many times we failed in estimating how much these trust funds need to have banked away, I think that really goes to the heart of this whole issue.

Also, a critical element here is why we are on this bill today. People who are following this Senate debate maybe tune in to watch C–SPAN, follow the debate in other places, and some will say to them: What is the Senate talking about today? They may report: Well, it is about asbestos.

Sure, it is an important issue. But my guess is most families across America would probably step back and say: I sure wish they would talk about the cost of health insurance for families, businesses, and individuals or maybe the cost of this heating bill I have in my hand, where the cost of heating this home has doubled since last year or maybe they ought to talk once in a while about this Medicare prescription Part D Program which has become a mess for seniors across America. Why aren't they talking about pension security when our neighbors next door worked a lifetime at that plant, and then the plant went into bankruptcy and dumped the pension, and now this man and his wife, who thought they had done everything right in life, don't have retiree benefits and don't have health benefits? Why aren't they talking about those things?

No, the Senate is engaged in a debate on the asbestos bill which I have characterized as a clash of the special interest titans—huge companies on both sides, for and against asbestos; insurance companies for and against this bill; trial lawyers opposing the bill; others supporting the bill; labor unions by and large opposing the bill with two or three exceptions. Why are we on this bill today? Because what drives this debate is what is at stake. What is at stake is not just recovery for hundreds of thousands of asbestos victims but a lot of money.

Earlier today, a Republican Senator, Mr. BENNETT of Utah, came to the Chamber with two charts which I thought really told the story. I don't have those charts, but I have summaries here. What Senator BENNETT pointed out is that for about 10 of the largest companies affected by this bill, this bill is a windfall. It is a windfall in this respect: They estimated how much each of these companies would have been required to pay out to asbestos victims if they went through the regular court process, and then they estimated how much the same companies would pay into the trust fund we are talking about today. And the difference is startling. For these 10 companies, the difference is $20 billion. In other words, if they paid the claims of victims in court, they would have paid $20 billion more than the amount they paid into the trust fund.

One of the companies which has been publicized recently is U.S. Gypsum. The reason people talk about it is they recently did a public filing, and here is what they said. They said: If we are held liable in court for all the asbestos claims we think could be filed against us, we believe we would pay out something in the range of $4 billion. But if this bill passes, we will be required to pay into the trust fund $797 million.

What a dramatic difference. So for this company, the passage of this bill is worth more than $3 billion. That is the reason we are here.

We are here because so many of these corporations know that if this bill passes, their exposure to liability is reduced dramatically. The obvious question is, If they don't pay the $20 billion to victims, who will make up the difference? And that is the point made by Senator BENNETT earlier in the day. He gave the names of eight or nine other companies, much smaller, some of which have paid small amounts to asbestos victims in court cases in settlements, some which have paid none. In each case, these companies had to step up and pay substantial amounts of money, ranging from $75 million to $578 million.

So here is one of the largest companies, U.S. Gypsum, with the largest exposure—$4 billion—paying about $800 million into the fund.

And then you take a look at a company named Foster Wheeler, a pretty well-known company. They will pay out $80 million in their experience in asbestos over the next 10 years. That is their estimate, I should say, $80 million. And they are asked to pay $578 million into the fund? Where is the fairness in that, that these companies with little or no exposure have to pay so much money while companies with so much exposure pay dramatically less? That is the fundamental unfairness in what we are discussing in the Senate here this evening.

I might also add, many of us are struggling to try to absorb this bill because this morning, as we had expected, the chairman filed a new version of the bill. We had been debating this for months, maybe years, and this morning comes a new version which, according to the chairman, makes 47 significant changes in the first bill we were handed.

Think about that for a moment. When you consider how many lives and how many families are dependent on our doing the right thing in the passage of this legislation, we are rushing to pass a trust fund that will take these families and individuals out of the courthouse into a trust fund.

The Presiding Officer is a medical doctor from the State of Oklahoma. We may not see eye to eye on a lot of things, but I listened as he speculated on what the exposure might be on this trust fund. He has made some statements as to whether something should be covered or should not be covered. But what he said, at least in the course of the Judiciary Committee hearing, is that there is some real uncertainty about how many people will be filing claims and what those claims will be worth.

That is what troubles me. I think there is more we can do to make this system more fair. First don't abandon America's court system. Don't abandon our system of justice. Don't conclude that 200 years of a court system in America is not proof positive that it is a valuable part of our American heritage and a valuable part of America's life. Start with our court system.

If there are abuses, and I will concede there are abuses, let's deal with them. I will tell you point blank, based on my legal education of long ago, if you want to recover for injury in court, you must have injuries or damages. Simple exposure to asbestos, which could include all of us, is not enough. You have to show some injuries or damages before you recover. That is why, in our State of Illinois, we set up what we call the pleural registry, and that says if you have been exposed but you are not sick, no symptoms, come in and sign up. If you don't contract an illness or something that is fatal, then you will have escaped any problem related to asbestos. If you do, you can come through the court system and you will

not be held back by any statute of limitations.

Some have argued about where lawsuits should be brought. That is a valid issue. We should debate it. Some have argued about what attorney's fees should be. That is a valid issue. But there have been some misstatements on the floor about attorney's fees, and I wish to clarify them. Some have said on the floor that 58 percent of all the money generated in these asbestos verdicts and settlements goes to lawyers. Technically, that is true, but look more closely: 31 percent is legal fees claimed by the victims' attorneys; 28 percent or 27 percent is from defense attorneys.

I practiced law for a number of years, and it was not uncommon for a person of modest means to come in my office and say: I have been injured, I need to file a lawsuit. And you would say to them: I know you can't put up thousands of dollars to pay for all the time I have to put in as a lawyer to get ready to go to court, argue the case, do everything lawyers do, so I will take it on a contingent fee basis. If you win, I win. If you lose, I lose.

For many people, that is the only way they can come to a courtroom. They can't put up $10,000, $20,000, $30,000 to pay for a team of lawyers to prepare a case. They just don't have it. So contingent fee cases are all across America.

If you file a case in Workers' Compensation in Illinois, you may pay, I guess—it has been a few years since I have done it—around 20 percent in attorney's fees. An ordinary case for personal injury might be a third. That is usually what the lawyer's fees are when it is a contingent fee basis. To say that asbestos victims are paying 31 percent in attorney's fees doesn't suggest to me that there is a built-in scandal here; it suggests that is fairly ordinary and routine in the legal practice.

It is interesting to note that for every dollar paid out, the defense—companies that are hiring defense attorneys—is receiving 28 cents on the dollar. That is an indication to me, with 30 cents and 28 cents, the victims' attorneys and the defense attorneys are comparable amounts. But having said that, if there is a discussion about how to make those attorney's fees more fair, I am willing to sit down and work on it.

I also believe we ought to look at the States that have already stepped forward and said: We are not going to abandon our courts, we are not going to abandon our system of justice, we will make changes so it works better—States such as Florida, Texas, Ohio. They give us good guidance. Senator CORNYN of Texas gave us an amendment—and may come back with another version of it soon—which addresses that particular approach. I would feel a lot more confident in making certain that our court system worked a little better than abandoning our court system to set up a trust fund that is not paid for.

I hope my colleagues in the Senate on both sides of the aisle will seriously consider the point of order raised today by my Republican colleague, Senator ENSIGN of Nevada. It is a valid point of order. It goes to the issue as to whether $140 billion is adequate, whether the payout of this money is consistent with the budget rules of the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I think the first time I heard the figure 31 to 27 was by Senator DURBIN. It didn't surprise me, really. The asbestos defendant companies are hiring some of the best lawyers in America, and they charge them big fees. It is part of what they cost. If it is 31 percent for the defendants' attorneys and 27 percent for the plaintiffs' attorneys, I am not really surprised. I had no idea precisely how it would come out, but I am not surprised at that.

What I would say to my colleagues here in the Senate, however, is that it is not disputed that 58 percent of the money paid out by the defendants is going to lawyers and not to the victims. It goes to the plaintiff, and the plaintiff has to pay almost half of the judgment to his lawyer, so he or she doesn't get to keep all the money. He has to pay this big lawyer fee. Plus the corporation is being sued and has 31 percent of what he is paying out going to his own lawyers. So who is winning here? This is really indisputable. Who is winning here? The legal system is grinding up people and companies in an extraordinary way which just has to be ended. We have to work our way through this.

It is so great to have a Presiding Officer, a medical doctor, try to help us deal with some of the medical criteria.

There still remains a great weakness in this bill in a number of things.

My colleagues present the most contradictory arguments. One time they are in here saying we have to have it in the Department of Labor, or we have to pay more and more and more, and then they come in and make the argument that these funds traditionally get out of control.

When Senator COBURN and Senator CORNYN propose an amendment that tightens the medical criteria a little bit, they object and vote against them.

This would be sort of amusing if it wasn't such a serious thing.

Some of my colleagues have been saying that the fund is clearly going to fail because we underestimate the number of claims. Claims are not the real problem. This bill is going to help with the claims. I don't know how many claims this bill will reduce—not quite as much as the Cornyn bill did because it was better criteria, in my view; more realistic, according to medical data and science.

But under this bill, I would guess that 40 percent to 50 percent of the current claims are not legitimate.

It prohibits and bars claims when a person is not sick. The latest estimates are that half the claims being filed today are by people who are not sick.

If you have asbestos exposure and you can see some scarring in a person's lungs, the chance of that person getting sick are enhanced. And under this legislation they don't get paid right then. But if they are monitored medically, and if they become sick, they will get compensation.

That is the best way to handle that, for sure.

If you get sick, you simply walk in with your doctor and with a report that says what the degree of illness is, another doctor will probably check that, and if it is verified, they will write you a check. You do not have to give a third, a fourth, or 40 percent to a plaintiffs' lawyer, and a defendant corporation isn't having to hire lawyers to defend against the lawsuit.

My colleague, Senator DURBIN, is so eloquent and is a skilled lawyer. He made an argument that I suppose people listening probably took a bit of an interest in and wondered about. He declared that the 10 companies with the most exposure would pay substantially less under this trust fund than under a court process—$20 billion less.

Let me say two things about that.

It is not a question of how much they pay out, it is how much gets to the victims, people who are sick. That is the most important question. How do we get more money to people who are sick without having to have the whole business collapse?

Second, he did not point out the fact about these tier I companies. These are the companies that are in bankruptcy. They are in bankruptcy already as a result of this litigation. There is only so much a company can carry. If you kill off the company, what do you do then? How can anybody be paid?

You can't destroy the companies totally and take them out of business if you expect them to continue to pay, for 25 years, people who become sick.

That is why they already have protections in bankruptcy, and they are paying through the bankruptcy court less than they would be otherwise. To keep these companies in the game, keep them alive, we give them a certain amount they have to pay depending on how big the companies are. And some are big and can pay a sizable amount—and they will pay a substantial amount of money, but they won't be going bankrupt.

A lot of people do not understand this. If the company that is responsible for exposing you to asbestos no longer exists, whom do you sue? If there are two people who have been exposed to asbestos, both of them have serious lung damage and it reduces their capacity to function, let us say both of them are entitled to a $200,000 judgment. One of them wants to sue a company that is gone, no longer exists, the company that is responsible, you would say: Well, they will be able to recover somewhere. No. If the company no longer exists that exposed him, that

person won't collect $200,000; he won't collect a dime. But the other one happens to have been exposed by a company that is still in existence and has money, or insurance, they can collect the full $200,000.

That is happening today.

To make it crystal clear, I will ask you about an automobile accident. Have you ever heard of people who have been run into, have an automobile accident as a result of a drunk driver who is uninsured and somebody is injured, they say, I am going to sue them and I am going to get a $1 million verdict. You know what the lawyer says? Does the defendant have any money? Well, no. Does he have any insurance? No. What does he have? He has a rental, that is the only car he had, it is a piece of junk, and it is not worth anything. The lawyer says: If you get a $50 million verdict, you will not collect one dime. It is not worth the trouble to go to court over.

This happens in America. It is the way the law is.

But this trust fund says whether the company that exposed them and injured them is in existence or is not, they will be able to recover too out of a uniform trust fund. And companies that are bankrupt will be able to pay at a level that allows them to stay in business and continue to pay into the trust fund.

Seventy-seven companies are already bankrupt. They say: Well, we are going to make more companies pay. We are going to make more companies pay than are supposed to pay—somehow make them pay more than they are supposed to pay. But let me say this to my colleagues or anyone who may be listening. Now there are 8,400 companies being sued, being dragged in, and many of them have the most tenuous exposure.

I remember very vividly a man coming into my office. He bought a company that at one time sold asbestos and had not sold asbestos for many years before he bought it. He buys it and makes it a part of his company. The next thing he knows, all of them are beginning to go at that little company as a defendant which he bought, and he is liable for it. Money is being sucked out of his whole, big company and going into this fund.

These companies realize that. They may not be the main target today, but the clever and sophisticated and determined plaintiff lawyers have demonstrated a capacity to add on companies and make them liable more than they were before. Many companies are willingly prepared to pay into this fund so they won't be sued for the rest of their existence; so when they go to a stockholders' meeting and write a prospectus which shows what their liabilities are, they can say exactly what their asbestos liability is rather than being required to list 5,000 asbestos cases filed against them.

Somebody may say: How much is that going to cost? Well, we don't know. Well, could it be $1 million each? Well, we do not know. We don't think so. I may not want to invest in your company. I may not want to buy stock in your company. I have to have some more certainty about how much you are going to pay.

That is one of reasons we are trying to pass this trust fund, so the defendant companies can say to their stockholders and would-be investors and those who would contract with them what their future financial prospects are.

Isn't that a good public policy thing to try to do?

Veterans, if we don't pass this bill, you are not going to be able to recover. Most of them have nobody to sue. You can't sue the Federal Government for this. A lot of other people already have found that the people they are entitled to sue by law either have no money or no longer exist.

I will say this: I think the legislation is headed in the right direction. I believe that Senator COBURN is correct. We need to watch this criteria. If we get that wrong, it can take this bill down. A doctor knows that thousands of Americans every day who are not exposed to asbestos get colorectal cancer or get throat cancer or get prostate cancer.

If somehow anybody who had any exposure to asbestos is not going to be able to come into the fund and demand that the fund pay them for cancer which they may have been genetically predisposed to, whether or not they have been exposed to asbestos, we have done something that is dangerous and the fund may not be able to survive.

The Congressional Budget Office says this fund, as rewritten, will survive. But I believe it could be tightened up to make it better. I believe that the fund has a chance to be viable throughout its entire life and fulfill its promise because we have done a better job in recent years in dealing with exposure to asbestos.

There has been a sea of change in what has happened. In earlier days, the companies did not warn the people who would be using their product about how dangerous it was. Even after they knew it was dangerous, they didn't warn them. Now everybody is warned. For 30 years, maybe 35 years, there has been exceedingly great care utilized when asbestos is about. You see people with masks on and all of that.

I think it is logical to assume that we will continue to see a decline in the claims and also this bill will take out the unjustified claims. Claims of people who have not been given any disability or sickness, even though they have been exposed and they get sick, they will be paid. If they don't get sick, they won't be paid.

That will reduce a lot of the claims. It will come down to people with legitimate illness. If a person comes in with that most grievous disease, mesothelioma, which is generally a fatal disease, this would entitle them to claim $1.1 million dollars, be able to have half of it paid in 30 days and the other half in 6 months.

Today, they do not know what they will get, and most of the claimants are deceased before money is recovered.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

AMENDMENT NO. 2747, AS MODIFIED

Mr. FRIST. Mr. President, I ask unanimous consent that amendment No. 2747 be modified with the change at the desk.

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

The amendment (No. 2747), as modified, is as follows:

On the appropriate page, insert the following and number accordingly:

GUIDELINES.—In determining which defendant participants may receive inequity adjustments the Administrator shall give preference in the following order:

(A) Defendant participants that have significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80 percent or more of their available primary insurance limits for asbestos claims remains available.

(B) Defendant participants where, pursuant to the guidance set forth in section 404(a)(2)(E), 75% of its prior asbestos expenditures were caused by or arose from premise liability claims.

(C) Defendant participants who can demonstrate that their prior asbestos expenditures is inflated due to an unusually large, anomalous verdict and that such verdict has caused the defendant to be in a higher tier.

(D) Any other factor deemed reasonable by the Administrator to have caused a serious inequity.

In determining whether a company has significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80% or more of their available primary insurance limits for asbestos claims remains available, the Administrator shall inquire and duly consider:

(1) The defendant participant's expected future liability in the tort system and accordingly the adequacy of insurance available measured against future liability.

(2) Whether the insurance coverage is uncontested, or based on a final judgment or settlement.

MORNING BUSINESS

Mr. FRIST. I ask unanimous consent there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

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

SENATOR SALAZAR'S MOTHER

Mr. REID. Mr. President, this afternoon, I rise to extend the thoughts and prayers of the entire Senate to Senator KEN SALAZAR who left the Capitol last night to be with his mother, Emma.

Mrs. Salazar is suffering from very delicate health. She was taken early this morning from her home in Alamosa, CO, to Denver for hospitalization.

The entire Salazar family is together in Denver as we speak comforting her and each other during this very difficult time.

I want them to know that the thoughts of everyone in this Chamber are with them.

Those of us who have come to know KEN SALAZAR know what a gentleman he is and how family oriented he is.

I spoke to him last night as he was getting ready to leave, and he is very concerned about his mom.

We wish KEN and his family the very best. I hope all Members of the Senate family would keep this good man and his family in their prayers.

TRIBUTE TO ELLEN KNOWLTON

Mr. REID. Mr. President, I rise today to honor a woman who has worked hard to ensure the safety of southern Nevadans, and indeed all Americans, for more than 24 years. Mrs. Ellen Knowlton recently retired from her position as Special Agent in Charge of the FBI's Las Vegas field office. As Special Agent Knowlton brings an end to her long and distinguished career, I join her family and friends in offering our gratitude for her honorable and dedicated service in our community.

Ellen joined the FBI in 1982, and went on to serve in Bureau offices in California, Oklahoma, Louisiana, and Washington, DC. In Washington, she was deputy assistant director of the Bureau's National Security Division Counterintelligence Operations. While in this capacity, Ellen supervised the September 11 terrorist hijacking investigation, for which our Nation is indebted.

In March 2002, Ellen became Special Agent in Charge of the FBI's Las Vegas operations, bringing with her a wealth of knowledge and experience from which Nevada continues to benefit. She refers to this appointment as the ''pinnacle'' of her career. However, I feel it is Nevadans who are truly fortunate for that appointment. Her work in Las Vegas has left a lasting impact on the State and our communities, particularly the relationships Ellen forged with local law enforcement. Her work has set a gold standard of cooperation and goodwill.

Special Agent Knowlton's colleagues within the law enforcement community often express their admiration for her. This speaks not only to her merits as a professional but to her character as an individual as well. Ellen has chosen a life of service and deserves all the praise and accolades she receives.

I am grateful for Ellen's untiring efforts on behalf of our country and leadership in our community. I wish her and her family the best as they embark on this new phase of their lives.

PANDEMIC INFLUENZA PREPAREDNESS

Mr. COCHRAN. Mr. President, I appreciate the efforts of the Labor, Health and Human Services subcommittee to ensure that the Senate and the public are educated on the important issues surrounding pandemic flu preparedness. The input of this panel in November was important to this committee as we worked to provide pandemic flu funding in the December Defense Appropriations bill.

The Senate Appropriations Committee has taken a significant first step in addressing this issue. We will continue to work with the Secretary of HHS and the White House to provide the funding necessary to prepare our country for an influenza pandemic. We realize these efforts require Federal and local governments, as well as private industry, working together. I am pleased that these interests are all represented here today.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to 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 June 8, 2005, in Brooklyn, NY, Dwan Prince a gay man, was savagely beaten by three men who screamed anti-gay slurs during the assault. The attack took place outside Prince's apartment building in the Brownsville section of Brooklyn. Prince was immediately rushed to the hospital after the attack where he remained for close to a week.

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.

EDUCATION FOR GLOBAL LEADERSHIP

Mr. LUGAR. Mr. President, in this era defined by rapid globalization and the fight against terrorism, an increased focus on international studies and foreign language instruction in our schools is critical to maintaining our country's global leadership position. In order to foster the continued expansion of economic development and democratic institutions across the globe, we need citizens and workers who are knowledgeable of other cultures and languages.

This need has become painfully evident in recent years as our Armed Forces, intelligence agencies, and diplomatic services have struggled to find personnel fluent in languages such as Arabic and Farsi and knowledgeable of the traditions and customs of the Middle East. At the same time, growing economic opportunities in Asia have put a premium on knowledge of languages such as Chinese, Hindi, Japanese, and Korean.

Fortunately, we are seeing welcomed movement in confronting this challenge. Recently, President Bush launched the National Security Language Initiative to increase the number of Americans learning critical foreign languages. And today, the Committee for Economic Development, CED, a nonpartisan organization of business leaders and university presidents, has released a new policy statement, Education for Global Leadership: The Importance of International Studies and Foreign Language Education for U.S. Economic and National Security. This report provides recommendations for the public and private sectors for strengthening and expanding international studies and foreign language instruction across all levels of learning.

I welcome these developments and encourage my colleagues to review the CED's recommendations and join in this critical effort to enhance our economic and national security.

PATRIOT ACT DEAL

Mr. FEINGOLD. Mr. President, I understand that some of my friends and colleagues in this body have come to an agreement with the White House on reauthorizing the PATRIOT Act.

While I respect these Senators greatly, I am gravely disappointed in this so-called deal. The White House agreed to only a few minor changes to the PATRIOT Act conference report that could not get through the Senate back in December. These changes do not address the major problems with the PATRIOT Act that a bipartisan coalition has been trying to fix for the past several years. We have come too far and fought too hard to agree to reauthorize the PATRIOT Act without fixing those problems. A few insignificant changes just doesn't cut it. I cannot support this deal, and I will do everything I can to stop it.

I understand the pressure that my colleagues have been under on this issue, and I appreciate all the hard work that they have done on the PATRIOT Act. It has been very gratifying to work on a bipartisan basis on this issue. It is unfortunate that the White House is so obviously trying to make this into a partisan issue, because it sees some political advantage to doing so. Whether the White House likes it or not, this will continue to be an issue where both Democrats and Republicans have concerns, and we will continue to work together for changes to the law. I am sure of that.

But I will also continue to strongly oppose any reauthorization of the PATRIOT Act that does not protect the rights and freedoms of law-abiding Americans with no connection to terrorism. This deal does not meet that standard; it doesn't even come close.

The PATRIOT Act conference report, combined with the few changes announced today, does not address the core issues that our bipartisan group of Senators have been concerned about for the last several years. The modest but critical changes we have been pushing are not included. I am not talking about new issues. We are talking about the same issues that concerned us when we first introduced the SAFE Act more than 2 years ago to fix the PATRIOT Act. And we have laid them out in detail in several different letters over the past few months.

First, and most importantly, the deal does not ensure that the government can only obtain the library, medical and other sensitive business records of people who have some link to suspected terrorists. This is the section 215 issue, which has been at the center of this debate over the PATRIOT Act. Section 215 of the PATRIOT Act allows the government to obtain secret court orders in domestic intelligence investigations to get all kinds of business records about people, including not just library records but also medical records and various other types of business records. The Senate bill that this body passed by unanimous consent back in July would have ensured that the government cannot use this power to go after someone who has no connection whatsoever to a terrorist or spy or their activities. The conference report replaces the Senate test with a simple relevance standard, which is not adequate protection against a fishing expedition. And the deal struck today leaves that provision of the conference report unchanged.

Second, the deal does not provide meaningful judicial review of the gag orders placed on recipients of section 215 business records orders and National Security Letters. Under the deal, such review can only take place after a year has passed and can only be successful if the recipient proves that that government has acted in bad faith. The deal ignores the serious first amendment problem with the gag rule under current law. In fact, it arguably makes the law worse in this area.

And third, the deal does not ensure that when government agents secretly break into the homes of Americans to do a so-called sneak and peek search, they tell the owners of those homes in most circumstances within 7 days, as courts have said they should, and as the Senate bill did.

As I understand it, this deal only makes a few small changes. It would permit judicial review of a section 215 gag order, but under conditions that would make it very difficult for anyone to obtain meaningful judicial review. It would state specifically that the government can serve National Security Letters on libraries if the library comes within the current requirements of the NSL statute, a provision that as I read it, just restates current law. And it would clarify that people who receive a National Security Letter would not have to tell the FBI if they consult with an attorney. This last change is a positive step, but it is only one relatively minor change.

So this deal comes nowhere near the significant, but very reasonable, changes in the law that I believe are a necessary part of any reauthorization package. We weren't asking for much. We weren't even asking for changes that would get us close to the bill that this body passed without objection last July. But the White House would not be reasonable and has forced a deal that is not satisfactory in an effort to serve their partisan purposes. I will oppose it, and I will fight it.

ENEMY COMBATANTS

Mr. KYL. Mr. President, I rise today to put into the RECORD a letter that Senator GRAHAM and I recently sent to the Attorney General, and to respond to misrepresentations that have been made in the press and by others regarding the circumstances of the enactment of the Graham amendment to last year's Defense Authorization bill. The letter responds to similar misleading attacks that were made against the Justice Department at the beginning of this year. My office has received several inquiries about this letter, which was sent to the Attorney General on January 18. So that anyone interested in this matter might review the letter, I will ask to have it printed in the RECORD.

I ordinarily would not comment on the meaning of legislation that already has been enacted into law. In this case, however, there has been a considerable amount of post-enactment commentary by others on the meaning of the Graham amendment. Much of this commentary insinuates that the Administration and the backers of the amendment are violating an agreement with members of the minority by characterizing the amendment as governing pending litigation. Since the enactment of the Graham amendment last December, some critics have begun to paint a revisionist history of this legislation. In this new account, the Graham amendment supposedly was intentionally modified by the Senate so as not to affect pending litigation. Also in this version of events, Senators relied on representations that the amendment was modified to carve out pending litigation when they voted in favor of its final passage. This conspiracy theory is without foundation.

For those unfamiliar with the Graham amendment, the disputed provision in the legislation changes the Federal habeas code by adding a subsection providing as follows: ''Except as provided in section 1005 of the Detainee Treatment Act of 2005, no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantanamo Bay, Cuba.'' The amendment also provides that ''[t]his section shall take effect on the date of the enactment of this Act.'' In addition, the amendment establishes substantive standards for limited judicial review of CSRT determinations and military-commission decisions, and provides that the paragraphs creating those review standards ''shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.''

Some critics now assert that nothing in the amendment prevents pre-enactment habeas actions from going forward in their previous form. For reasons explained in the letter to the Attorney General, I believe that such an interpretation is untenable. In addition to the points made in the letter, I would also add the following: the amendment states that the changes that it makes to the habeas code ''shall take effect on the date of the enactment of this Act.'' If the current pack habeas cases are allowed to go forward in their current form, the law's provision that ''no court, justice, or judge shall have jurisdiction'' to hear those cases in that form will not be effective on the date of the law's enactment. Rather, the courts still would have jurisdiction over these cases after the date of enactment, and the law's all-encompassing jurisdictional bar would become effective only when the current litigation would exhaust itself—a date that likely would come only years in the future. Such a result would not be consistent with the requirement that the law's total jurisdictional prohibition ''take effect of the date of the enactment of this Act.''

Of those critics who argue that the amendment carves out pre-enactment habeas cases, I would simply ask, what part of ''no court, justice or judge'' do you not understand? How could this language possibly be more comprehensive? And how could any Senator possibly have been misled as to its effect?

Some of the recent criticism of the amendment in the press has taken a new tack. A few critics have begun to suggest that even if the legislative text of the Graham amendment does wipe out the pending habeas cases, Senators were affirmatively misled about this aspect of the final amendment. The allegation is that Senators were led to understand that the amendment that they were voting on would not affect pending cases. I have reviewed the legislative record from the days leading up to the vote on final passage of the Graham amendment, and find this suggestion wanting. Allow me to describe what was actually said about the original version of the amendment—the Graham/Kyl amendment—as well as the final version, the Graham/Levin/Kyl amendment, prior to their passage.

On November 10, Senator LEVIN stated with regard to the original Graham/Kyl amendment, ''I read the language as to how broad it is. It eliminates explicitly any appeal: No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus, and that is the way an appeal goes to a court from one of these people. It is eliminated.'' (151 Cong. Rec. S12665.) Similarly, later that day, Senator BINGAMAN characterized the original Graham amendment as follows: ''It essentially denies all courts anywhere the right to consider any petition from any prisoner being held at Guantanamo Bay.'' (151 Cong. Rec. S12667.) And later, on November 15, Senator DURBIN said the following about the original Graham/Kyl amendment: ''the amendment would eliminate habeas for detainees at Guantanamo Bay. . . . It would strip Federal courts, including the U.S. Supreme Court, of the right to hear any challenge to any practice at Guantanamo Bay, other than a one-time appeal to the D.C. Circuit. . . . It applies retroactively, and therefore also likely would prevent the Supreme Court from ruling on the merits of the Hamdan case, a pending challenge to the legality of the administration's military commissions.'' (151 Cong. Rec. S12799.)

Thus from the beginning, Senators recognized and emphasized to their colleagues that the original Graham amendment language was comprehensive. They also recognized and emphasized that the amendment barred pending cases from going forward, including the Hamdan case in the Supreme Court. These aspects of the original amendment not only were generally acknowledged, but were a point of controversy during the Senate debate.

Had the subsequent Graham/Levin/Kyl amendment departed from the original amendment by carving out pending cases, this would have been a momentous change. Aside from the fact that such a change would have gutted the amendment, it also would addressed one of the issues about which opposing Senators had expressed sharp concern. Surely, had such a change been made or even intended to be made, the fact would have been noted. Instead, it is the dog that did not bark.

First, neither Senator GRAHAM nor I ever said anything in the days leading up to the final vote on the amendment that could possibly suggest to anyone that the modified amendment exempted pending cases. Senator GRAHAM is the lead sponsor and I am an original cosponsor of the amendment that passed the Senate on November 10. We controlled the amendment. No one was in a better position than we were to describe what the amendment does and does not do. Had such a major change to the amendment been made, it is inconceivable that one of us would not at least have commented on it. No such comment or even the suggestion of such a change was made by either one of us.

Indeed, the few statements that Senator GRAHAM did make prior to passage of Graham/Levin/Kyl that describe the amendment's reach tend to confirm that the amendment does not treat detainees differently based on when they filed their claims. For example, on the evening of November 14, when the final amendment was introduced, Senator GRAHAM noted that ''[i]nstead of having unlimited habeas corpus opportunities under the Constitution, we give every enemy combatant, all 500, a chance to go to Federal court, the Circuit Court of Appeals for the District of Columbia.'' (151 Cong. Rec. S12754.) ''What we have done, working with Senators LEVIN, KYL, and others, we have created that same type of appeals process for all military commission decisions.'' Ibid.

During that same evening, Senator LEVIN also commented on the new amendment. Although he said that the amendment did not ''strip jurisdiction'' from the courts, he made clear that he meant that jurisdiction remained in place because the pending cases—including challenges to military-commission decisions—could go forward as claims invoking the substantive review standards of the new amendment. Senator LEVIN stated: ''What we have done in this amendment, we have said that the standards in the amendment will be applied in pending cases, but the amendment will not trip the courts of jurisdiction over those cases. For instance, the Supreme Court jurisdiction in Hamdan is not affected.'' (151 Cong. Rec. S12755.) Again, later: ''what our amendment does, as soon as it is enacted and the enactment is effective, it provides that the standards we set forth in our amendment will be the substantive standards which we would expect would be applied in all cases, including cases which are pending as of the effective date of this amendment.'' Ibid. And again: ''because it would not strip courts of jurisdiction over these matters where they have taken jurisdiction, it does, again, apply the substantive law and assume that the courts would apply the substantive law if this amendment is agreed to.'' Ibid.

Whether the amendment, by barring one type of claim and authorizing another type to take its place, strips the courts of jurisdiction, is, to some extent, a matter of perspective. It is a question of whether the glass is half empty or half full. On the operative issue, however, Senator LEVIN's remarks on November 14 are consistent not only with my own and Senator GRAHAM's characterization of the amendment (see, e.g. 151 Cong. Rec. S14263), but also with the interpretation now advanced by the Justice Department: that the current claims can go forward, but only as claims for review under the substantive standards created by the new act.

It bears mention that the revised amendment's authorization of judicial review of military-commission decisions, though narrow and venue-restricted, was a substantial departure from the original amendment. As Senator LEVIN had emphasized on November 10, the original amendment ''eliminates court review of the sentences of enemy combatants before these commissions.'' (151 Cong. Rec. S12664.) He stated that the amendment even ''eliminates the appeal of a conviction that led to a capital offense.'' (151 Cong. Rec. S12665.) Under the original Graham amendment, no appeal of any kind would have been permitted from the military-commission verdict in the Hamdan case.

The revised amendment does allow limited appeals of final military-commission decisions. In fact, this change was described to Senators as the principal difference between the original and revised Graham amendments. Senator LEVIN noted on the morning of November 15, before the vote on Graham/Levin/Kyl:

> The amendment which was approved last Thursday, which is the one now awaiting this amendment, would have provided for review only for status determinations and not of convictions by military commissions. . . . One of the reasons I voted against the amendment last Thursday is that it did not provide for that direct judicial review of convictions by military commissions. That is the major change in the amendment before the Senate, the so-called Graham-Levin-Kyl amendment which is before the Senate. There are a number of other changes as well, but of all the changes, what this amendment does is add . . . a direct appeal for convictions by military commissions. (151 Cong. Rec. S12754.)

Other Senators speaking about the amendment prior to the final vote did not even view the detainee's glass as half full. On the morning of November 15, Senator SPECTER exhorted his colleagues to oppose the amendment, stating: ''On the face of the Graham amendment, it . . . even takes away jurisdiction from the Supreme Court of the United States.'' (151 Cong. Rec. S12799.) He later stated that the amendment would ''strip Federal courts of the authority to consider a habeas petition from detainees being held in U.S. custody as enemy combatants,'' (151 Cong. Rec. 12801), and reiterated that the Graham/Levin/Kyl amendment was an amendment ''which on the face takes away jurisdiction of the Supreme Court of the United States.'' Ibid. Senator SPECTER's remarks should at least have placed any Senator on inquiry notice that the final amendment might affect pending cases.

Finally, Senator DURBIN also spoke about the final Graham amendment prior to the vote. As I mentioned earlier, on the morning of November 15, Senator DURBIN expressed concern that the original Graham/Kyl amendment's jurisdictional bar would apply ''retroactively,'' and that it ''likely would prevent the Supreme Court from ruling on the merits of the Hamdan case.'' (151 Cong. Rec. S12799.) Almost immediately after these words, Senator DURBIN also commented on the revised Graham amendment. He stated:

The Graham-Levin substitute amendment would somewhat improve the underlying amendment by expanding the scope of review in the D.C. Circuit Court to include whether CSRT's are legal, but not whether a particular detainee's detention is legal. It would also allow for post-conviction review of military commission convictions. However, the amendment would still eliminate habeas review and overrule Rasul.

(151 Cong. Rec. S12799.) Again, no suggestion was made that the new amendment might carve out pending cases, despite the Senator's expressed concern about retroactivity. The Senator gave no hint that he expected the new amendment to treat pending cases any differently than did the old amendment. Senator DURBIN does not appear to have been misled about the effect of the final Graham amendment, nor did he mislead anyone else.

To be sure, two statements that do appear in the RECORD prior to the final vote on the Graham amendment both assert that the amendment would not ''strip jurisdiction''—and both of these statements are unleavened by Senator LEVIN's accompanying clarification that pending cases would proceed under the substantive review standards of the new law. Both of these statements, however, appear to have been introduced into the record following the final vote—both refer to that vote in the past tense. Neither Senator thus could have misled other Members about the effect of the amendment prior to the vote. Senator KERRY made clear in his statement that his remarks were made only after the November 15 vote: ''Today, I voted in favor of Senator BINGAMAN's amendment No. 2523, because it would have preserved judicial review . . . When the Bingaman amendment failed, I voted for a second-degree amendment.'' (151 Cong. Rec. S12799.) Similarly, Senator REID also emphasized that his statement did not precede the actual vote: ''the Senate has voted to deny the availability of habeas corpus to individuals held by the United States at Guantanamo Bay, Cuba. I rise to explain . . . my votes in favor of the Bingaman amendment and the Graham-Levin amendment earlier today.'' (151 Cong. Rec. S12802.) Neither of these statements was part of the information that was presented to Senators prior to the final vote on the Graham amendment.

To summarize, the legislative record is utterly devoid of any evidence that Senators were led to believe that the Graham/Levin/Kyl amendment would carve out pending cases. Prior to the vote, several Senators spoke of the original amendment's breadth and the fact that it would terminate pending cases. Senator GRAHAM, drawing no distinction between pre- and post-enactment filers, stated that the revised amendment would apply a uniform standard to all 500 Guantanamo detainees. Senator LEVIN made clear that ''the standards we set forth in our amendment will be the substantive standards which we would expect would be applied in all cases, including cases which are pending as of the effective date of this amendment.'' Senator SPECTER pointedly warned that the final amendment would ''strip Federal courts of the authority to consider a habeas petition from detainees'' and ''even take[] away jurisdiction from the Supreme Court of the United States.'' Other Members who condemned the original amendment for terminating pending cases gave no hint that they viewed the new amendment any differently. Quite simply, there is no evidence that anyone misled anyone else about the fact that the Graham amendment would only allow pending cases to go forward under the limited review standards of the new law.

On November 15, the Graham/Levin/Kyl amendment passed the Senate by a vote of 84–14. That same day, the entire Defense Authorization bill passed the Senate by unanimous consent and the Senate appointed conferees. One month later, on December 16, the House and Senate conferees agreed to file a conference report. In the days that followed, a new slew of statements were made in the Senate and even in the House commenting on the meaning of the Graham amendment. Many of these statements are simply the usual effort by the losers of legislative battles to rewrite legislative history. The majority of the Senators, for example, who announced in these statements that the Graham amendment was not intended to affect pending cases also were among the 14 Senators who voted against the final Graham/Levin/Kyl compromise. No one can seriously suggest that these members relied on any representations made by the backers of the amendment. And more importantly, given the marked disagreement between the statements that were made at this late stage about the effect of the amendment on pending cases, no one could justifiably have relied upon one view rather than another to learn what the amendment does. Rather, it is up to members to examine the actual language of the amendment.

I hope that this review of the circumstances of the enactment of the Graham amendment will put to rest any accusation that members of Congress were misled about the amendment's impact on pending cases. Whether the amendment does in fact govern pending cases is another matter. For the reasons expressed here and in the January 18 letter to the Attorney General, I believe that it does so, but that, of course, is a matter for the courts to decide. In the event that the courts concur with my and Senator GRAHAM's interpretation of the amendment, however, no Member should be heard to complain that they were led to believe that the amendment would operate differently.

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

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

U.S. SENATE,
Washington, DC, January 18, 2006.

Hon. ALBERTO GONZALES,
Attorney General, U.S. Department of Justice, Washington, DC.

DEAR MR. ATTORNEY GENERAL: We understand that the Justice Department has been criticized recently in the press and by members of Congress for asserting in court proceedings that a provision in the Fiscal Year 2006 Defense appropriations bill that regulates legal actions brought by Guantanamo detainees—the so-called ''Graham Amendment''—affects pending litigation. Critics contend that the Administration's actions violate an agreement with Members of Congress by arguing that the Graham Amendment makes no exception for pending cases.

We are the lead sponsor and an original cosponsor of the Graham Amendment. We write to assure you that the attorneys under your supervision have correctly interpreted the disputed provision.

The Graham Amendment states in relevant part that ''effect[ive] on the date of enactment of this Act,'' except pursuant to special review procedures specified in the Act, ''no court, justice, or judge shall have jurisdiction to hear or consider'' a habeas application or any other action relating to the detention of a Guantanamo detainee. All Members of the Senate had access to this language before the Senate voted on the final Graham Amendment and the final Defense appropriations bill. The language cannot reasonably be construed to leave intact any power in the courts to entertain the current barrage of habeas petitions and other actions brought by Guantanamo detainees. The Defense appropriations bill was signed into law on December 30, 2005. As of that date, literally ''no court, justice, or judge'' has jurisdiction to entertain these lawsuits. That is what we intended.

Had we intended to preserve some power in the courts to continue to hear the current flurry of legal actions, we would have done so. We did not. Moreover, as we made clear when the final defense bill passed the Senate, we are well aware that for over a century, American courts consistently have interpreted legislation removing a court's jurisdiction over a type of case to also remove its ability to hear pending cases. Surely, this long line of precedent negates any ambiguity as to the effect of the Graham Amendment on pending cases.

We also note that a contrary interpretation of the Amendment's effect would be inconsistent with the structure of the Amendment. As mentioned above, other sections of the Graham Amendment create special standards and procedures for judicial review of the detention and trial of Guantanamo detainees. The Amendment also states that these special standards and procedures shall apply not only to relevant claims filed after enactment, but also those ''*pending on . . .* the date of the enactment of this Act.'' (Emphasis added.) Obviously, no claim pending at the time of enactment sought to invoke the review standards created by the same Act. This provision calls on the courts and parties to construe pending actions that challenge either the fact of detention or a military trial as requests for review pursuant to the special standards in the new law. And just as obviously, if all pending lawsuits were exempted from the new law, no pending case would be governed by the new review standards. To adopt the construction advocated by the critics—that courts retain jurisdiction to continue to hear all current lawsuits in their current form—would render the statutory language applying the new standards to pending cases a dead letter.

The original Graham-Kyl Amendment stated that its jurisdiction-removing provisions

''apply to [actions] pending on or after the date of the enactment of this Act.'' This language later was replaced with language specifying that the Amendment ''shall take effect on the date of the enactment of this Act.'' There were two reasons for this substitution: first, the jurisdiction-removing provision technically does not apply any new standards to the pending cases. Rather, it eliminates the forum in which those cases can be heard. Second, the original language ''applying'' jurisdiction removal to pending cases appeared to require that those cases be dismissed outright. Such a result would have conflicted with subparagraph (h)(2), which is designed to allow current cases to continue in the D.C. Circuit as requests for review pursuant to the new standards. Altering the effective-date language eliminated this internal inconsistency and clarified that, rather than requiring that pending cases be dismissed, the new law allows the courts to construe those cases as requests for review under the new standards and, where necessary, transfer them to the appropriate forum.

This is all that we intended by this modification of the Graham Amendment's effective-date language and, more importantly, this is all that the language does. Nothing in this modification preserves any jurisdiction in the courts to continue the current actions in their present form after the date of the enactment of the Act.

To the extent that anyone construing the Graham Amendment might be tempted to subordinate actual statutory text to expressions of Senators' private intent, two points are in order: first, we are two of the three cosponsors on the ''Graham-Levin-Kyl Amendment'' that was introduced in the Senate on November 14, and one of us is the lead sponsor. Both of us made clear in the Congressional Record at the time that the final law passed the Senate that we understood, in light of standard rules of statutory construction, that removal of jurisdiction would eliminate pending cases—the same interpretation now espoused by the Justice Department.

In addition, on November 14, the other cosponsor of the amendment, Senator Levin, stated that ''[w]hat our Amendment does, as soon as it is enacted and the enactment is effective, it provides that the substantive standards we set forth in our Amendment will be the substantive standards which we would expect would be applied in all cases, including cases which are pending as of the effective date of this Amendment.'' 151 Cong. Rec. 12755. He also stated that day: ''the standards in the Amendment will be applied in pending cases.'' Ibid. The effective-date and pending-claims language in the Amendment introduced on November 14 is identical to that in the enacted statute. Thus, on the day of introduction, all three original cosponsors of the Graham Amendment understood it to operate in the same way: the pending Guantanamo cases can go forward, but only under the special review standards and procedures established by the Amendment.

Finally, we should comment on the various other legislative statements purporting to explain the intent behind the Graham Amendment. By our count, at least nine Members of the minority have introduced statements in the Congressional Record announcing that the Graham Amendment was meant to have no effect on pending litigation. For the record, the only one of these Members who played any role in crafting the Amendment is Senator Levin. Negotiations with Senator Levin resulted in a substantial expansion of the scope of the judicial review permitted under the special review procedures established by the Amendment. None of the other Members commenting on the intent behind the Amendment's effective-date subsection played any significant drafting role of which we are aware. Indeed, some of these minority Members who purport to define the authorial intent also complain that the Amendment was ''negotiated largely behind closed doors by the White House and a select few majority Members of Congress'' (151 Cong. Rec. 12201), or that ''all negotiations on this provision have occurred in back rooms, without the involvement of the vast majority of Congress, and without even consulting most of the conferees.'' 151 Cong. Rec. 14170. Such complaints are not consistent with the ''insider'' perspective that these Members purport to share with the reader. Several of these Members also are among the 14 Senators who even voted against the final Graham-Levin-Kyl Amendment when it was offered in the Senate on November 15. Clearly, it would be inappropriate to allow those who opposed the amendment to define the intent of the authors of the amendment.

Of course, more important than any private intent harbored by any Member of Congress is the actual legislative text that was passed by both houses of Congress and signed into law by the President. As we noted previously, absent repudiation by the federal courts of over a century of precedent construing like statutes, the Graham Amendment unambiguously eliminates the federal courts' power to hear Guantanamo detainees' cases in their current form. Notwithstanding the accusations made by some critics, your litigators have, in our view, properly interpreted the Graham Amendment. And, at the end of the day, we anticipate that the courts will make these jurisdictional determinations in accord with their own rules, procedures, precedent, and the plain language of the statute.

Sincerely,

LINDSEY O. GRAHAM,
U.S. Senator.
JON KYL,
U.S. Senator.

GLOBAL NUCLEAR ENERGY PARTNERSHIP

Mr. CRAIG. Mr. President, I rise today to express my agreement with President Bush's belief that our country's security depends in large part on a diverse energy portfolio, one that is not overly reliant on any one energy source, especially sources of foreign origin. I agree with the President that this country is overly dependent on foreign oil. Consistent with that belief, the Bush administration has just announced a potentially far-reaching energy program known as the Global Nuclear Energy Partnership or GNEP. This program provides a wide-reaching, long-term plan for establishing a robust and sustainable future for nuclear energy in this country and abroad.

The Global Nuclear Energy Partnership promises to provide abundant energy, without emitting greenhouse gases; to recycle used nuclear fuel in order to minimize waste; to safely and securely allow developing nations to deploy nuclear power to meet their energy needs, while reducing proliferation risks; to assure maximum energy recovery from still-valuable used nuclear fuel; and to allow the U.S. to rely on a single geologic waste repository for the rest of this century.

Nuclear energy currently provides about 20 percent of this Nation's electricity, and does so without emitting any carbon, greenhouse gases, or other air pollutants. All the waste generated by commercial nuclear powerplants is securely managed and destined for safe, permanent disposal in a geologic repository.

However, according to current law, that repository can contain only slightly more than the amount of waste already stored at existing reactor sites. Even if the law is changed, the repository at Yucca Mountain can only accommodate about the amount of spent nuclear fuel that will be generated by the existing reactors in this country over their lifetimes. If nuclear power is to have a future in this country, even to maintain its current 20 percent share of electricity generation, either a second repository will need to be developed soon—with many more to follow—or an alternative means of managing this waste is needed.

After a single use, spent nuclear fuel retains more than 95 percent of its energy potential. That energy potential could be tapped by reprocessing the spent fuel, recycling the useable part and disposing of the rest as waste, which makes up only about 3–4 percent of the spent fuel. This could substantially reduce the amount of long-lived nuclear waste requiring burial in a geologic repository, and could extend the lifetime of the Yucca Mountain repository many fold.

But efforts to recycle spent fuel were abandoned in this country back in the 1970s, largely because of concerns about nuclear proliferation. Those concerns stemmed from the fact that, at that time, the method used to recycle spent fuel, the ''PUREX'' process, separated out pure plutonium, which might be used to construct a nuclear bomb.

During the 30-plus years since then, the U.S. has—through research at its National Laboratories—made considerable progress in developing new methods for reprocessing spent fuel that are much less prone to proliferation risks, because they do not separate out pure plutonium, but keep it mixed with other actinides. This mixture is not readily used for nuclear weapons.

Reintroducing recycling into this country's strategy for managing spent fuel is a major change in policy, and one that deserves serious discussion. That discussion should be based on fact and not emotion; should address current technologies, not those from more than a generation ago; and should consider reasonable alternatives to maintaining nuclear energy as a viable part of our Nation's energy supply.

And what reasonable alternatives are there? Total electricity consumption in the U.S. is projected to increase by about 40 percent by 2025. Wind and solar energy cannot provide large-scale, base-load electricity, because they are intermittent energy sources. Hydro provides about 10 percent of our electricity right now, but building new

dams to fully accommodate the increased demand is not possible. Relying solely on fossil fuels to make up the difference is environmentally irresponsible, and with the price of natural gas increasing dramatically, less economically appealing. Nuclear energy is the most environmentally sound technology capable of adequately meeting such increased demand. But even simply maintaining the current share of electricity generation provided by nuclear energy will require constructing many new nuclear powerplants in this country.

So should we continue to push for opening Yucca Mountain to begin accepting waste as soon as possible? The answer is clearly yes. Electric utilities demand confidence that spent fuel will be managed responsibly if they are going to continue to build new nuclearpower plants in the U.S.

But can we build many more Yucca Mountains to accommodate the additional waste? I think the answer is clearly no.

Still, new nuclear powerplants are being planned—and not only in this country, which has not ordered a new nuclear plant in 30 years, but around the world. China, Russia, several European countries, and others are planning—or building—new nuclear powerplants. Somewhere between 100 and 150 new nuclear plants are likely to be built in the next 20 years or so. In fact, the U.S., despite having pioneered nuclear power, risks falling far behind in this home-grown technology.

Furthermore, the growth in nuclear power worldwide, while avoiding the potential environmental impact of a similar number of fossil-fuel powerplants, raises serious concerns about nuclear proliferation. An increasing number of countries are interested in developing nuclear power, and in some cases, developing or acquiring technologies that could lead to their ability to produce nuclear weapons. North Korea and Iran constantly remind us of the potential danger.

Therefore, the U.S. and other responsible nuclear-capable countries need to work together to help developing countries acquire clean, affordable energy, but not the means to develop nuclear weapons.

And this is another farsighted goal of the Global Nuclear Energy Partnership. Through GNEP, this administration proposes to work with international partners to help developing nations deploy proliferation-resistant and emission-free nuclear energy by developing international fuel services and small-scale modular reactors.

Finally, if this country is to eventually wean itself off its dependence on foreign oil and gas, we need to develop a clean-burning fuel for transportation. In fact, even if nuclear power replaced all the fossil-fueled powerplants in this country, it would make little impact on our oil use. We would still need to import about 70 percent of our oil for transportation.

This need to reduce our dependence on foreign oil, in addition to reducing carbon emissions, was the impetus for President Bush to propose his Hydrogen Initiative in the 2001 State of the Union, and he has restated his convictions in all subsequent State of the Union addresses.

Consistent with President Bush's vision, we must continue our efforts to make the transition to a hydrogen-based economy, and we need to generate that hydrogen by using environmentally responsible technologies. Nuclear energy provides one such technology with high-temperature reactors such as the Next Generation Nuclear Plant that will be able to produce market-competitive hydrogen.

Nuclear power has the potential to provide clean, affordable, and emission-free electricity to an increasingly energy-hungry world, and the next generation of nuclear plants will produce fuel for transportation in an increasingly oil-starved world.

Access to affordable energy is crucial for improved quality of life and overall economic prosperity. The Global Nuclear Energy Partnership promises to increase energy security, both here in the United States and abroad. It will encourage environmentally responsible energy development around the world, and will provide that energy with minimal impact on the environment. I congratulate our President for his vision and commitment to helping make all this possible.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

CORETTA SCOTT KING

• Mr. SALAZAR. Mr. President, earlier this week, our Nation mourned the passing and celebrated the life of one of the civil rights era's greatest leaders. Coretta Scott King was the wife of civil rights activist Martin Luther King, Jr., and an incredible leader in her own right.

Mrs. King's death came just days after the Nation commemorated the contributions her late husband made to our country and only a few months after the passing of Rosa Parks and Constance Baker Motley, two pillars of our country's civil rights movement.

I spent Martin Luther King Day with my family. As we discussed the progress our great country has made in its quest to be a more inclusive America, I was reminded of the personal sacrifices of so many in the struggle for equality and dignity.

Coretta Scott King was not troubled by these sacrifices. Years later, she reflected ''I understood when I married Martin that I did not just marry a man. I married a vision. I married a destiny.'' Upon his untimely passing, Mrs. King carried on this vision, sharing his message with other generations and even other continents.

Coretta Scott King was exposed to the injustice of segregation at an early age. She grew up poor, in segregated Alabama, where she helped support her family by working in the cotton fields. She graduated first in her high school class, and she and her sister became the first two African-American graduates of Antioch college in Ohio. She studied education and music. After graduation she enrolled at the New England Conservatory of Music. Through the course of her life, she received over 60 honorary doctorates from colleges and universities.

After her husband's assassination, Mrs. King continued raising her 4 children while her presence as a civil rights leader was growing. Only four days after his death, she led a march of 50,000 people through the streets of Memphis. The following year, she took her late husband's place in the Poor People's Campaign at the Lincoln Memorial in June of 1968.

But she did not simply represent her late husband. A unique role evolved over time for Mrs. King.

She made her own contributions through many venues, including more than 30 Freedom Concerts during the 1960s. At these Freedom Concerts, Mrs. King lectured, read poetry and sang to raise awareness and money for the civil rights movement. In her lifetime she authored three books, and helped found dozens of organizations including the National Black Coalition for Voter Participation and the Black Leadership Roundtable.

After the death of her husband, Mrs. King began gathering support for the Martin Luther King, Jr., Center for Nonviolent Social Change in 1969. She devoted herself tirelessly to the establishment of a national holiday to honor her late husband.

In 1983, she brought together more that 800 human rights organizations to form the Coalition of Conscience.

In 1985, Mrs. King and three of her children were arrested at the South African Embassy in Washington, DC for protesting apartheid. She stood with Nelson Mandela in Johannesburg when he became South Africa's first democratically elected president.

In 1987, she helped lead a national Mobilization Against Fear and Intimidation in the Forsyth March on Washington.

In preparation for the Reagan-Gorbachev talks, in 1988, she served as head of the U.S. delegation of Women for a Meaningful Summit in Athens, Greece.

In 1993, Mrs. King was invited by President Clinton to witness the historic handshake between Israeli Prime Minister Yitzhak Rabin and Palestinian Chairman Yassir Arafat at the signing of the Middle East Peace Accords.

She further lent her support to democracy movements worldwide and served as a consultant to many world leaders.

In the later years of her life she struggled tirelessly fighting for women's rights and working to prevent the spread of HIV/AIDS. Mrs. King fulfilled

one of her life's major goals and Dr. King's birthday is now celebrated annually in over 100 nations.

I wish to commemorate the incredible message of this woman. Recent celebrations commemorating the 50th anniversary of the Supreme Court's landmark ruling in Brown v. Board of Education and the 40th anniversary of the enactment of the Voting Rights Act, remind us of just how far our country has come.

Mrs. King once remarked, ''Struggle is a never ending process. Freedom is never really won—you earn it and win it in every generation.'' Our country has lost a giant who took on the struggle for freedom. If we truly wish to honor her, we must all assume the responsibility to fight injustice and inequality.

I thank Mrs. King for her incredible contributions to this country and to the world. Her family will continue to be in my thoughts and prayers. While she will be deeply missed, her message will never be forgotten.●

ADDITIONAL STATEMENTS

HONORING PHILIP A. FRANCIS, JR.

● Mr. ALEXANDER. Mr. President, today I want to honor Philip A. Francis, Jr., on his promotion as superintendent of the Blue Ridge Parkway, and his departure from the Great Smoky Mountains National Park. Since 1994, Philip A. Francis, Jr., has served as assistant superintendent of America's busiest national park. For more than 11 years, Phil did an exemplary job of keeping the Smokies on track and moving forward during a very dynamic period of the park's history. Phil served under a succession of three different Smokies superintendents and acted as superintendent himself for well over 2 years of his tenure. His leadership provided an essential element of stability to the park's operations and to improving its relationships with its many partners and surrounding gateway communities.

In recognition of his organizational management talents and his ability to work with numerous and diverse stakeholders, Phil has recently been chosen to become superintendent of the Blue Ridge Parkway. With over 9 million annual visitors, the Smokies is the most visited national park in the country. But the 470 mile-long Blue Ridge Parkway, with nearly 19 million travelers a year, is the National Park Service's busiest management unit.

While at the Smokies, Phil provided oversight and continuity to National Park Service managers at all levels as they negotiated through the complexities of making far-reaching decisions regarding the future of the immensely controversial Cades Cove and Elkmont Historic Districts in the Tennessee portions of the park. And he has played a key role in striving for a resolution to a 60 year-long debate over a proposed new road though the Smokies in North Carolina. Despite the often heated debate among the parties to these contentious discussions, Phil has gained a reputation for his willingness to listen to the concerns of all sides and to look for solutions that recognize their needs while still protecting the park's natural and cultural resources.

Phil has also been an influential proponent for the Smokies in communities outside the park's boundaries and in working with its ever-expanding circle of support groups. Since their founding in 1993, the Friends of the Smokies has raised in excess of $15.5 million in support for improvements at the Smokies. By combining Friends support with assistance from the Great Smoky Mountains Association, the park has been able to broaden its educational programs, undertake the world's first all species biodiversity inventory, and expand environmental education opportunities. Phil has been a key participant in helping develop those new programs, and in creating new nonprofit organizations to manage them.

In 2002, the National Park Service faced a challenge in finding a new superintendent for the Great Smoky Mountains National Park. For those who care about the Smokies, as I do, there was lots of interest in who would be selected. Director Fran Mainella made a great choice when she appointed Dale Ditmanson, and we have grown to appreciate Dale's abilities and passion over the last few years. One of the reasons for Dale's strong start is the help he has gotten from Phil, and I look forward to working with Dale to preserve and carry on Phil's legacy in the Smokies.

I join the park's many neighbors and friends in thanking Phil for his hard work and professionalism while at the Smokies. I extend my congratulations and best wishes to Phil on his new assignment at the Blue Ridge Parkway.●

RETIREMENT OF DALLAS L. HAYDEN

● Mr. BROWNBACK. Mr. President, on December 24, 2005, Dallas L. Hayden, a native son of Kansas retired from Federal service with 26 years with the Department of Agriculture, Office of Inspector General. Mr. Hayden retired as the Special Agent-in-Charge of the Great Plains Region of which Kansas is included.

Mr. Hayden exemplified all that a Federal law enforcement agent should: integrity, loyalty, and above all, the belief that the laws of the land are paramount. Politics never played a part in any investigation under his control. Only the facts mattered.

I want to publicly commend Mr. Hayden for his service and wish only the best for him and his family in the years to come.●

SCHOOL OF DENTISTRY—GIVE KIDS A SMILE DAY

● Mr. COCHRAN. Mr. President, on February 3, 2006, the University Of Mississippi Medical Center School of Dentistry hosted ''Give Kids A Smile Day/National Children's Dental Access Day.'' This event is part of a national initiative by the American Dental Association to focus attention on the epidemic of untreated oral disease among disadvantaged children. As part of this program, 40,000 dental professionals and volunteers provided free educational, preventive, and restorative dental services to children from low-income families at 2,000 locations across the country. In Mississippi, more than 1,200 children from elementary schools in Jackson, MS, and the Mississippi Delta visited the dental school and the School of Nursing Mobile Dental Van for dental services. The event was cosponsored by the Mississippi Dental Association, the Medical Center School of Health Related Professions, the Medical Center School of Nursing, the School of Dentistry's ACT Center, and the Jackson Medical Mall Foundation. Events such as this raise public awareness of dental disease and highlight the ongoing challenges faced by disadvantaged children in accessing dental care.

I applaud the efforts of the University of Mississippi Medical Center School of Dentistry, the Mississippi Dental Association, and other supporting organizations for their efforts to combat childhood dental disease in Mississippi.●

ALPHA KAPPA ALPHA

● Mr. COCHRAN. Mr. President, on January 12–15, 2006, the State of Mississippi hosted the Alpha Kappa Alpha, AKA, Sorority's 98th National Founders Day Weekend which celebrates the founding of the first Greek-letter organization of African-American college women in 1908. AKA was created to encourage high scholastic and ethical standards and to enrich the social and intellectual aspects of college life for African American women. AKA is now a 17,000 member organization with a broad mission to improve conditions in communities through volunteer service. AKA has made great strides in helping individuals and communities develop and maintain constructive relationships with others. National Founders Day Weekend also serves to recognize and commemorate the Mississippi Health Project.

The Mississippi Health Project, sponsored by AKA, brought primary medical care to the rural Black population across the state of Mississippi for 2 to 6 weeks every summer from 1935 to 1942. During the 98th National Founders Day Weekend, a historic landmark was dedicated in Mound Bayou in the Mississippi Delta to commemorate the success of the Mississippi Health Project and to serve as a reminder of AKA's continuing commitment to provide health services to families across the world.

Through collaboration with the National Institutes of Health's National Institute of Child Health and Human Development and the University of Mississippi Medical Center, AKA hosted a health forum in Jackson, MS, as part of the 98th National Founders Day Weekend. Additional activities included health fairs in Jackson and the Mississippi Delta, a special salute to AKA members affected by Hurricane Katrina, and an African-American Heritage tour.

I applaud the accomplishments of Alpha Kappa Alpha sorority and recognize the 98th National Founders Day Weekend as the first national AKA meeting in Mississippi.●

TRIBUTE TO SISTER DOROTHY STANG

● Mr. DEWINE. Mr. President, I rise today to pay tribute to Sister Dorothy Stang, who was brutally murdered nearly a year ago on February 12, 2005. Two hired assassins shot and killed her while she was traveling to visit a remote rural settlement near the Trans-Amazon Highway. She was 73 years old.

In May 2005, I introduced a resolution here in the Senate to honor Sister Dorothy—known as Dot to family and friends—for devoting her life to the cause of justice for the dispossessed in Brazil. Refusing to back down in the face of death threats from those who opposed her efforts, she doggedly continued assisting impoverished families and worked to protect the rain forest. Her life exemplifies the highest ideals of reverence for human dignity, compassion for those who lack a voice in their own society, and respect for nature.

Born in Dayton, OH, Dot was one of nine children. While she was growing up, she expressed a wish to one day become a missionary. Her siblings say their sister was always a strong, adventurous woman who truly loved life.

After joining the Sisters of Notre Dame de Namur in 1948 and taking her final vows in 1956, Sister Dorothy taught elementary classes at St. Victor School in Calumet City and St. Alexander School in Villa Park in Illinois and Most Holy Trinity School in Arizona. She began working in Brazil in 1966, and in the early 1980s, she moved to a rural area 1,300 miles north of Rio de Janeiro. There, she worked with the Catholic Church's Pastoral Land Commission, an organization that seeks to eradicate poverty and protect the environment by helping impoverished Brazilians to secure land.

Sister Dorothy's passionate commitment to this mission was an inspiration to many. She was known for riding a motorcycle and camping outside the offices of local officials when they refused to meet with her. She lived her lifelong passion for teaching by organizing peasant groups and educating hundreds of families about sustainable farming techniques, land tenure issues, and the importance of conservation. Her extensive knowledge of Brazilian law, which was entirely self-taught, won her great respect from locals and other activists.

While she worked hard, she did not see her endeavors as a sacrifice. Rather, she professed a love for the region and its people, becoming a Brazilian citizen and instructing her family that she would someday like to be buried in the place about which she cared so deeply.

Last year, Sister Dorothy testified before a Brazilian congressional committee on deforestation and did not hesitate to name companies that were engaged in illegal logging. Furthermore, only days before her death, she met with Brazilian human rights officials to voice her concern about the dangers that she believed some loggers and landowners posed to the peasant farmers with whom she lived.

Although she received death threats for years, she told those around her that the Bible was the only weapon she needed. Sister Dorothy lived her commitment to her faith in the bravest of ways, demonstrating courage and determination to the end. Witnesses recall that, when the gunmen confronted her, she read to her killers from the Bible before she was murdered.

Sister Dorothy was a much beloved figure in the communities where she worked. Last year, the Brazilian state where she spent more than two decades of her life named her ''Woman of the Year,'' and the Brazilian Bar Association honored her with its Humanitarian of the Year award. At her funeral, thousands of peasants mourned the loss of a woman whom they knew as both a determined leader and a fun-loving friend.

The Brazilian Government sent troops to stabilize the area following the tragedy, and it also has honored Sister Dorothy's legacy by setting aside disputed lands for a sustainable development program that she supported. In addition, President Lula da Silva denounced the killing and restated his government's commitment to defending Brazil's rain forests from destruction and environmentally unsound development.

Despite these positive signs, many peasants in the areas where Sister Dorothy worked remain landless; Brazil has one of the world's largest wealth gaps. Violence also continues in the region, which is widely recognized as a place where federal Government control is often tenuous. During the past two decades, hundreds in the area have died in violent clashes between poor settlers and landowners who resent government attempts to resettle landless families and prohibit illegal logging.

Sister Dorothy recognized the many daunting obstacles that face Brazil's poorest people and, rather than simply hoping for conditions to someday improve, happily devoted her life to fighting for what she believed was right. There is much to be done, but she has set an outstanding example of how one person can make a difference in the face of hopelessness. It is up to us to keep her memory alive and never forget her determination and her commitment to helping those most in need.●

THE CLIMATE OF TRUST PROGRAM

● Mrs. FEINSTEIN. Mr. President, I rise today to pay tribute to the Bay Area Council for Jewish Rescue and Renewal's Climate of Trust Program. The council's work in combating ethnic and religious hatred while strengthening tolerance and moderation in Russian society has made a great difference in the lives of all the program's participants.

In 1998, a wave of anti-Semitic activity terrorized the Jewish population in a provincial town in northwest Russia. In response, the Bay Area Council established the Climate of Trust Program, a collaborative partnership between American and Russian police officers, local officials, human rights activists, and ethnic and religious community representatives dedicated to resolving conflicts peacefully and establishing an atmosphere of tolerance and mutual respect in Russia.

It is fitting that the pilot program for the Climate of Trust began in one of the most diverse cities in the world, my hometown of San Francisco.

In 2000, representatives of the San Francisco Police Department, the District Attorney's Office, the California Superior Court, and the Anti-Defamation League went to Russia to join their counterparts in a seminar on religious tolerance. The participants continued the dialogue when the Russian delegates traveled to San Francisco later that year.

In total, seven of these exchanges have now taken place. During these meetings, attendees discuss a wide variety of issues including hate crime laws in the United States, how hate incidents are investigated, elements of a hate crime and its impact on the community, diversity in the police department, and community policing.

These interactions culminated in the establishment of four permanent regional tolerance centers in Russia. These centers design and implement activities that promote tolerance and effective communication between law enforcement and the community.

Organized and run by Russian police officers and community members alike, the centers sponsor hate crimes courses for police cadets to identify and handle ethnic or religious violence and produce a tolerance textbook for high school students.

From its modest beginning in 1998, the Climate of Trust has grown into a far-reaching and effective program. Thousands of Russians, from small town police officers to federal government officials, have attended Climate of Trust seminars and workshops.

The success of this program is due in no small part to the hard work of the

Bay Area Council, USAID, and, most importantly, the team of American volunteers and their Russian counterparts who have worked together to develop new models for promoting tolerance and diversity.

We have all witnessed the tragic consequences of ethnic hatred and religious intolerance. It is our solemn obligation to work together to ensure that tolerance and understanding prevails. I commend and congratulate the Climate of Trust Program of the Bay Area Council for Jewish Rescue and Renewal for their tireless efforts in these areas, and I look forward to working with them again in the future.●

HONORING BETTY FRIEDAN

● Ms. MIKULSKI. Mr. President, I rise today to honor the life and legacy of my friend, Betty Friedan. She opened the minds of Americans to the possibility of a new role for women in our country. She provided the spark that has helped make the ambitions of so many women come true.

This spark helped me realize my own dreams. It allowed me to become a social worker, a Baltimore City councilwoman, a U.S. Congresswoman, and now a U.S. Senator. Betty Friedan's spark inspired women to realize our full potential.

Betty Friedan was born Bettye Goldstein in Peoria, IL, in 1921. She graduated summa cum laude from Smith College in 1942 before accepting a fellowship for graduate study in psychology at the University of California, Berkeley. She did not finish her fellowship at Berkeley, however, because a male friend at the time discouraged her from doing so. This may have been the beginning of Betty Friedan's awareness of the troubled station women were expected to fill.

In 1947, Betty Goldstein married Carl Friedan. The newlyweds moved to a home in suburban New York and started a family. It was during this time that Ms. Friedan began to consider why she and so many of the women she knew yearned for more choices on how to live their lives. Her book, the ''Feminine Mystique'', is considered one of the most influential works of the 20th century. In it, she examined the issues of limited choices and limited career prospects for American women. ''The Feminine Mystique'' changed the face of America.

''The Feminine Mystique'' challenged American society to reevaluate the role of women in our country. The feminism that Betty Friedan embraced provided a spark for people like me to speak up and speak out.

Ms. Friedan founded the National Organization for Women in 1966, where she served as the first president, before going on to found NARAL in 1969.

Two years later, I entered my first race for public office and won a seat on the Baltimore City Council. I then joined Betty Friedan, Gloria Steinem and many other women in founding the National Women's Political Caucus.

Betty Friedan paved the way for women when she wrote ''The Feminine Mystique'' and she devoted the rest of her life to the cause of equality, vaulting it to the forefront of the American conscience. Ms. Friedan was an unwavering advocate for equality, justice, women, and positive change.

I honor Betty Friedan for her courage and her creativity—and thank her for all that she did for me and for women everywhere.●

KETCHIKAN CITIZEN OF THE YEAR

● Ms. MURKOWSKI. Mr. President. I rise today to honor a very special person: Sherrie Slick of Ketchikan, AK, who was recently named Citizen of the Year by the Greater Ketchikan Chamber of Commerce during its annual banquet on January 14, 2006.

This year's award was given based on community service and volunteerism. Before her name was announced, Alaska's Governor described volunteers as ''quiet heroes who often are taken for granted because they're always there and doing their jobs, and doing something for someone else is reward enough for them.'' For those who know Sherrie, the ''quiet'' part of that description doesn't quite fit—but in every other respect, that was an almost perfect description of one of the most energetic and active people I know—a woman who could have been the model for the ''Energizer Bunny.''

I have known Sherrie for many years. I have been the recipient of her hospitality and now have the pleasure of working with her in her capacity as the community representative for the Alaska congressional delegation. When you need to know what is new, what is hot, and what is happening in town, she is the woman to know.

Sherrie is a 32 year resident of Ketchikan with two children who attended the local schools. She is now immersed in her role as a grandmother and loving it. Her dedication to family, community, and career is universally recognized by friends and associates.

Sherrie served on the local chamber of commerce's board of directors for 9 years, including a stint as president, and continues to be active on the chamber's transportation committee. She has spent 8 years on the Ketchikan Visitors Bureau's board of directors, including a year as its chairman, and is a member of the group's marketing committee. She served on the Ketchikan Overall Economic Development Committee for 4 years. She participates each year in the development of Ketchikan's legislative priorities and travels to Juneau as a representative of the community to lobby the Alaska legislature for support on local projects.

Sherrie put in many hours as the community organized public workshops and meetings for the Gravina Access Project. She helped provide information that was key to advancing the growth and economic development of the Ketchikan Shipyard and remains an active supporter of the Ketchikan elements of the southeast Alaska power intertie. She helped facilitate the planning and preparation that helped bring the NOAA research vessel *Fairweather* to Ketchikan. For years, she has gone far beyond the requirements of her job in counseling and providing information to local fishermen on high seas drift net legislation, the Pacific Salmon Treaty, and innumerable other issues of concern.

Sherrie has played active roles with Ketchikan Theatre Ballet, Ketchikan Soccer League, Ketchikan Killer Whales Swimming Club, Campfire Girls, Boy Scouts, Little League Baseball, and Junior High and the KayHi Drill Teams.

Finally, as the Alaska congressional delegation's ''woman on the spot,'' she has been instrumental in assisting local governments, businesses, and individuals to prepare and advocate for Federal government actions. She is an outstanding liaison between the congressional delegation and its constituents, with an unparalleled understanding and knowledge not only of Ketchikan, but also of surrounding communities; and there is no one better at planning the details so that every visit from a delegation member goes smoothly and productively.

Sherrie is wise, energetic, and delightfully entertaining. Ketchikan could have picked no finer person for this honor, and I am very proud to know this fine Alaskan. Congratulations, Sherrie Slick, ''Ketchikan Citizen of the Year.''●

TRIBUTE TO MITCH MUSTAIN

● Mr. PRYOR. Mr. President, it is with the greatest pleasure that I rise today to honor an outstanding student athlete from Springdale, AR, Mitch Mustain. As I am sure many of you know, Mitch was named the 2005 Gatorade National High School Football Player of the Year and the Player of the Year on Parade Magazine's 43rd annual All-America High School Football Team. He received these awards not only for his outstanding leadership and athletic skill but also for his academic achievements and overall character.

During the 2005 season, senior quarterback Mitch Mustain led Springdale High School to a No. 2 national ranking and the State Class 5A title. He completed 190 passes for 3,817 yards and 47 touchdowns. He also rushed for seven scores and was sacked only twice. In the school's 54 to 20 state final win, Mitch connected on 17 passes for 5 touchdowns.

I also take this opportunity to say how proud and excited I am that Mitch Mustain has signed with my alma mater, the University of Arkansas. I foresee great things ahead for the Razorbacks.

Mr. President, I ask my colleagues to join me today in ''Calling the Hogs'' in

recognition of this future Razorback's outstanding accomplishments. We all look forward to following Mitch's career and anticipate that he will make lasting contributions to his team and to the University of Arkansas.●

COLLECTION OF HEARTS CAMPAIGN

● Mr. SANTORUM. Mr. President, I rise today to recognize the efforts of the Keystone Soldiers organization based in Fleetwood, PA. This all-volunteer organization provides continued support for our service members currently deployed overseas through letters, emails, phone calls, and care packages. Keystone Soldiers has most recently partnered with Boscov's department stores in an effort to collect valentines for deployed service members. The Collection of Hearts campaign is just a small part of their effort to remind our deployed troops that they have our continued support. I appreciate the patriotism of this organization in supporting our troops as they continue to serve our Nation.

Our brave service men and women are sacrificing so much for us; they are in harm's way each day, missing valuable time with their loved ones. Showing support by sending care packages, letters, and emails is a very small way to show our appreciation for their sacrifice.

I appreciate the selfless efforts of charitable organizations, such as Keystone Soldiers, for reminding our troops that they are appreciated. I encourage all Americans to show their support for our troops by lending your support to organizations such as these.●

MESSAGE FROM THE HOUSE

At 12:11 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 4297) to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006, and asks a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints the following members as the managers of the conference on the part of the House: Mr. THOMAS, Mr. MCCRERY, Mr. CAMP, Mr. RANGEL, and Mr. STARK.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4456. An act to designate the facility of the United States Postal Service located at 2404 Race Street in Jonesboro, Arkansas, as the ''Hattie W. Caraway Station''.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 331. Concurrent 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.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 4456. To designate the facility of the United States Postal Service located at 2404 Race Street in Jonesboro, Arkansas, as the ''Hattie W. Caraway Station''; to the Committee on Homeland Security and Governmental Affairs.

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–5681. A communication from the Assistant Administrator, Office of Administration and Resource Management, Environmental Protection Agency, transmitting, pursuant to law, (7) reports relative to vacancy announcements within the Agency; to the Committee on Environment and Public Works.

EC–5682. 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 ''National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing'' ((RIN2060–AM90)(FRL No. 8008–2)) received on February 8, 2006; to the Committee on Environment and Public Works.

EC–5683. 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 ''Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of Arizona; Finding of Attainment for Ajo Particulate Matter of 10 Microns or Less (PM10) Nonattainment Area; Determination Regarding Applicability of Certain Clean Air Act Requirements'' (FRL No. 8029–2) received on February 8, 2006; to the Committee on Environment and Public Works.

EC–5684. 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 ''Revision to Toxic Substances Compliance Monitoring Grants (TSCA section 28) Regulation'' ((RIN2070–AJ24)(FRL No. 8031–4)) received on February 8, 2006; to the Committee on Environment and Public Works.

EC–5685. 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 ''Revisions to the California State Implementation Plan, South Coast Air Quality Management District'' (FRL No. 8027–9) received on February 8, 2006; to the Committee on Environment and Public Works.

EC–5686. A communication from the Architect of the Capitol, transmitting, pursuant to law, a report entitled ''Report on the Requirements of the Energy Act of 2005 Related to Congressional Facilities''; to the Committee on Energy and Natural Resources.

EC–5687. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled ''Impact of Energy Policy Act of 2005 Section 206 Rebates on Consumers and Renewable Energy Consumption, With Projections to 2010; to the Committee on Energy and Natural Resources.

EC–5688. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled ''Data Collection in Response to Section 1404 of the Energy Policy Act of 2005''; to the Committee on Energy and Natural Resources.

EC–5689. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled ''Plan to Ensure Continued Recovery and Storage of Greater-Than-Class C Low-Level Radioactive Sealed Sources that Pose a Security Threat Until a Permanent Disposal Facility is Available''; to the Committee on Energy and Natural Resources.

EC–5690. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled ''Energy Conservation Standards Activities''; to the Committee on Energy and Natural Resources.

EC–5691. A communication from the Secretary of Energy and the Chairman, Federal Energy Regulatory Commission, transmitting jointly, pursuant to law, a report entitled ''Steps to Establish a Transmission Monitoring System for Transmission Owners and Operators Within the Eastern and Western Interconnections''; to the Committee on Energy and Natural Resources.

EC–5692. A communication from the Executive Director, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands'' (Docket No. RM06–9–000) received on February 8, 2006; to the Committee on Energy and Natural Resources.

EC–5693. A communication from the General Counsel, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Prohibition of Energy Market Manipulation'' (Docket No. RM06–3–000) received on February 8, 2006; to the Committee on Energy and Natural Resources.

EC–5694. A communication from the Director, Office of Hearings and Appeals, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Implementation of the Equal Access to Justice Act in Agency Proceedings'' (RIN1094–AA49) received on February 08, 2006; to the Committee on Energy and Natural Resources.

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 Mr. ALLEN:

S. 2262. A bill to provide that pay may not be disbursed to Members of Congress after October 1 of any fiscal year in which all appropriations acts are not passed by Congress, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. DAYTON:

S. 2263. A bill to amend title 49, United States Code, to require that automobiles and light trucks manufactured after model year 2007 be able to operate on a fuel mixture that is at least 85 percent ethanol, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. PRYOR (for himself and Mr. NELSON of Florida):

S. 2264. A bill to provide enhanced consumer protection from unauthorized sales

and use of confidential telephone information by amending the Communications Act of 1934, prohibiting certain practices, and providing for enforcement by the Federal Trade Commission and States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. MCCAIN (for himself, Mr. FEINGOLD, Mr. KYL, Mr. BAYH, Mr. ENSIGN, Mr. GRAHAM, Mr. SUNUNU, Mr. COBURN, Mr. DEMINT, and Mr. CORNYN):

S. 2265. A bill to provide greater accountability of taxpayers' dollars by curtailing congressional earmarking, and for other purposes; to the Committee on Rules and Administration.

By Mr. SANTORUM:

S. 2266. A bill to establish a fellowship program for the congressional hiring of disabled veterans; to the Committee on Homeland Security and Governmental Affairs.

By Mr. DORGAN (for himself and Mr. GRAHAM):

S. 2267. A bill to withdraw normal trade relations treatment from, and apply certain provisions of title IV of the Trade Act of 1974 to, the products of the People's Republic of China; to the Committee on Finance.

By Mr. KERRY (for himself and Mr. SALAZAR):

S. 2268. A bill to amend title 5, United States Code, to deny Federal retirement benefits to individuals convicted of certain offenses, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. DEWINE (for himself, Mr. VOINOVICH, and Mr. NELSON of Florida):

S. 2269. A bill to designate the Federal building and United States courthouse located at 200 West 2nd Street in Dayton, Ohio, as the ''Tony Hall Federal Building and United States Courthouse''; to the Committee on Environment and Public Works.

By Mr. MENENDEZ:

S. 2270. A bill to amend the Internal Revenue Code of 1986 to allow a refundable credit against income tax to subsidize the cost of COBRA continuation coverage for certain individuals; to the Committee on Finance.

ADDITIONAL COSPONSORS

S. 431

At the request of Mr. DEWINE, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 431, a bill to establish a program to award grants to improve and maintain sites honoring Presidents of the United States.

S. 438

At the request of Mr. ENSIGN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 438, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 908

At the request of Mr. MCCONNELL, the name of the Senator from South Carolina (Mr. DEMINT) was added as a cosponsor of S. 908, a bill to allow Congress, State legislatures, and regulatory agencies to determine appropriate laws, rules, and regulations to address the problems of weight gain, obesity, and health conditions associated with weight gain or obesity.

S. 985

At the request of Mrs. CLINTON, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 985, a bill to establish kinship navigator programs, to establish kinship guardianship assistance payments for children, and for other purposes.

S. 1172

At the request of Mr. SPECTER, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1172, a bill to provide for programs to increase the awareness and knowledge of women and health care providers with respect to gynecologic cancers.

S. 1915

At the request of Mr. ENSIGN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1915, a bill to amend the Horse Protection Act to prohibit the shipping, transporting, moving, delivering, receiving, possessing, purchasing, selling, or donation of horses and other equines to be slaughtered for human consumption, and for other purposes.

S. 1930

At the request of Mr. COCHRAN, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 1930, a bill to expand the research, prevention, and awareness activities of the National Institute of Diabetes and Digestive and Kidney Diseases and the Centers for Disease Control and Prevention with respect to inflammatory bowel disease.

S. 2134

At the request of Mr. SMITH, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 2134, a bill to strengthen existing programs to assist manufacturing innovation and education, to expand outreach programs for small and medium-sized manufacturers, and for other purposes.

S. 2179

At the request of Mr. OBAMA, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 2179, a bill to require openness in conference committee deliberations and full disclosure of the contents of conference reports and all other legislation.

S. 2235

At the request of Mr. SCHUMER, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 2235, a bill to posthumously award a congressional gold medal to Constance Baker Motley.

S. 2250

At the request of Mr. GRASSLEY, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 2250, a bill to award a congressional gold medal to Dr. Norman E. Borlaug.

S. 2253

At the request of Mr. DOMENICI, the names of the Senator from Idaho (Mr. CRAIG), the Senator from Ohio (Mr. VOINOVICH), the Senator from Alabama (Mr. SESSIONS), the Senator from South Dakota (Mr. JOHNSON), the Senator from North Dakota (Mr. CONRAD) and the Senator from Tennessee (Mr. ALEXANDER) were added as cosponsors 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. 2261

At the request of Mr. OBAMA, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 2261, a bill to provide transparency and integrity in the earmark process.

S. RES. 313

At the request of Ms. CANTWELL, the names of the Senator from Ohio (Mr. DEWINE) and the Senator from South Dakota (Mr. JOHNSON) 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.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ALLEN:

S. 2262. A bill to provide that pay may not be disbursed to Members of Congress after October 1 of any fiscal year in which all appropriations acts are not passed by Congress, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

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

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

S. 2262

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

SECTION 1. NO DISBURSEMENT OF PAY TO MEMBERS OF CONGRESS IF APPROPRIATIONS ACTS NOT TIMELY PASSED.

(a) RESTRICTION ON DISBURSEMENT OF PAY.—

(1) IN GENERAL.—If, as of the first day of any fiscal year, Congress has not passed all final appropriations acts necessary to provide appropriations for the entirety of that fiscal year, the Secretary of the Senate and the Chief Administrative Officer of the House of Representatives may not disburse net pay to any Member of Congress for any pay period beginning in that fiscal year before the date on which notice is provided under subsection (b)(2) that all such final appropriation acts have been passed.

(2) DISBURSEMENT AFTER PASSAGE.—The Secretary of the Senate and the Chief Administrative Officer of the House of Representatives shall disburse all amounts of net pay to Members of Congress not disbursed under paragraph (1) at the same time pay is disbursed for the first pay period beginning after the period to which paragraph (1) applies.

(b) NOTICE.—The President pro tempore of the Senate shall provide notice to the Secretary of the Senate, and the Speaker of the House of Representatives shall provide notice to the Chief Administrative Officer of the House of Representatives—

(1) of any restriction on disbursement of pay under subsection (a)(1), on the first day of the fiscal year to which the restriction applies; and

(2) of the passage by Congress of all final appropriations acts described in subsection (a)(1) with respect to that fiscal year, on the date that passage occurs.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the authority of the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives relating to withholdings, deductions, or any other administrative function relating to pay as otherwise authorized by law.

(d) EFFECTIVE DATE.—This Act shall take effect on January 3, 2007.

By Mr. MCCAIN (for himself, Mr. FEINGOLD, Mr. KYL, Mr. BAYH, Mr. ENSIGN, Mr. GRAHAM, Mr. SUNUNU, Mr. COBURN, Mr. DEMINT, and Mr. CORNYN):

S. 2265. A bill to provide greater accountability of taxpayers' dollars by curtailing congressional earmarking, and for other purposes; to the Committee on Rules and Administration.

Mr. MCCAIN. Mr. President, last Congress I introduced a rules change proposal to allow points of order to be raised against unauthorized appropriations and policy riders in appropriations bills and conference reports in an effort to reign in wasteful pork barrel spending. Today I am introducing a modified version of that proposal. I am pleased to be joined in this bipartisan effort today by Senators FEINGOLD, COBURN, BAYH, SUNUNU, GRAHAM, ENSIGN, DEMINT, and KYL.

According to data compiled by the Congressional Research Service, in 1994, there were 4,126 Congressional earmarks added to the annual appropriations bills. In 2005, there were 15,877 earmarks, the largest number yet, that's an increase of nearly 300 percent! The level of funding associated with those earmarks has more than doubled from $23.2 billion in fiscal year 1994 to $47.4 billion in fiscal year 2005.

Our bill, entitled the Pork-Barrel Reduction Act, would establish a new procedure under Rule XVI, modeled in part after the Byrd Rule, which would allow a 60-vote point of order to be raised against specific provisions that contain unauthorized appropriations, including earmarks, as well as unauthorized policy changes in appropriations bills and conference reports. Of importance is that successful points of order would not kill a conference report, but the targeted provisions would be deemed removed from the conference report, and the measure would be sent back for concurrence by the House.

To ensure that Members are given enough time to review appropriations bills, our proposal would also require that conference reports be available at least 48 hours prior to floor consideration. It also prohibits the consideration of a conference report if it includes matter outside the scope of conference.

Additionally, our bill includes the provisions of S. 1495, the Obligation of Funds Transparency Act, which Senator CORBURN and I introduced last July, to prohibit Federal agencies from obligating funds for appropriations earmarks included only in congressional reports, which are unamendable.

To promote transparency, our bill requires that any earmarks included in a bill be disclosed fully in the bill's accompanying report, along with the name of the Member who requested the earmark and its essential governmental purpose. Additionally, our bill would require recipients of Federal dollars to disclose any amounts that the recipient expends on registered lobbyists.

In summary, this proposed rules change, if adopted, would allow any member to raise a point of order in an effort to extract objectionable unauthorized provisions from the appropriations process. Our goal is to reform the current system by empowering all members with a tool to rid appropriations bills of unauthorized funds, pork barrel projects, and legislative policy riders and to provide greater public disclosure of the legislative process.

I would like to highlight just a few examples of recent earmarks, many of which clearly do not belong in the measures that they were included:

From the Defense Conference Report for FY 2006: $500,000 to teach science to grade-school students in Pennsylvania. $900,000 for ''Memorial Day'' out of the Army Operations and Maintenance account. $4.4 million for a Technology Center in Missouri. $1 million to a Civil War Center in Richmond, Virginia. $850,000 for an education center and public park in Des Moines, Iowa. $2 million for a public park in San Francisco. $500,000 for the Arctic Winter Games, an international athletic competition held this year in Alaska. $1.5 million for an aviation museum in Seattle, $1.35 million for an aviation museum in Hawaii, $1 million for a museum in Pennsylvania, and $3 million for the museum at Fort Belvoir. There's also $1.5 million for restoring the Battleship Texas. Funding for farm conservation. A provision protecting jobs in Hawaii and Alaska. A provision transferring as a direct lump sum payment to the University of Alaska the unobligated and unexpended balances appropriated to the United States-Canada Railroad Commission. And, of course, the ANWR provisions.

From the FY06 Energy and Water Appropriations Bill Conference Report Statement of Managers: $500,000 for the Burpee Museum of Natural History in Illinois. $500,000 for Chesapeake Bay submerged aquatic vegetation research. $600,000 to study fish passage in Mud Mountain, Washington. $3 million to study the beneficial uses of dredged material for Morehead City, North Carolina. $1.25 million for the Sacred Falls demonstration project in Hawaii. $2 million for the Desert Research Institute, Nevada. $3.5 million for the Iroquois Bio-Energy Consortium Ethanol Project, Indiana. $500,000 for the Washington State Ferries Biodiesel Demonstration Project, WA. $1 million for the Canola-based Automotive Oil R&D, PA. $1 million for the Mt. Wachusett Community College Wind Project, MA. $7 million for the Arctic Energy Office, Alaska.

These Energy and Water projects that I just mentioned are just a few examples of report language earmarks, none of which are subject to an amendment to strike.

From the FY 2002 and 2003 Defense Appropriations Conference Reports: During conference negotiations on the Department of Defense Appropriations Act for fiscal year 2002, unprecedented language was inserted into the final bill to allow the U.S. Air Force to lease 100 Boeing 767 commercial aircraft and convert them to tankers. The total cost to taxpayers, about $30 billion.

However, Congress did not authorize these provisions in the Act, or in any other bill for that matter. In fact, the Senate Armed Services Committee was not even advised of this effort by the Air Force Secretary during consideration of the authorization measure. Moreover, these aircraft were not in the President's budget, the joint chiefs' unfunded priority list, or the pentagon's long range defense budget. Additionally, the purportedly compelling need for these aircraft (which the air force repeatedly cited for having taxpayers pay $6 billion more for leasing these tankers than they would if the air force simply bought them outright) was, and continues to be, wholly unsupported by any serious study or analysis of alternatives.

Nonetheless, legislative language was again included in the Department of Defense Appropriations Act for Fiscal Year 2003 to modify the previous year's bill language on the Boeing 767 tankers. And, once again, the sweeping changes in procurement policy was made by the Appropriators without the input of the authorizing committee.

Ultimately, it was discovered that the Air Force broke a number of Federal budgetary and leasing rules; that the lease terms were fiscally irresponsible; that this deal would have set a horrible precedent for the procurement of major defense systems; and that folks at the Air Force conspired with Boeing to break the law to make this deal happen in the first instance. Mr. President, with some people, as a result, not only losing their jobs, but also serving time in jail, I think all of my colleagues know what an egregious mistake this turned out to be.

From Supplemental for War on Terror Conference Report (April 2005): A provision directing the Secretary of the Interior to analyze the viability of a sanctuary for the Rio Grande Silvery Minnow in Rio Grande Valley, TX.

A provision stating that the $40 million set forth in the Consolidated Appropriations Act of 2004 for construction of a Port of Philadelphia marine cargo terminal ''be used solely for the construction by and for a Philadelphia-based company.''

From the FY 2003 Omnibus Appropriations Conference Report: The conference report contained provisions which allow a subsidiary of the Malaysian-owned ''Norwegian Cruise Lines'' the exclusive right to operate several large foreign-built cruise vessels in the domestic cruise trade. This provides an unfair competitive advantage to a foreign company at the expense of all other cruise ship operators, and creates a de facto monopoly for Norwegian Cruise Lines in the Hawaii cruise trade. Interestingly, this provision stems from another earmark in 1998 that went awry.

The fiscal year 1998 Department of Defense Appropriation Bill granted a legal monopoly for American Classic Voyages to operate as the only U.S. flagged operator among the Hawaiian islands. After receiving the monopoly, American Classic Voyages secured a $1.1 billion loan guarantee from the U.S. Maritime Administration's, MARAD, Title XI loan guarantee program for the construction of two passenger vessels known as Project America. Project America's subsequent failure 4 years later resulted in the U.S. Maritime Administration paying out over $187.3 million of the American taxpayers' money to cover the project's loan default, and recovering only $2 million from the sale of some of the construction materials and parts. It is one hull and miscellaneous parts from these never-completed ships which cost the taxpayers nearly $200 million which are now going to be used in a foreign shipyard for building the Norwegian Cruise ships that will operate in Hawaii under this latest special interest provision.

The conference report included an agriculture policy change to make catfish producers eligible for payments under the livestock compensation program, even though hog, poultry, and horse producers are not eligible.

Despite the fact that the U.S. Department of Agriculture had implemented new organic food standards after lengthy negotiations, language was added to the conference report to permit livestock producers to certify and label meat products as ''organic'' even if the animals had not been fed organic grain. Without any consideration or debate, this last-minute rider was added to override these standards. Interestingly, a few months later, the Congress approved legislation as part of the War supplemental to repeal this provision and restore the prior organic food labeling standards.

Obviously, I could go on and on and on citing examples of unauthorized earmarks and policy riders in appropriations bills. But I think you've got the picture. And I hope that we have finally reached the point that we are going to do something to reform this very broken system of legislating.

Our current economic situation and our vital national security concerns require that now, more than ever, we prioritize our Federal spending. But our appropriations bills do not always put our national priorities first. The process is broken and it needs to be fixed.

In his farewell address, President Dwight D. Eisenhower reflected on the spending he believed to be excessive. His words then are all the more powerful in today's out of control environment: ''As we peer into society's future,'' he said, ''we—you and I, and our government—must avoid the impulse to live only for today, plundering, for our own ease and convenience, the precious resources of tomorrow. We cannot mortgage the material assets of our grandchildren without risking the loss also of their political and spiritual heritage. We want democracy to survive for all generations to come, not to become the insolvent phantom of tomorrow.''

And yet, if we cannot change, if we will not change, we risk precisely that—becoming the insolvent phantom of tomorrow. I wonder what President Eisenhower would think of this mess. But, then, perhaps others have contemplated the same question. After all, the Defense Appropriations bill we passed in December included a $1.7 million earmark for a memorial on the National Mall that would honor none other than * * * Dwight D. Eisenhower.

I urge my colleagues to support this bill.

By Mr. KERRY (for himself and Mr. SALAZAR):

S. 2268. A bill to amend title 5, United States Code, to deny Federal retirement benefits to individuals convicted of certain offenses, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. KERRY. Mr. President, along with Senator SALAZAR, I am introducing the Congressional Pension Accountability Act, to deny Federal pensions to members of Congress who are convicted of white collar crimes such as bribery.

I strongly believe that Members of Congress must be held to the highest ethical standards. This year, the Senate is expected to consider legislation to reform our ethics laws. This is in response to a series of scandals that have exposed Washington lobbyists and unfortunately even a Member of Congress who used undue and improper influence to represent special interests in their dealings with the Federal Government.

Last year, the now infamous Washington lobbyist Jack Abramoff pleaded guilty to conspiracy, mail fraud and tax evasion charges in a plea agreement. The Justice Department is currently investigating his attempts to influence Federal Government policy in both Congress and the Executive Branch.

In the largest bribery case in the Congress since the 1980s, Representative Randy ''Duke'' Cunningham recently resigned from the House of Representatives after pleading guilty in Federal court to receiving $2.4 million in bribes from military contractors and evading more than $1 million in taxes. In a plea agreement, former Representative Cunningham admitted to a pattern of bribery lasting close to five years, with Federal contractors giving him Persian rugs, a Rolls-Royce, antique furniture, paying travel and hotel expenses, use of a yacht and a lavish graduation party for his daughter.

As elected representatives, we must hold ourselves and all those who represent the Federal Government to the highest ethical standards. The principle is a simple one: public servants who abuse the public trust and are convicted of ethics crimes should not collect taxpayer financed pensions.

Under current law, former Representative Cunningham and others convicted of serious ethics abuses will receive a Congressional pension of approximately $40,000 per year—paid for by American taxpayers. Only a conviction for a crime against the United States, such as treason or espionage, will cost a Member of Congress their pension. This law must be changed to ensure that Congress does not reward unethical behavior.

The Congressional Pension Accountability Act will bar Members of Congress from receiving taxpayer-funded retirement benefits after they have been convicted of bribery or other serious ethics offenses.

Together we can significantly improve our government by changing the way business is done in Washington. I believe this legislation will help ensure that our government once again responds to the needs of our people, not special interests.

By Mr. DEWINE (for himself, Mr. VOINOVICH, and Mr. NELSON of Florida):

S. 2269. A bill to designate the Federal building and United States courthouse located at 200 West 2nd Street in Dayton, Ohio, as the ''Tony Hall Federal Building and United States Courthouse''; to the Committee on Environment and Public Works.

Mr. DEWINE. Mr. President, I ask unanimous consent that the text of this bill which designates the Federal building and United States courthouse located at 200 West 2nd Street in Dayton, Ohio, as the ''Tony Hall Federal Building and United States Courthouse,'' be printed in the RECORD.

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

S. 2269

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

SECTION 1. DESIGNATION OF TONY HALL FEDERAL BUILDING AND UNITED STATES COURTHOUSE.

The Federal building and United States courthouse located at 200 West 2nd Street in Dayton, Ohio, shall be known and designated as the ''Tony Hall Federal Building and United States Courthouse''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the

United States to the Federal building and United States courthouse referred to in section 1 shall be deemed to be a reference to the Tony Hall Federal Building and United States Courthouse.

By Mr. MENENDEZ:

S. 2270. A bill to amend the Internal Revenue Code of 1986 to allow a refundable credit against income tax to subsidize the cost of COBRA continuation coverage for certain individuals; to the Committee on Finance.

Mr. MENENDEZ. Mr. President, today I am pleased to introduce the Health Care COBRA OffSet Tax Savings (COSTS) Act of 2006. This important legislation is a step forward in helping working families afford quality health care in this country.

Rewarding work is one of the most fundamental core values of our Nation. Our founding fathers built a society on the notion that if you work hard, you will have an opportunity to provide a better future for your children and thus build a stronger, more competitive nation. And, as we've seen throughout our Nation's history, America's workers have not disappointed.

Unfortunately, too many Americans are working hard every day, but are still unable to make ends meet and provide even the most basic needs for their family, such as food, shelter, or health care. The legislation I'm introducing will help address one of these important challenges: affordable, quality health care for working families.

The statistics are undeniable—almost 46 million Americans have no health insurance and more than 1 million of the uninsured are in my home state of New Jersey. But that's just the beginning of the problem. Even families who are fortunate enough to have health insurance, are struggling to pay the premiums, which in New Jersey, have increased at four times the rate of earnings. Since 2000, the employee share of health care premiums in New Jersey increased almost 43 percent or almost $400 a year. When family earnings increase by only 10 percent over the same period, it becomes clear just how challenging it is for our hard working families to get by.

The Health Care COSTS Act does not address the entire problem, but it will help some workers afford to keep their health insurance when they're between jobs. Currently, many workers who receive health coverage through their employer are entitled to keep that coverage for up to 18 months after they leave their jobs. This coverage is known as COBRA coverage. However, many don't take advantage of COBRA coverage because it's simply too expensive. The employee, who has just lost their job, has to pay the full cost of the coverage, making it prohibitively expensive for most families.

The Health Care COSTS Act helps moderate-income families with the cost of COBRA by providing an ''advanceable'' tax credit for half the cost of these health care premiums. The tax credit would go directly to the health plan administrator, thus reducing the workers' monthly premiums by half. This is not a handout, but a helping hand for workers who have contributed to the economic well-being of their community and have earned the opportunity to care for their family while they get back on their feet and find another job.

Clearly, there is much more to do in addressing the health care crisis in this country, but this is an important first step in helping working families afford health care coverage during one of the most difficult and vulnerable times a family might face. I hope this legislation will be a starting point for discussion of the significant challenges families face in affording quality health care in this country.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2745. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed by her 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 2746. Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) proposed an amendment to the bill S. 852, supra.

SA 2747. Mr. SPECTER proposed an amendment to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra.

SA 2748. Mr. CORNYN (for himself, Mr. COBURN, Mr. GRAHAM, Mr. ENSIGN, Mr. CRAPO, Mr. INHOFE, Mr. MARTINEZ, Mr. DEMINT, Mr. THUNE, Mr. BENNETT, Mr. SMITH, Mr. CRAIG, Mr. BUNNING, Mr. THOMAS, Mr. SUNUNU, Mr. CHAMBLISS, Mr. ENZI, and Mr. HAGEL) proposed an amendment to the bill S. 852, supra.

SA 2749. Mr. CORNYN proposed an amendment to amendment SA 2748 proposed by Mr. CORNYN (for himself, Mr. COBURN, Mr. GRAHAM, Mr. ENSIGN, Mr. CRAPO, Mr. INHOFE, Mr. MARTINEZ, Mr. DEMINT, Mr. THUNE, Mr. BENNETT, Mr. SMITH, Mr. CRAIG, Mr. BUNNING, Mr. THOMAS, Mr. SUNUNU, Mr. CHAMBLISS, Mr. ENZI, and Mr. HAGEL) to the bill S. 852, supra.

SA 2750. Mr. FRIST (for Ms. COLLINS (for herself and Mr. BOND)) proposed an amendment to the bill S. 662, to reform the postal laws of the United States.

SA 2751. Mr. FRIST (for Mr. HARKIN) proposed an amendment to the bill S. 662, supra.

SA 2752. Mr. FRIST (for Mr. REID) proposed an amendment to the bill S. 662, supra.

SA 2753. Mr. FRIST (for Mr. STEVENS) proposed an amendment to the bill S. 662, supra.

SA 2754. Mr. KYL (for himself and Mr. CHAMBLISS) proposed an amendment to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

SA 2755. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2756. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2757. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2758. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2745. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed by her 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 15, line 23, insert '', or the captive insurance company established and funded under title III of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 517)'' before the period.

On page 125, between lines 22 and 23, insert the following:

(11) ASBESTOS EXPOSURE AS THE RESULT OF A NATURAL OR OTHER DISASTER.—A claimant may file an exceptional medical claim with the Fund if —

(A) such claimant has been exposed to asbestos from any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) a natural or other disaster, occurring before, on, or after the date of enactment of this Act, including—

(I) the attack on the World Trade Center in New York, New York on September 11, 2001; and

(II) Hurricane Katrina of 2005 in the Gulf Region of the United States; or

(ii) the clean up and remediation following such a disaster; or

(B) such claimant has been exposed to asbestos as a result of living with a person who has met the exposure requirements described in subparagraph (A).

On page 365, line 12, insert ''(1) IN GENERAL.—'' before ''Except''.

On page 365, between lines 17 and 18, insert the following:

(2) ACTIONS PRESERVED.—Nothing in this Act shall be construed to limit or abrogate any pending or future civil action against the United States Government or any State or local government, or any agency or subdivision thereof, or any former or present officer or employee thereof, in either their official or individual capacities, seeking redress for exposure to asbestos—

(A) from any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) a natural or other disaster, occurring before, on, or after the date of enactment of this Act, including—

(I) the attack on the World Trade Center in New York, New York on September 11, 2001; and

(II) Hurricane Katrina of 2005 in the Gulf Region of the United States; or

(ii) the clean up and remediation following such a disaster; or

(B) as a result of living with a person who has met the exposure requirements described in subparagraph (A).

On page 366, between lines 11 and 12, insert the following:

(b) NATURAL DISASTER CLAIMANTS.—

(1) IN GENERAL.—Nothing in this Act shall be construed to limit or abrogate any existing fund, or preclude the formation of any future fund, for the payment of eligible medical expenses relating to treating asbestos-related disease for individuals exposed to asbestos—

(A) from any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) a natural or other disaster, occurring before, on, or after the date of enactment of this Act, including—

(I) the attack on the World Trade Center in New York, New York on September 11, 2001; and

(II) Hurricane Katrina of 2005 in the Gulf Region of the United States; or

(ii) the clean up and remediation following such a disaster; or

(B) as a result of living with a person who has met the exposure requirements described in subparagraph (A).

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensation as defined under section 134(a).

On page 366, line 12, strike ''(b)'' and insert ''(c)''.

SA 2746. Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) proposed an amendment 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; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Fairness in Asbestos Injury Resolution Act of 2006'' or the ''FAIR Act of 2006''.

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

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

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

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

Subtitle B—Asbestos Disease Compensation Procedures

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

Subtitle C—Medical Criteria

Sec. 121. Medical criteria requirements.

Subtitle D—Awards

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

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

Sec. 201. Definitions.
Sec. 202. Authority and tiers.
Sec. 203. Subtiers.
Sec. 204. Assessment administration.
Sec. 205. Stepdowns and funding holidays.
Sec. 206. Accounting treatment.

Subtitle B—Asbestos Insurers Commission

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

Subtitle C—Asbestos Injury Claims Resolution Fund

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

TITLE III—JUDICIAL REVIEW

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

TITLE IV—MISCELLANEOUS PROVISIONS

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

TITLE V—ASBESTOS BAN

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

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

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

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

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

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

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

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

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

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

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

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

(11) Environmental Protection Agency supported studies have determined that the raw vermiculite ore mined and milled in Libby, Montana contained 21 to 26 percent asbestos, by weight. The milled ore, resulting from the processing in Libby, which was shipped out of Libby contained markedly reduced percentages of asbestos. A 1982 Environmental

Protection Agency-supported sutdy concluded that oreshipped out of Libby contained 0.3 to 7 percent asbestos, by weight.

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

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

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

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

(16) Nothing in this Act is intended to increase the Federal deficit or impose any burden on the taxpayer. The Office of Asbestos Disease Compensation established under this Act shall be privately funded by annual payments from defendant participants that have been subject to asbestos liability and their insurers. Section 406(b) of this Act expressly provides that nothing in this Act shall be construed to create any obligation of funding from the United States or to require the United States to satisfy any claims if the amounts in the Fund are inadequate. Any borrowing by the Fund is limited to monies expected to be paid into the Fund, and the Administrator shall have no fiscal authroity beyond the amount of private money coming into the Fund. This Act provides the Administrator with broad enforcement authority to pursue debts to the Fund owed by defendant participants or insurer participants and their successors in interest.

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

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

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

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

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

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

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

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

(A) chrysotile;

(B) amosite;

(C) crocidolite;

(D) tremolite asbestos;

(E) winchite asbestos;

(F) richterite asbestos;

(G) anthophyllite asbestos;

(H) actinolite asbestos;

(I) asbestiform amphibole minerals;

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

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

(3) ASBESTOS CLAIM.—

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

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

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

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

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

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

(v) claims arising out of medical malpractice; or

(vi) any claim arising under—

(I) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(II) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(III) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.);

(IV) the Equal Pay Act of 1963 (29 U.S.C. 206);

(V) the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.);

(VI) section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983); or

(VII) the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

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

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

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

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

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

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

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

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

(12) PARTICIPANT.—

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

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

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

(iii) any successor in interest of a participant.

(B) EXCEPTION.—

(i) IN GENERAL.—A defendant participant shall not include any person protected from any asbestos claim by reason of an injunction entered in connection with a plan of reorganization under chapter 11 of title 11, United States Code, that has been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal

or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

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

(13) PERSON.—The term ''person''—

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

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

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

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

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

(A) retention of the same facilities or location;

(B) retention of the same employees;

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

(D) retention of the same supervisory personnel;

(E) continuity of assets;

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

(G) retention of the same name;

(H) maintenance of the same customer base;

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

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

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

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

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

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

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

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

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

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

(20) DEBTOR.—The term ''debtor''—

(A) means—

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

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

(B) shall not include an entity—

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

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

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

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

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

(a) IN GENERAL.—

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

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

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

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

(A) management of the Fund;

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

(C) the sums necessary for conducting the studies required under this Act;

(D) all administrative and legal expenses; and

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

(b) APPOINTMENT OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator of the Office of Asbestos Disease Compensation shall be appointed by the President, 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 primary purpose of providing benefits to asbestos claimants and their beneficiaries;

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

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

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

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

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

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

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

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

(2) CERTAIN ENFORCEMENTS.—For each infraction relating to paragraph (1)(H), the Administrator also may impose a civil penalty not to exceed $10,000 on any person or entity

found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall prescribe appropriate regulations to implement paragraph (1)(H).

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

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

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

(f) APPLICATION OF FOIA.—

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

(2) CONFIDENTIALITY OF FINANCIAL RECORDS.—

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

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

(i) shall adopt procedures for—

(I) handling submitted records marked confidential; and

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

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

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

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

SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE COMPENSATION.

(a) ESTABLISHMENT.—

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

(2) COMPOSITION AND APPOINTMENT.—The Advisory Committee shall be composed of 20 members, appointed 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 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 120 days after the enactment of this Act, the Administrator shall establish a comprehensive asbestos claimant assistance program to—

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

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

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

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

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

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

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

(d) LEGAL ASSISTANCE.—

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

(2) LIST OF QUALIFIED ATTORNEYS.—As part of the program, the Administrator shall maintain a roster of qualified attorneys who

have agreed to provide pro bono services to asbestos claimants under rules established by the Administrator. The claimants shall not be required to use the attorneys listed on such roster.

(3) NOTICE.—

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

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

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

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

(e) ATTORNEY'S FEES.—

(1) LIMITATION.—

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

(B) REVIEW OF PROPOSED DECISION.—

(i) REASONABLE FEE.—If an individual seeks a review of a proposed decision in accordance with section 114(d), the representative of such individual may, in lieu of seeking payment for services rendered subject to the limitation described in paragraph (1), obtain a reasonable attorney's fee.

(ii) CALCULATION OF REASONABLE FEE.—Any fee obtained under clause (i) shall be calculated by multiplying a reasonable hourly rate by the number of hours reasonably expended on the claim of the individual.

(iii) REQUIREMENTS FOR COMPENSATION.—A representative of an individual shall not be eligible to receive a fee under clause (i), unless—

(I) such representative submits to the Administrator detailed contemporaneous billing records for any work actually performed in the course of representation of an individual; and

(II) the Administrator finds, based on billing records submitted by the representative under subclause (I), that the work for which compensation is sought was reasonably performed, and that the requested hourly fee is reasonable.

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

(A) $5,000; or

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

SEC. 105. PHYSICIANS PANELS.

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

(b) FORMATION OF PANELS.—

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

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

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

(C) the particular expertise necessary for each panel.

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

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

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

(1) a physician licensed in any State;

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

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

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

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

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

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

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

SEC. 106. PROGRAM STARTUP.

(a) IMMEDIATE STARTUP.—

(1) IN GENERAL.—Subject to section 101(d), the Administrator may—

(A) start receiving, reviewing, and deciding claims immediately upon the date of enactment of this Act; and

(B) reimburse the Department of Labor from the Fund for any expense incurred—

(i) before that date of enactment in preparation for carrying out any of the responsibilities of the Administrator under this Act; and

(ii) during the 60-day period following that date of enactment to carry out such responsibilities.

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

(b) INTERIM PERSONNEL AND CONTRACTING.—The Secretary of Labor and the Assistant Secretary of Labor for the Employment Standards Administration shall make available to the Administrator on a temporary basis such personnel and other resources as may be necessary to facilitate the expeditious startup of the program. The Administrator may in addition contract with individuals or entities having relevant experience to assist in the expeditious startup of the program including entering into contracts on an expedited or sole source basis during the startup period for the purpose of processing claims or providing financial analysis or assistance. Such relevant experience shall include, but not be limited to, experience with the review of workers' compensation, occupational disease, or similar claims and with financial matters relevant to the operation of the program.

(c) TERMINAL HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures, as provided in section 106(f), to provide for an expedited process to categorize, evaluate, and pay terminal health claims. Such procedures, as provided in section 106(f), shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of terminal health claims.

(2) ELIGIBLE TERMINAL HEALTH CLAIMS.—A claim shall qualify for treatment as a terminal health claim if—

(A) the claimant is living and provides a diagnosis of mesothelioma meeting the requirements of section 121(d)(9);

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

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

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

(ii) has since died from a malignant disease or condition; and

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

(3) ADDITIONAL TERMINAL HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as terminal health claims under this subsection except that exceptional medical claims may not proceed.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of terminal health claims prior to the Fund being certified as operational, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, shall process and pay claims in accordnace with section 106(f)(2). The processing and payment of claims shall be subject to regulations promulgated under this Act.

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

(d) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health claims. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

(e) INTERIM ADMINISTRATOR.—Until an Administrator is appointed and confirmed under section 101(b), the responsibilities of the Administrator under this Act shall be performed by the Assistant Secretary of Labor for the Employment Standards Administration, who shall have all the authority conferred by this Act on the Administrator and who shall be deemed to be the Administrator for purposes of this Act. Before final regulations being promulgated relating to claims processing, the Interim Administrator may prioritize claims processing,

without regard to the time requirements prescribed in subtitle B of this title, based on severity of illness and likelihood that exposure to asbestos was a substantial contributing factor for the illness in question.

(f) STAY OF CLAIMS; 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 or as otherwise provided in section 402(f), stayed.

(2) TERMINAL HEALTH CLAIMS.—

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

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

(ii) FILING.—

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

(II) EXCEPTION.—Any person who seeks compensation for an exigent health claim from a trust in accordance with section 402(f) shall not be eligible to seek a settlement or settlement offer under this paragraph.

(iii) TERMINAL HEALTH CLAIM INFORMATION.—To file a terminal health claim, each individual shall provide all of the following information:

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

(II) A description of any claims for compensation for an asbestos related injury or disease filed by the claimant with any trust or class action trust, and the status or disposition or any such claims.

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

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

(V) For terminal health claims arising after the date of enactment of this Act, the claimant shall identify each defendant that would be an appropriate defendant in a civil action seeking damages for the asbestos claim of the claimant. Identification of all potential participants shall be made in good faith by the claimant.

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

(v) WEBSITE.—

(I) POSTING.—The Administrator or claims facility shall post the information described in subclause (II) to a secure website, accessible on a passcode-protected basis to participants.

(II) REQUIRED INFORMATION.—The website established under subclause (I) shall contain a listing of—

(aa) each claimant that has filed a notice of intent to seek a settlement or claim under this clause;

(bb) the name of such claimant; and

(cc) if applicable—

(AA) the name of the court where such claim was filed;

(BB) the case or docket number of such claim; and

(CC) the date such claim was filed.

(III) PROHIBITIONS.—The website established under subclause (I) shall not contain specific health or medical information or social security numbers.

(IV) PARTICIPANT ACCESS.—A participant's access to the website established under subclause (I) shall be limited on a need to know basis, and participants shall not disclose or sell data, or retain data for purposes other than paying an asbestos claim.

(V) VIOLATIONS.—Any person or other entity that violates any provision of this clause, including by breaching any data posted on the website, shall be subject to an injunction, or civil penalties, or both.

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

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

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

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

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

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

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

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

(viii) FAILURE TO PAY.—If the Administrator or claims facility does not pay the award as required under clause (xiii), the Administrator shall refer the certified claim within 10 days as a certified terminal health claim to the defendants in the pending Federal and State court action or to the potential defendants identified under clause (iii)(IV) for terminal claims arising after the date of enactment of this Act. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(ix) SETTLEMENT OFFER.—Any participant or participants may, within 30 days after receipt of such notice as provided under clause (vii) or (viii), file and serve on all parties and the Administrator a good faith settlement offer in an aggregate amount not to exceed the total amount to which the claimant would receive under section 131. If the aggregate amount offered by all participants exceeds the award determined by the Administrator, all offers shall be deemed reduced pro-rata until the aggregate amount equals the award amount. An acceptance of such settlement offer for claims pending before the date of enactment of this Act shall be subject to approval by the trial judge or authorized magistrate in the court where the claim is pending. The court shall approve any such accepted offer within 20 days after a request, unless there is evidence of bad faith or fraud. No court approval is necessary if the terminal health claim was certified by the Administrator or claims facility under clause (vi).

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

(xi) OPPORTUNITY TO CURE.—If the settlement offer is rejected for being less than what the claimant would receive under the Fund, the participants shall have 10 business days to make an amended offer. If the amended offer equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement offer in writing. If the settlement offer is again rejected as less than what the claimant would receive under the Fund or if participants fail to make an amended offer, the claimant shall recover 150 percent of what the claimant would receive under the Fund. If the amount of the amended settlement offer made by the Administrator, claims facility, or participants equals 150 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xii) PAYMENT SCHEDULE.—

(I) MESOTHELIOMA CLAIMANTS.—For mesothelioma claimants—

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

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

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

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

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

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

(xiii) RECOVERY OF COSTS.—

(I) IN GENERAL.—Any participant whose settlement offer is accepted may recover the cost of such settlement by deducting from the participant's next and subsequent contributions to the Fund the full amount of the payment made by such participant to the terminal health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that the participant's offer is not in good faith. Any such payment shall be considered a payment to the Fund for purposes of section 404(e)(1) and in response to the payment obligations imposed on participants in title II.

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

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

(xv) FAILURE TO PAY.—If a participant fails to pay an accepted settlement offer within the payment schedule under clause (xii), the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund 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) STAY TERMINATED AND REVERSION TO COURT.—If 9 months after a terminal health claim has been filed under subparagraph (A), a claimant has not received a settlement under subparagraph (A)(xii) and the Administrator has not certified to Congress that the Fund or claims facility is operational and paying terminal health claims at a reasonable rate, the stay of claim provided under paragraph (1) shall be lifted and such terminal health claimant, may immediately seek a judgment or order for monetary damages from the court where the case is currently pending or the appropriate Federal or State court for claims arising after the date of enactment of this Act. If a claimant has failed to file a claim or notice of intent to seek a settlement, as required under subparagraph (A)(ii), the provisions of this subparagraph shall not apply.

(C) 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 participant 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 participant's next and subsequent contributions to the Fund for that amount of the payment made by such participant to the terminal health claimant.

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

(A) IN GENERAL.—

(i) PURSUAL OF CLAIMS.—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-terminal 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 (if the claim is otherwise within the jurisdiction of the court) or State court located within—

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

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

(ii) RULE OF CONSTRUCTION.—This subparagraph shall not be construed as creating a new Federal cause of action.

(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 capable of operating 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 non-terminal 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 have been stayed or not filed may be filed or reinstated in the appropriate Federal or State court.

(4) RESERVATION OF RIGHTS.—Except as otherwise provided in this Act, participation in the offer and settlement process under this subsection shall not affect or prejudice any rights or defenses a party might have in any litigation.

SEC. 107. AUTHORITY OF THE ADMINISTRATOR.

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

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

(2) administer oaths;

(3) examine witnesses;

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

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

Subtitle B—Asbestos Disease Compensation Procedures

SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.

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

(1) file a claim in a timely manner in accordance with sections 106(f)(2) and 113; and

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

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

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

SEC. 113. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

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

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

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

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—A claimant who receives an award for an eligible disease or condition

shall not be precluded from submitting claims for and receiving additional awards under this title for any higher disease level for which the claimant becomes eligible, subject to appropriate setoffs as provided under section 134.

(B) LIBBY, MONTANA CLAIMS.—

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

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

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

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

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

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—If a claim is not filed with the Office within the limitations period specified in this subsection for that category of claim, such claim shall be extinguished, and any recovery thereon shall be prohibited.

(2) INITIAL CLAIMS.—An initial claim for an award under this Act shall be filed within 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.

(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 on any such claim shall be prohibited.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) IN GENERAL.—

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

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

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

(c) PAYMENTS IF NO TIMELY PROPOSED DECISION.—If the Administrator has received a complete claim and, after the Fund has been certified subject to section 106(f)(3)(E) 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. AUDITING PROCEDURES.

(a) IN GENERAL.—

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

(2) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

(A) IN GENERAL.—If the Administrator determines that an audit conducted in accordance with the methods developed under paragraph (1) demonstrates that the medical evidence submitted by a specific physician 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.

(C) SUBMISSION OF VALID EVIDENCE.—Claimants shall be allowed to submit valid evidence if prior evidence is found unacceptable for purposes of establishing eligibility for an award under this Act.

(b) REVIEW OF CERTIFIED B-READERS.—

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

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

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

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

(c) SMOKING ASSESSMENT.—

(1) IN GENERAL.—

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

(i) records of past medical treatment and evaluation;

(ii) affidavits of appropriate individuals;

(iii) applications for insurance and supporting materials; and

(iv) employer records of medical examinations.

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

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

(3) CONSENT.—

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

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

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

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

Subtitle C—Medical Criteria

SEC. 121. MEDICAL CRITERIA REQUIREMENTS.

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

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

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

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

(B) bilateral pleural plaques;

(C) bilateral pleural thickening; or

(D) bilateral pleural calcification.

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

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

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

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

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

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

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

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

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

(A) never smoked; or

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

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

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

(14) SUBSTANTIAL OCCUPATIONAL EXPOSURE TO ASBESTOS.—

(A) IN GENERAL.—The term ''substantial occupational exposure'' means employment in an industry and an occupation where for a

substantial portion of a normal work year for that occupation, the claimant—

(i) handled raw asbestos fibers;

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

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

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

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

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

(16) WEIGHTED OCCUPATIONAL EXPOSURE.—

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

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

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

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

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

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

(b) MEDICAL EVIDENCE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) x-rays or computerized tomography;

(B) detailed results of pulmonary function tests;

(C) laboratory tests;

(D) tissue samples;

(E) results of medical examinations;

(F) reviews of other medical evidence; and

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

(c) EXPOSURE EVIDENCE.—

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

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

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

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

(2) PROOF OF EXPOSURE.—

(A) AFFIDAVITS.—Exposure to asbestos sufficient to satisfy the exposure requirements for any disease level may be established by a detailed and specific affidavit that—

(i) is filed by—

(I) the claimant; or

(II) if the claimant is deceased, a coworker or a family member of the claimant; and

(ii) is found in proceedings under this title to be—

(I) reasonably reliable, attesting to the claimant's exposure; and

(II) credible and not contradicted by other evidence.

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

(C) ADDITIONAL EVIDENCE.—The Administrator may require submission of other or additional evidence of exposure, if available, for a particular claim when determined necessary, as part of the minimum information required under section 113(c).

(3) TAKE-HOME EXPOSURE.—

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

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

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

(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 and 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, including proximity, 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 and 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, other than silica, 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, other than silica, of that pulmonary condition.

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

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, 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, other than silica, 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 *b*y 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 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 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 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).

(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.

(E) MESOTHELIOMA CASES.—

(i) IN GENERAL.—The Physicans Panel shall grant priority status to—

(I) all Level IX claims with other identifiable asbestos exposure as provided under paragraph (9)(B)(iv); and

(II) all Level IX claims that are filed as exceptional medical claims.

(ii) PHYSICIAN PANEL.—If the Physicians Panel issues a certificate of medical eligibility, the claimant shall be deemed to qualify for Level IX compensation. If the Physicians Panel rejects the claim, and the Administrator deems it rejected, the claimant may immediately seek judicial review under section 302.

(5) APPROVAL.—

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

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

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

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

(8) LIBBY, MONTANA.—

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

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

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

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

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

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

(9) STUDY OF VERMICULITE PROCESSING FACILITIES.—

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

ATSDR shall conduct a study of all Phase 1 sites where—

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

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

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

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

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

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

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

(v) the risk of asbestos-related mortality to residents living in the vicinity of such facilities,

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

(C) RESULTS OF STUDY.—The results of the study required under this paragraph shall be transmitted to the Administrator. 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:

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.—The Administrator may increase awards for Level IX claimants who have dependent children so long as the increase under this paragraph is cost neutral. Such increased awards shall be paid for by decreasing awards for claimants other than Level IX, so long as no award levels are decreased more than 10 percent.

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

(4) SPECIAL ADJUSTMENT FOR FELA CASES.—

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

(B) REGULATIONS.—

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

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

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

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

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

(D) AMOUNT.—

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

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

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

(F) DEMONSTRATION OF ELIGIBILITY.—

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

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

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

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

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

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

(6) COST-OF-LIVING ADJUSTMENT.—

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

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

(C) CONSUMER PRICE INDEX.—

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

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

SEC. 132. MEDICAL MONITORING.

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

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

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

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

(2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENT.

(a) STRUCTURED PAYMENTS.—

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

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

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

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

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

(3) EXTENSION OF PAYMENT PERIOD.—

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

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

(4) LUMP-SUM PAYMENTS.—

(A) In general.—The Administrator shall develop guidelines to provide for 1 lump-sum payment to asbestos claimants who are mesothelioma victims and who are alive on the date on which the Administrator receives notice of the eligibility of the claimant.

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

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

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

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

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

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

(5) EXPEDITED PAYMENTS.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of terminal health claims as described under section 106(c)(2)(B) and (C).

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

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

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

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

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

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

(D) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health risks. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

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

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

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

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

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

(f) EFFECT OF PAYMENT.—The 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. 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.—

(1) IN GENERAL.—The payment of an award to an asbestos claimant under section 106 or 133 shall not affect any claim of an asbestos claimant against—

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

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

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the pursuit of a claim that is preempted under section 403.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

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

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

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

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

(3) INDEMNITEE.—The term ''indemnitee'' means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

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

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

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

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

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

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

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

(7) ASBESTOS PREMISES CLAIM.—The term ''asbestos premises claim''—

(A) means an asbestos claim against a current or former premises owner or landowner, or person controlling or possessing premises or land, alleging injury or death caused by exposure to asbestos on such premises or land or by exposure to asbestos carried off such premises or land on the clothing or belongings of another person; and

(B) includes any such asbestos claim against a current or former employer alleging injury or death caused by exposure to asbestos on premises or land owned, controlled or possessed by the employer, if such claim is not a claim for benefits under a workers' compensation law or veterans' benefits program.

(8) ASBESTOS PREMISES DEFENDANT PARTICIPANT.—The term ''asbestos premises defendant participant'' means any defendant participant for which 95 percent or more of its prior asbestos expenditures relate to asbestos premises claims against that defendant participant.

SEC. 202. AUTHORITY AND TIERS.

(a) LIABILITY FOR PAYMENTS TO THE FUND.—

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

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

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

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

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

(1) DEFINITION.—

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

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

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

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

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

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

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

Notice of such motion shall be as directed by the bankruptcy court, and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity's chapter 11 filing. The bankruptcy court shall hold a hearing and make its determination with respect to the motion within 30 days after the date the motion is filed. In making its determination, the bankruptcy court shall take into account the affidavits, public statements, and securities filings, and other information, if any, submitted by the entity and all other facts and circumstances presented by an objecting party. Any review of this determination shall be an expedited appeal and limited to whether the decision was against the weight of the evidence. Any appeal of a determination shall be an expedited review to the United States Circuit Court of Appeals for the circuit in which the bankruptcy is filed.

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

(A) on request of a party in interest or on a motion of the court, and after a notice and a hearing, the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that such confirmation is required to avoid the liquidation or the need for further financial reorganization of that entity; and

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

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

(4) OFFSETS.—

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

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

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

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

(2) Tier III: $50,000,000 or greater, but less than $75,000,000.
(3) Tier IV: $10,000,000 or greater, but less than $50,000,000.
(4) Tier V: $5,000,000 or greater, but less than $10,000,000.
(5) Tier VI: $1,000,000 or greater, but less than $5,000,000.
(6) ASBESTOS PREMISES DEFENDANT PARTICIPANTS.—
(A) IN GENERAL.—Asbestos premises defendant participants that would be included in Tier II, III, IV or V according to their prior asbestos expenditures shall, after 5 years of the Fund being operational, instead be assigned to the immediately lower tier, such that—
(i) an asbestos premises defendant participant that would be assigned to Tier II shall instead be assigned to Tier III;
(ii) an asbestos premises defendant participant that would be assigned to Tier III shall instead be assigned to Tier IV;
(iii) an asbestos premises defendant participant that would be assigned to Tier IV shall instead be assigned to Tier V; and
(iv) an asbestos premises defendant participant that would be assigned to Tier V shall instead be assigned to Tier VI.
(B) RETURN TO ORIGINAL TIER.—The Administrator may return asbestos premises defendant participants to their original tier, on a yearly basis, if the Administrator determines that the additional revenues that would be collected are needed to preserve the solvency of the Fund.
(e) TIER PLACEMENT AND COSTS.—
(1) PERMANENT TIER PLACEMENT.—After a defendant participant or affiliated group is assigned to a tier and subtier under section 204(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(c), and paragraphs (3), (4),

and (5) of this subsection, the annual payment obligation by a debtor under subparagraph (B) of this paragraph shall not exceed $80,000,000.

(3) SUBTIER 2.—

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

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

(4) SUBTIER 3.—

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

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

(5) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, jointly held, in trust or otherwise, with a defendant participant, less—

(A) all allowable administrative expenses;

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

(C) allowable secured claims.

(6) CLASS ACTION TRUST.—The assets of any class action trust that has been established in respect of the liabilities for asbestos claims of any person included within a debtor and affiliated group that has been included in Tier I (exclusive of any assets needed to pay previously incurred expenses and asbestos claims within the meaning of section 403(d)(1), before the date of enactment of this Act) shall be transferred to the Fund not later than 60 days after the date of enactment of this Act.

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

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

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

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

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

(E) those persons or affiliated groups remaining included in Subtier 3.

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

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

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

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

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

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

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

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

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

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

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

(E) those persons or affiliated groups remaining included in Subtier 3.

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

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

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

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

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

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

(e) TIER IV SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier IV shall be included in 1 of the 4 subtiers of Tier IV, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

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

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

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

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

(D) Subtier 4: $550,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 3 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

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

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

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 3 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

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

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(3) OTHER PAYMENT FOR CERTAIN PERSONS AND AFFILIATED GROUPS.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, and if an adjustment authorized by this subsection does not impair the overall solvency of the Fund, any person or affiliated group within Tier VI whose required subtier payment in any given year would exceed such person's or group's average annual expenditure on settlements, and judgments of asbestos disease-related claims over the 8 years before the date of enactment of this Act shall make the payment required of the immediately lower subtier or, if the person's or group's average annual expenditures on settlements and judgments over the 8 years before the date of enactment of this Act is less than $100,000, shall not be required to make a payment under this Act.

(B) NO FURTHER ADJUSTMENT.—Any person or affiliated group that receives an adjustment under this paragraph shall not be eligible to receive any further adjustment under section 204(d).

(h) TIER VII.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, or VI, a person or affiliated group shall also be included in Tier VII, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims, and such settlement, judgment, defense, or indemnity costs constitute 75 percent or more of the total prior asbestos expenditures by the person or affiliated group.

(2) ADDITIONAL AMOUNT.—The payment requirement for persons or affiliated groups included in Tier VII shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VI.

(3) SUBTIER 1.—Each person or affiliated group in Tier VII with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated group in Tier VII with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated group in Tier VII with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) IN GENERAL.—Each defendant participant or affiliated group shall pay to the Fund in the amounts provided under this subtitle as appropriate for its tier and subtier each year until the earlier to occur of the following:

(1) The participant or affiliated group has satisfied its obligations under this subtitle during the 30 annual payment cycles of the operation of the Fund.

(2) The amount received by the Fund from defendant participants, excluding any

amounts rebated to defendant participants under subsections (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 measured against the likely cost of past and potential future claims in the absence of this Act;

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

(IV) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant;

(ii) shall qualify for a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote, and for purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act;

(iii) shall be granted a two-tier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such participant's prior asbestos expenditures arose from asbestos claims based on successor liability arising from a merger to which the participant or its predecessor was a party that occurred at least 30 years before the date of enactment of this Act, and that such prior asbestos expenditures exceed the inflation-adjusted value of the assets of the company from which such liability was derived in such merger, and upon such demonstration the Administrator shall grant such adjustment for the life of the Fund and amounts paid by such defendant participant prior to such adjustment in excess of its adjusted payment obligation under this clause shall be credited against next succeeding required payment obligations; and

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

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

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

(B) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(C) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), an inequity adjustment under this subsection shall have a term of 3 years.

(D) RENEWAL.—A defendant participant may renew an inequity adjustment every 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.

(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), (g), and (m) of this section) fail in any year to raise at least $3,000,000,000, after applicable reductions or adjustments have been taken according to subsections (d) and (m), the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(3) GUARANTEED PAYMENT SURCHARGE.—To the extent the procedure set forth in paragraph (2) is insufficient to satisfy the required minimum aggregate annual payment, after applicable reductions or adjustments have been taken according to subsections (d) and (m), the Administrator 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 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);

(iv) payment in the amount specified in section 203 for the lowest subtier of the tier within which the defendant participant falls, except that if the defendant participant, or the affiliated group including the defendant participant, had 2002 revenues exceeding $3,000,000,000, it or its affiliated group shall pay the amount specified for Subtier 3 of Tiers II, III, or IV or Subtier 2 of Tiers V or VI, depending on the applicable Tier; and

(v) a signature page personally verifying the truth of the statements and estimates described under this subparagraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(B) RELIEF.—

(i) IN GENERAL.—The Administrator shall establish procedures to grant a defendant participant relief from its initial payment obligation if the participant shows that—

(I) the participant is likely to qualify for a financial hardship adjustment; and

(II) failure to provide interim relief would cause severe irreparable harm.

(ii) JUDICIAL RELIEF.—The Administrator's refusal to grant relief under clause (i) is subject to immediate judicial review under section 303.

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

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

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

(C) a statement whether it has material continuing business operations and, if not, whether it holds cash or other assets that have been allocated or earmarked for asbestos settlements;

(D) in the case of debtors falling within Subtier 1 of Tier I—

(i) a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2);

(ii) for those debtors subject to the payment requirement of section 203(b)(2)(B)(ii), a statement whether its prior asbestos expenditures do not exceed $10,000,000, and a description of its business operations sufficient to show the requirements of that section are met; and

(iii) a payment under section 203(b)(2)(B);

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

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

(G) a signature page personally verifying the truth of the statements and estimates described under this paragraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(3) INITIAL YEAR: TIER VII.—Not later than 90 days after enactment of this Act, each defendant participant in Tier VII shall file with the Administrator—

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

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

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

(4) NOTICE TO PARTICIPANTS.—Not later than 240 days after enactment of this Act, the Administrator shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund; and

(B) publish in the Federal Register a notice—

(i) setting forth the criteria in this Act, and as prescribed by the Administrator in accordance with this Act, for paying under

this subtitle as a defendant participant and requiring any person who may be a defendant participant to submit such information; and

(ii) that includes a list of all defendant participants notified by the Administrator under subparagraph (A), and provides for 30 days for the submission by the public of comments or information regarding the completeness and accuracy of the list of identified defendant participants.

(5) RESPONSE REQUIRED.—

(A) IN GENERAL.—Any person who receives notice under paragraph (4)(A), and any other person meeting the criteria specified in the notice published under paragraph (4)(B), shall provide the Administrator with an address to send any notice from the Administrator in accordance with this Act and all the information required by the Administrator in accordance with this subsection no later than the earlier of—

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

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

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(C) CONSENT TO AUDIT AUTHORITY.—The response submitted under subparagraph (A) shall include, on behalf of the defendant participant or affiliated group, a consent to the Administrator's audit authority under section 221(d).

(6) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INDIVIDUAL.—Not later than 60 days after receiving a response under paragraph (5), the Administrator shall send the person a notice of initial determination identifying the tier and subtier, if any, into which the person falls and the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Administrator and identified to the defendant participant.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to defendant participants, the Administrator shall publish in the Federal Register a notice listing the defendant participants that have been sent such notification, and the initial determination identifying the tier and subtier assignment and annual payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response in accordance with paragraph (5) is received from a defendant participant, or if the response is incomplete, the initial determination shall be based on the best information available to the Administrator.

(C) PAYMENTS.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Administrator the amount required by the notice, after deducting any previous payment made by the participant under this subsection. If the amount that the defendant participant is required to pay is less than any previous payment made by the participant under this subsection, the Administrator shall credit any excess payment against the future payment obligations of that defendant participant. The pendency of a petition for rehearing under paragraph (10) shall not stay the obligation of the participant to make the payment specified in the Administrator's notice.

(7) EXEMPTIONS FOR INFORMATION REQUIRED.—

(A) PRIOR ASBESTOS EXPENDITURES.—In lieu of submitting information related to prior asbestos expenditures as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Tier II.

(B) REVENUES.—In lieu of submitting information related to revenues as may be required for purposes of this subtitle, a nondebtor defendant participant may consent to be assigned to Subtier 1 of the defendant participant's applicable tier.

(8) NEW INFORMATION.—

(A) EXISTING PARTICIPANT.—The Administrator shall adopt procedures for requiring additional payment, or refunding amounts already paid, based on new information received.

(B) ADDITIONAL PARTICIPANT.—If the Administrator, at any time, receives information that an additional person may qualify as a defendant participant, the Administrator shall require such person to submit information necessary to determine whether that person is required to make payments, and in what amount, under this subtitle and shall make any determination or take any other act consistent with this Act based on such information or any other information available to the Administrator with respect to such person.

(9) SUBPOENAS.—The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(10) REHEARING.—A defendant participant has a right to obtain rehearing of the Administrator's determination under this subsection of the applicable tier or subtier 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(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 required under subsection (h), after applicable reductions or adjustments have been taken according to subsections (d) and (m) is reached each year; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(l) GUARANTEED PAYMENT SURCHARGE.—

(1) IN GENERAL.—To the extent there are insufficient monies in the defendant guaranteed payment account established in subsection (k) to attain the minimum aggregate annual payment required under subsection (h) in any given year, the Administrator 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) as provided in this subsection. Any such surcharge shall be imposed on a pro rata basis, in accordance with each defendant participant's relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), (g), and (m) of this section).

(2) LIMITATION.—

(A) IN GENERAL.—In no case shall the 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).

(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 the first 5 years of the life of the Fund and any subsequent years as provided in section 405(f) for any reduction in an insurer participant's annual allocated amount caused by the granting of a financial hardship or exceptional circumstance adjustment under this section, and any amount by which aggregate insurer payments fall below the level required under paragraph (3)(C) by reason of the failure or refusal of any insurer participant to make a required payment, or for any other reason that causes such payments to fall below the level required under paragraph (3)(C). The Commission shall conduct a thorough study (within the time limitations under this subparagraph) of the accuracy of the reserve allocation of each insurer participant, and may request information from the Securities and Exchange Commission or any State regulatory agency. Under this procedure, not later than 120 days after the initial meeting of the Commission, the Commission shall commence a rulemaking proceeding under section 213(a) to propose and adopt a methodology for allocating payments among insurer participants. In proposing an allocation methodology, the Commission may consult with such actuaries and other experts as it deems appropriate. After hearings and public comment on the proposed allocation methodology, the Commission shall as promptly as possible promulgate a final rule establishing such methodology. After promulgation of the final rule, the Commission shall determine the individual payment of each insurer participant under the procedures set forth in subsection (b).

(C) SCOPE.—Every insurer, reinsurer, and runoff entity with asbestos-related obligations in the United States shall be subject to the Commission's and Administrator's authority under this Act, including allocation determinations, and shall be required to fulfill its payment obligation without regard as to whether it is licensed in the United States. Every insurer participant not licensed or domiciled in the United States shall, upon the first payment to the Fund, submit a written consent to the Commission's and Administrator's authority under this Act, and to the jurisdiction of the courts of the United States for purposes of enforcing this Act, in a form determined by the Administrator. Any insurer participant refusing to provide a written consent shall be subject to fines and penalties as provided in section 223.

(D) ISSUERS OF FINITE RISK POLICIES.—

(i) IN GENERAL.—The issuer of any policy of retrospective reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a risk or loss transfer to insure for asbestos losses and other losses (both known and unknown), including those policies commonly referred to as ''finite risk'', ''aggregate stop loss'', ''aggregate excess of loss'', or ''loss portfolio transfer'' policies, shall be obligated to make payments required under this Act directly to the Fund on behalf of the insurer participant who is the beneficiary of such policy, subject to the underlying retention and the limits of liability applicable to such policy.

(ii) PAYMENTS.—Payments to the Fund required under this Act shall be treated as loss payments for asbestos bodily injury (as if such payments were incurred as liabilities imposed in the tort system) and shall not be subject to exclusion under policies described under clause (i) as a liability with respect to tax or assessment. Within 90 days after the scheduled date to make an annual payment to the Fund, the insurer participant shall, at its discretion, direct the reinsurer issuing such policy to pay all or a portion of the annual payment directly to the Fund up to the full applicable limits of liability under the policy. The reinsurer issuing such policy shall be obligated to make such payments directly to the Fund and shall be subject to the enforcement provisions under section 223. The insurer participant shall remain obligated to make payment to the Fund of that portion of the annual payment not directed to the issuer of such reinsurance policy.

(2) AMOUNT OF PAYMENTS.—

(A) AGGREGATE PAYMENT OBLIGATION.—The total payment required of all insurer participants over the life of the Fund shall be equal to $46,025,000,000, less any bankruptcy trust credits under section 222(d).

(B) ACCOUNTING STANDARDS.—In determining the payment obligations of participants that are not licensed or domiciled in the United States or that are runoff entities, the Commission shall use accounting standards required for United States licensed direct insurers.

(C) CAPTIVE INSURANCE COMPANIES.—No payment to the Fund shall be required from a captive insurance company, unless and only to the extent a captive insurance company, on the date of enactment of this Act, insures the asbestos liability, directly or indirectly, of (and that arises out of the manufacture, sale, distribution or installation of materials or products by, or other conduct of) a person or persons other than and unaffiliated with its ultimate parent or affiliated group or pool in which the ultimate parent participates or participated, or unaffiliated with a person that was its ultimate parent or a member of its affiliated group or pool at the time the relevant insurance or reinsurance was issued by the captive insurance company.

(D) SEVERAL LIABILITY.—Unless otherwise provided under this Act, each insurer participant's obligation to make payments to the Fund is several. Unless otherwise provided under this Act, there is no joint liability, and the future insolvency by any insurer participant shall not affect the payment required of any other insurer participant.

(3) PAYMENT OF CRITERIA.—

(A) INCLUSION IN INSURER PARTICIPANT CATEGORY.—

(i) IN GENERAL.—Insurers that have paid, or been assessed by a legal judgment or settlement, at least $1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance shall be insurer participants in the Fund. Other insurers shall be exempt from mandatory payments.

(ii) INAPPLICABILITY OF SECTION 202.—Since insurers may be subject in certain jurisdictions to direct action suits, and it is not the intent of this Act to impose upon an insurer, due to its operation as an insurer, payment obligations to the Fund in situations where the insurer is the subject of a direct action, no insurer subject to mandatory payments under this section shall also be liable for payments to the Fund as a defendant participant under section 202.

(B) INSURER PARTICIPANT ALLOCATION METHODOLOGY.—

(i) IN GENERAL.—The Commission shall establish the payment obligations of individual insurer participants to reflect, on an equitable basis, the relative tort system liability of the participating insurers in the absence of this Act, considering and weighting, as appropriate (but exclusive of workers' compensation), such factors as—

(I) historic premium for lines of insurance associated with asbestos exposure over relevant periods of time;

(II) recent loss experience for asbestos liability;

(III) amounts reserved for asbestos liability;

(IV) the likely cost to each insurer participant of its future liabilities under applicable insurance policies; and

(V) any other factor the Commission may determine is relevant and appropriate.

(ii) DETERMINATION OF RESERVES.—The Commission may establish procedures and standards for determination of the asbestos reserves of insurer participants. The reserves of a United States licensed reinsurer that is wholly owned by, or under common control of, a United States licensed direct insurer shall be included as part of the direct insurer's reserves when the reinsurer's financial results are included as part of the direct insurer's United States operations, as reflected in footnote 33 of its filings with the National Association of Insurance Commissioners or in published financial statements prepared in accordance with generally accepted accounting principles.

(C) PAYMENT SCHEDULE.—The aggregate annual amount of payments by insurer participants over the life of the Fund shall be as follows:

(i) For years 1 and 2, $2,700,000,000 annually.

(ii) For years 3 through 5, $5,075,000,000 annually.

(iii) For years 6 through 27, $1,147,000,000 annually.

(iv) For year 28, $166,000,000.

(D) CERTAIN RUNOFF ENTITIES.—A runoff entity shall include any direct insurer or reinsurer whose asbestos liability reserves have been transferred, directly or indirectly, to the runoff entity and on whose behalf the runoff entity handles or adjusts and, where appropriate, pays asbestos claims.

(E) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—

(i) IN GENERAL.—Under the procedures established in subsection (b), an insurer participant may seek adjustment of the amount of its payments based on exceptional circumstances or severe financial hardship.

(ii) FINANCIAL ADJUSTMENTS.—An insurer participant may qualify for an adjustment based on severe financial hardship by demonstrating that payment of the amounts required by the Commission's methodology would jeopardize the solvency of such participant.

(iii) EXCEPTIONAL CIRCUMSTANCE ADJUSTMENT.—An insurer participant may qualify for an adjustment based on exceptional circumstances by demonstrating—

(I) that the amount of its payments under the Commission's allocation methodology is exceptionally inequitable when measured against the amount of the likely cost to the participant of its future liability in the tort system in the absence of the Fund;

(II) an offset credit as described in subparagraphs (A) and (C) of subsection (b)(4); or

(III) other exceptional circumstances.

The Commission may determine whether to grant an adjustment and the size of any such adjustment, but except as provided under paragraph (1)(B), subsection (f)(3), and section 405(f), any such adjustment shall not affect the aggregate payment obligations of insurer participants specified in paragraph (2)(A) and subparagraph (C) of this paragraph.

(iv) TIME PERIOD OF ADJUSTMENT.—Except for adjustments for offset credits, adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating to the Administrator that it remains justified.

(F) FUNDING HOLIDAYS.—

(i) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from insurer participants for that year.

(ii) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under clause (i) every year.

(iii) LIMITATIONS OF FUNDING HOLIDAYS.—Any reduction or waiver of the insurer participants' funding obligations shall—

(I) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(II) be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(iv) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(b) PROCEDURE FOR NOTIFYING INSURER PARTICIPANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

(1) NOTICE TO PARTICIPANTS.—Not later than 30 days after promulgation of the final rule establishing an allocation methodology under subsection (a)(1), the Commission shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund under the allocation methodology; and

(B) publish in the Federal Register a notice—

(i) requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information; and

(ii) that includes a list of all insurer participants notified by the Commission under subparagraph (A), and provides for 30 days for the submission of comments or information regarding the completeness and accuracy of the list of identified insurer participants.

(2) RESPONSE REQUIRED BY INDIVIDUAL INSURER PARTICIPANTS.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice under a schedule or by a date established by the Commission.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE TO INSURER PARTICIPANTS OF INITIAL PAYMENT DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INSURERS.—Not later than 120 days after receipt of the information required by paragraph (2), the Commission shall send each insurer participant a notice of initial determination requiring payments to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information. An insurer participant's payments shall be payable over the schedule established in subsection (a)(3)(C), in annual amounts proportionate to the aggregate annual amount of payments for all insurer participants for the applicable year.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to insurer participants, the Commission shall publish in the Federal Register a notice listing the insurer participants that have been sent such notification, and the initial determination on the payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination requiring a payment from the insurer participant shall be based on the best information available to the Commission.

(4) COMMISSION REVIEW, REVISION, AND FINALIZATION OF INITIAL PAYMENT DETERMINATIONS.—

(A) COMMENTS FROM INSURER PARTICIPANTS.—Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support adjustments to the required payments to reflect severe financial hardship or exceptional circumstances, including the provision of an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy judicially confirmed after May 22, 2003, but before the date of enactment of this Act.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Commission, the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether payments from that person should be required, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Commission shall adopt procedures for revising initial payments based on information received under subparagraphs (A) and (B), including a provision requiring an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy confirmed after May 22, 2003, but before the date of enactment of this Act.

(5) EXAMINATIONS AND SUBPOENAS.—

(A) EXAMINATIONS.—The Commission may conduct examinations of the books and records of insurer participants to determine the completeness and accuracy of information submitted, or required to be submitted, to the Commission for purposes of determining participant payments.

(B) SUBPOENAS.—The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) ESCROW PAYMENTS.—Without regard to an insurer participant's payment obligation under this section, any escrow or similar account established before the date of enactment of this Act by an insurer participant in connection with an asbestos trust fund that has not been judicially confirmed by final order by the date of enactment of this Act shall be the property of the insurer participant and returned to that insurer participant.

(7) NOTICE TO INSURER PARTICIPANTS OF FINAL PAYMENT DETERMINATIONS.—Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Commission shall send each insurer participant a notice of final determination.

(c) INSURER PARTICIPANTS VOLUNTARY ALLOCATION AGREEMENT.—

(1) IN GENERAL.—Not later than 30 days after the Commission proposes its rule establishing an allocation methodology under subsection (a)(1), direct insurer participants licensed or domiciled in the United States, other direct insurer participants, reinsurer participants licensed or domiciled in the United States, or other reinsurer participants, may submit an allocation agreement, approved by all of the participants in the applicable group, to the Commission.

(2) ALLOCATION AGREEMENT.—To the extent the participants in any such applicable group voluntarily agree upon an allocation arrangement, any such allocation agreement shall only govern the allocation of payments within that group and shall not determine the aggregate amount due from that group.

(3) CERTIFICATION.—The Commission shall determine whether an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle and, if so, shall certify the agreement as establishing the allocation methodology governing the individual payment obligations of the participants who are parties to the agreement. The authority of the Commission under this subtitle shall, with respect to participants who

are parties to a certified allocation agreement, terminate on the day after the Commission certifies such agreement. Under subsection (f), the Administrator shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) COMMISSION REPORT.—

(1) RECIPIENTS.—Until the work of the Commission has been completed and the Commission terminated, the Commission shall submit an annual report, containing the information described under paragraph (2), to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Administrator.

(2) CONTENTS.—The report under paragraph (1) shall state the amount that each insurer participant is required to pay to the Fund, including the payment schedule for such payments.

(e) INTERIM PAYMENTS.—

(1) AMOUNT OF INTERIM PAYMENT.—Within 90 days after the date of enactment of this Act, insurer participants shall make an aggregate payment to the Fund not to exceed 50 percent of the aggregate funding obligation specified under subsection (a)(3)(C) for year 1.

(2) RESERVE INFORMATION.—Within 30 days after the date of enactment of this Act, each insurer participant shall submit to the Administrator a certified statement of its net held reserves for asbestos liabilities as of December 31, 2004.

(3) ALLOCATION OF INTERIM PAYMENT.—The Administrator shall allocate the interim payment among the individual insurer participants on an equitable basis using the net held asbestos reserve information provided by insurer participants under subsection (a)(3)(B). Within 60 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register the name of each insurer participant, and the amount of the insurer participant's allocated share of the interim payment. The use of net held asbestos reserves as the basis to determine an interim allocation shall not be binding on the Administrator in the determination of an appropriate final allocation methodology under this section. All payments required under this paragraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Commission. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Administrator. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established under subsection (a)(3)(E).

(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Administrator to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.

(f) TRANSFER OF AUTHORITY FROM THE COMMISSION TO THE ADMINISTRATOR.—

(1) IN GENERAL.—Upon termination of the Commission under section 215, the Administrator shall assume all the responsibilities and authority of the Commission, except that the Administrator shall not have the power to modify the allocation methodology established by the Commission or by certified agreement or to promulgate a rule establishing any such methodology.

(2) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—Upon termination of the Commission under section 215, the Administrator shall have the authority, upon application by any insurer participant, to make adjustments to annual payments upon the same grounds as provided in subsection (a)(3)(D). Adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating that it remains justified. Upon the grant of any adjustment, the Administrator shall increase the payments, consistent with subsection (a)(1)(B), required of all other insurer participants so that there is no reduction in the aggregate payment required of all insurer participants for the applicable years. The increase in an insurer participant's required payment shall be in proportion to such participant's share of the aggregate payment obligation of all insurer participants.

(3) CREDITS FOR SHORTFALL ASSESSMENTS.—If insurer participants are required during the first 5 years of the life of the Fund to make up any shortfall in required insurer payments under subsection (a)(1)(B), then, beginning in year 6, the Administrator shall grant each insurer participant a credit against its annual required payments during the applicable years that in the aggregate equal the amount of shortfall assessments paid by such insurer participant during the first 5 years of the life of the Fund. The credit shall be prorated over the same number of years as the number of years during which the insurer participant paid a shortfall assessment. Insurer participants which did not pay all required payments to the Fund during the first 5 years of the life of the Fund shall not be eligible for a credit. The Administrator shall not grant a credit for shortfall assessments imposed under section 405(f).

(4) FINANCIAL SECURITY REQUIREMENTS.—Whenever an insurer participant's A.M. Best's claims payment rating or Standard and Poor's financial strength rating falls below A−, and until such time as either the insurer participant's A.M. Best's Rating or Standard and Poor's rating is equal to or greater than A−, the Administrator shall have the authority to require that the participating insurer either—

(A) pay the present value of its remaining Fund payments at a discount rate determined by the Administrator; or

(B) provide an evergreen letter of credit or financial guarantee for future payments issued by an institution with an A.M. Best's claims payment rating or Standard & Poor's financial strength rating of at least A+.

(g) ACCOUNTING TREATMENT.—Insurer participants' payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each insurer participant. This subsection shall in no way reduce the amount of monetary payments to the Fund by insurer participants as required under subsection (a).

(h) JUDICIAL REVIEW.—The Commission's rule establishing an allocation methodology, its final determinations of payment obligations and other final action shall be judicially reviewable as provided in title III.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.

(a) RULEMAKING.—The Commission shall promulgate such rules and regulations as necessary to implement its authority under this Act, including regulations governing an allocation methodology. Such rules and regulations shall be promulgated after providing interested parties with the opportunity for notice and comment.

(b) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Commission's adoption of a final regulation.

(c) INFORMATION FROM FEDERAL AND STATE AGENCIES.—The Commission may secure directly from any Federal or State department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(d) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) GIFTS.—The Commission may not accept, use, or dispose of gifts or donations of services or property.

(f) EXPERT ADVICE.—In carrying out its responsibilities, the Commission may enter into such contracts and agreements as the Commission determines necessary to obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 90 days after the last date on which the Commission makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Commission is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMISSION.

All expenses of the Commission shall be paid from the Fund.

Subtitle C—Asbestos Injury Claims Resolution Fund

SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION FUND.

(a) ESTABLISHMENT.—There is established in the Office of Asbestos Disease Compensation the Asbestos Injury Claims Resolution Fund, which shall be available to pay—

(1) claims for awards for an eligible disease or condition determined under title I;

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (b);

(4) the remaining obligations to the asbestos trust of a debtor and the class action trust under section 405(g)(8); and

(5) administrative expenses to carry out the provisions of this Act.

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The Administrator is authorized to borrow from time to time amounts as set forth in this subsection, for purposes of enhancing liquidity available to the Fund for carrying out the obligations of the Fund under this Act. The Administrator may authorize borrowing in such form, over such term, with such necessary disclosure to its lenders as will most efficiently enhance the Fund's liquidity.

(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 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 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) 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 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.

(d) BANKRUPTCY TRUST CREDITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, but subject to paragraph (2) of this subsection, the Administrator shall provide a credit toward the aggregate payment obligations under sections 202(a)(2) and 212(a)(2)(A) for assets received by the Fund from any bankruptcy trust established under a plan of reorganization confirmed and substantially consummated after July 31, 2004.

(2) ALLOCATION OF CREDITS.—The Administrator shall allocate, for each such bankruptcy trust, the credits for such assets between the defendant and insurer aggregate payment obligations as follows:

(A) DEFENDANT PARTICIPANTS.—The aggregate amount that all persons other than insurers contributing to the bankruptcy trust would have been required to pay as Tier I defendants under section 203(b) if the plan of reorganization under which the bankruptcy trust was established had not been confirmed and substantially consummated and the proceeding under chapter 11 of title 11, United States Code, that resulted in the establishment of the bankruptcy trust had remained pending as of the date of enactment of this Act.

(B) INSURER PARTICIPANTS.—The aggregate amount of all credits to which insurers are entitled to under section 202(c)(4)(A) of the Act.

SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.

(a) DEFAULT.—If any participant fails to make any payment in the amount of and according to the schedule under this Act or as prescribed by the Administrator, after demand and a 30-day opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY.—In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code. The United States Bankruptcy Court shall have jurisdiction over any issue or controversy regarding lien priority and lien perfection arising in a bankruptcy case due to a lien imposed under subsection (a).

(c) CIVIL ACTION.—

(1) IN GENERAL.—In any case in which there has been a refusal or failure to pay any liability imposed under this Act, including a refusal or failure to provide the information required under section 204 needed to determine liability, the Administrator may bring a civil action in any appropriate United States District Court, or any other appropriate lawsuit or proceeding outside of the United States—

(A) to enforce the liability and any lien of the United States imposed under this section;

(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest to the payment of such liability;

(C) for temporary, preliminary, or permanent relief; or

(D) to enforce a subpoena issued under section 204(i)(9) to compel the production of documents necessary to determine liability.

(2) ADDITIONAL PENALTIES.—In any action under paragraph (1) in which the refusal or failure to pay was willful, the Administrator may seek recovery—

(A) of punitive damages;

(B) of the costs of any civil action under this subsection, including reasonable fees incurred for collection, expert witnesses, and attorney's fees; and

(C) in addition to any other penalty, of a fine equal to the total amount of the liability that has not been collected.

(d) ENFORCEMENT AUTHORITY AS TO INSURER PARTICIPANTS.—

(1) IN GENERAL.—In addition to or in lieu of the enforcement remedies described in subsection (c), the Administrator may seek to recover amounts in satisfaction of a payment not timely paid by an insurer participant under the procedures under this subsection.

(2) SUBROGATION.—To the extent required to establish personal jurisdiction over nonpaying insurer participants, the Administrator shall be deemed to be subrogated to the contractual rights of participants to seek recovery from nonpaying insuring participants that are domiciled outside the United States under the policies of liability insurance or contracts of liability reinsurance or retrocessional reinsurance applicable to asbestos claims, and the Administrator may bring an action or an arbitration against the nonpaying insurer participants under the provisions of such policies and contracts, provided that—

(A) any amounts collected under this subsection shall not increase the amount of deemed erosion allocated to any policy or contract under section 404, or otherwise reduce coverage available to a participant; and

(B) subrogation under this subsection shall have no effect on the validity of the insurance policies or reinsurance, and any contrary State law is expressly preempted.

(3) RECOVERABILITY OF CONTRIBUTION.—For purposes of this subsection—

(A) all contributions to the Fund required of a participant shall be deemed to be sums legally required to be paid for bodily injury resulting from exposure to asbestos;

(B) all contributions to the Fund required of any participant shall be deemed to be a single loss arising from a single occurrence under each contract to which the Administrator is subrogated; and

(C) with respect to reinsurance contracts, all contributions to the Fund required of a participant shall be deemed to be payments to a single claimant for a single loss.

(4) NO CREDIT OR OFFSET.—In any action brought under this subsection, the nonpaying insurer or reinsurer shall be entitled to no credit or offset for amounts collectible or potentially collectible from any participant nor shall such defaulting participant have any right to collect any sums payable under this section from any participant.

(5) COOPERATION.—Insureds and cedents shall cooperate with the Administrator's reasonable requests for assistance in any such proceeding. The positions taken or statements made by the Administrator in any such proceeding shall not be binding on or attributed to the insureds or cedents in any other proceeding. The outcome of such a proceeding shall not have a preclusive effect on the insureds or cedents in any other proceeding and shall not be admissible against any subrogee under this section. The Administrator shall have the authority to settle or compromise any claims against a nonpaying insurer participant under this subsection.

(e) BAR ON UNITED STATES BUSINESS.—If any direct insurer or reinsurer refuses to pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Administrator shall issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. If any direct insurer or reinsurer refuses to furnish any information requested by the Administrator, the Administrator may issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. Insurer participants or their affiliates seeking to obtain a license from any State to write any type of insurance shall be barred from obtaining any such license until payment of all contributions required as of the date of license application.

(f) CREDIT FOR REINSURANCE.—If the Administrator determines that an insurer participant that is a reinsurer is in default in paying any required contribution or otherwise not in compliance with this Act, the Administrator may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer after the date of the Administrator's determination of default. Any State law governing credit for reinsurance to the contrary is preempted.

(g) DEFENSE LIMITATION.—In any proceeding under this section, the participant shall be barred from bringing any challenge to any determination of the Administrator

or the Asbestos Insurers Commission regarding its liability under this Act, or to the constitutionality of this Act or any provision thereof, if such challenge could have been made during the review provided under section 204(i)(10), or in a judicial review proceeding under section 303.

(h) DEPOSIT OF FUNDS.—

(1) IN GENERAL.—Any funds collected under subsection (c)(2) (A) or (C) shall be—

(A) deposited in the Fund; and

(B) used only to pay—

(i) claims for awards for an eligible disease or condition determined under title I; or

(ii) claims for reimbursement for medical monitoring determined under title I.

(2) NO EFFECT ON OTHER LIABILITIES.—The imposition of a fine under subsection (c)(2)(C) shall have no effect on—

(A) the assessment of contributions under subtitles A and B; or

(B) any other provision of this Act.

(i) PROPERTY OF THE ESTATE.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (4)(B)(ii), by striking ''or'' at the end;

(2) in paragraph (5), by striking ''prohibition.'' and inserting ''prohibition; or''; and

(3) by inserting after paragraph (5) and before the last undesignated sentence the following:

''(6) the value of any pending claim against or the amount of an award granted from the Asbestos Injury Claims Resolution Fund established under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(j) PROPOSED TRANSACTIONS.—

(1) NOTICE OF PROPOSED TRANSACTION.—Any participant that has taken any action to effectuate a proposed transaction or a proposed series of transactions under which a significant portion of such participant's assets, properties or business will, if consummated as proposed, be, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the 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;

(vi) the intensity and duration of exposure to risk levels of naturally occurring asbestos as defined by the Environmental Protection Agency; and

(vii) any other factors that the Administrator determines relevant.

(3) PROTOCOLS.—The guidelines developed under this subsection shall establish protocols for medical screening, which shall include—

(A) administration of a health evaluation and work history questionnaire;

(B) an evaluation of smoking history;

(C) a physical examination by a qualified physician with a doctor-patient relationship with the individual;

(D) a chest x-ray read by a certified B-reader as defined under section 121(a)(4); and

(E) pulmonary function testing as defined under section 121(a)(13).

(4) FREQUENCY.—The Administrator shall establish the frequency with which medical screening shall be provided or be made available to eligible individuals, which shall be not less than every 5 years.

(5) PROVISION OF SERVICES.—The Administrator shall provide medical screening to eligible individuals directly or by contract with another agency of the Federal Government, with State or local governments, or with private providers of medical services. The Administrator shall establish strict qualifications for the providers of such services, and shall periodically audit the providers of services under this subsection, to ensure their integrity, high degree of competence, and compliance with all applicable technical and professional standards. No provider of medical screening services may have earned more than 15 percent of their income from the provision of services of any kind in connection with asbestos litigation in any of the 3 years preceding the date of enactment of this Act. All contracts with providers of medical screening services under this subsection shall contain provisions for reimbursement of screening services at a reasonable rate and termination of such contracts for cause if the Administrator determines that the service provider fails to meet the qualifications established under this subsection.

(6) LIMITATION OF COMPENSATION FOR SERVICES.—The compensation required to be paid to a provider of medical screening services for such services furnished to an eligible individual shall be limited to the amount that would be reimbursed at the time of the furnishing of such services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for similar services if such services are covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(7) FUNDING; PERIODIC REVIEW.—

(A) FUNDING.—The Administrator shall make such funds available from the Fund to implement this section, with a minimum of $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(g).

(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), 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.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action challenging the constitutionality of any provision or application of this Act. The following rules shall apply:

(A) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened under section 2284 of title 28, United States Code.

(B) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, after the entry of the final decision.

(C) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(2) REPAYMENT TO ASBESTOS TRUST AND CLASS ACTION TRUST.—If the transfer of the assets of any asbestos trust of a debtor or any class action trust (or this Act as a whole) is held to be unconstitutional or otherwise unlawful, the Fund shall transfer the remaining balance of such assets (determined under section 405(f)(1)(A)(iii)) back to the appropriate asbestos trust or class action trust within 90 days after final judicial action on the legal challenge, including the exhaustion of all appeals.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FALSE INFORMATION.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1351. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund

''(a) FRAUD RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission under title II of the Fairness in Asbestos Injury Resolution Act of 2006 shall be fined under this title or imprisoned not more than 20 years, or both.

''(b) FALSE STATEMENT RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—

''(1) IN GENERAL.—It shall be unlawful for any person, in any matter involving the Office of Asbestos Disease Compensation or the Asbestos Insurers 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 2006.

''(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 2006, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).''.

(b) ASSUMPTION OF EXECUTORY CONTRACT.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.''.

(c) ALLOWED ADMINISTRATIVE EXPENSES.—Section 503 of title 11, United States Code, is amended by adding at the end the following:

''(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

''(2) For purposes of paragraph (1), the term 'asbestos payment obligation' means any payment obligation under title II of the Fairness in Asbestos Injury Resolution Act of 2006.''.

(d) NO DISCHARGE.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) of the debtor's payment obligations assessed against the participant under title II of that Act.''.

(e) PAYMENT.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) PARTICIPANT DEBTORS.—

''(1) IN GENERAL.—Paragraphs (2) and (3) shall apply to a debtor who—

''(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2006); and

''(B) is subject to a case under this title that is pending—

''(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(ii) at any time during the 1-year period preceding the date of enactment of that Act.

''(2) TIER I DEBTORS.—A debtor that has been assigned to Tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2006, shall make payments in accordance with sections 202 and 203 of that Act.

''(3) TREATMENT OF PAYMENT OBLIGATIONS.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2006 shall—

''(A) constitute costs and expenses of administration of a case under section 503 of this title;

''(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

''(C) not be stayed;

''(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

''(E) not be impaired or discharged in any current or future case under this title.''.

(f) TREATMENT OF TRUSTS.—Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(j) ASBESTOS TRUSTS.—

''(1) IN GENERAL.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the 'Fund') as established under the Fairness in Asbestos Injury Resolution Act of 2006 if the trust qualifies as a 'trust' under section 201 of that Act.

''(2) TRANSFER OF TRUST ASSETS.—

''(A) IN GENERAL.—

''(i) Except as provided under clause (ii) of this subparagraph and subparagraphs (B), (C), and (E), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) shall be transferred to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(ii) Notwithstanding clause (i), and except as provided under subparagraphs (B), (C), and (E), any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), other than a trust established under a reorganization plan subject to section 202(c) of that Act, shall transfer the assets in such trust to the Fund as follows:

''(I) In the case of a trust established on or before December 31, 2005, such trust shall transfer 90 percent of the assets in such trust to the Fund not later than 90 days after the

date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) In the case of a trust established after December 31, 2005, such trust shall transfer 88 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(iii) Not later than 90 days after the date on which the Administrator of the Office of Asbestos Disease Compensation (referred to in this section as the 'Administrator') certifies in accordance with section 106(f)(3)(E)(ii) of the Fairness in Asbestos Injury Resolution Act of 2006 that the Fund is fully operational and paying all valid asbestos claims at a reasonable rate, any trust transferring assets under clause (ii) shall transfer all remaining assets in such trust to the Fund. The transfer required by this clause shall not include any trust assets needed to pay—

''(I) previously incurred expenses; or

''(II) claims determined to be eligible for compensation under clause (vi).

''(iv) Except as provided under subparagraph (B), the Administrator of the Fund shall accept any assets transferred under clauses (ii) or (iii) and utilize them for any purposes for the Fund under section 221 of the Fairness in Asbestos Injury Resolution Act of 2006, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(v) Notwithstanding any other provision of Federal or State law, no liability of any kind may be imposed on a trustee of a trust for transferring assets to the Fund in accordance with clause (i).

''(vi) Any trust transferring assets under clause (ii) shall be subject to the following requirements:

''(I) The trust may continue to process asbestos claims, make eligibility determinations, and pay claims in a manner consistent with this clause if a claimant—

''(aa) has a pending asbestos claim as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(bb) provides to the trust a copy of a binding election submitted to Administrator waiving the right to secure compensation under section 106(f)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, unless the claimant is permitted under section 106(f)(2)(B) of such Act to seek a judgment or order for monetary damages from a Federal or State court;

''(cc) meets the requirements for compensation under the distribution plan for the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(dd) for any non-malignant condition satisfies the medical criteria under the distribution plan for the trust that is most nearly equivalent to the medical criteria described in section 121(d)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, except that, notwithstanding any provision of the distribution plan of the trust to the contrary, the trust shall not accept the results of a DLCO test (as such test is defined in section 121(a) of the Fairness in Asbestos Injury Resolution Act of 2006) for the purpose of demonstrating respiratory impairment; and

''(ee) for any of the cancers listed in section 121(d)(6) of the Fairness in Asbestos Injury Resolution Act of 2006 does not seek, and the trust does not pay, any compensation until such time as the Institute of Medicine finds that there is a causal relationship between asbestos exposure and such cancer, in which case such claims may be paid if such claims otherwise qualify for compensation under the distribution plan of the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) The trust shall not accept medical evidence from any physician, medical facility, or laboratory whose evidence would be not be accepted as evidence—

''(aa) under the Manville Trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(bb) by the Administrator under section 115(a)(2) of such Act.

''(III) The trust shall not amend its scheduled payment amount or payment percentage as in effect on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(IV) The trust shall not amend its eligibility criteria after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, except to conform any criteria in any category under the distribution plan of the trust with related criteria in a related category under section 121 of the Fairness in Asbestos Injury Resolution Act of 2006.

''(V) The trust shall notify the Administrator of the Fund of any claim determined to be eligible for compensation after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and the amount of any such compensation awarded to the claimant of such claim. The notification required by this subclause shall be made in such form as the Administrator shall require, and not later than 15 days after the date the determination is made.

''(VI) The trust shall not pay any claim without a certification by a claimant, subject to the penalties described in the Fairness in Asbestos Injury Resolution Act of 2006, stating the amount of collateral source compensation that such claimant has received, or is entitled to receive, under section 134 of the Fairness in Asbestos Injury Resolution Act of 2006. In the event that collateral source compensation exceeds the amount that a claimant would be paid in the category under that Act that is most nearly similar to the claimant's claim under the distribution plan of the trust, the aggregate value of the awards received by the claimant shall be reduced pro rata so that the claimant's total compensation does not exceed what would be paid for such a condition under the Fairness in Asbestos Injury Resolution Act of 2006, excluding any adjustments under section 131(b)(3) and (4) of that Act.

''(VII) Upon finding that the trust has breached any condition or conditions of this clause, the Administrator shall require the immediate payment of remaining trust assets into the Fund in accordance with section 402(f) of the Fairness in Asbestos Injury Resolution Act of 2006. The Administrator shall be entitled to an injunction against further payments of nonliquidated claims from the assets of the trust during the pendency of any dispute regarding the findings of noncompliance by the Administrator. The court in which any action to enforce the obligations of the trust is pending shall afford the action expedited consideration.

''(B) AUTHORITY TO REFUSE ASSETS.—The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

''(C) ALLOCATION OF TRUST ASSETS.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. The trustees shall demonstrate to the satisfaction of the Administrator, or by clear and convincing evidence in a proceeding brought before the United States District Court for the District of Columbia in accordance with paragraph (4), that the amount reserved is properly allocable to claims other than asbestos claims.

''(D) SALE OF FUND ASSETS.—The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2006 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

''(E) LIQUIDATED CLAIMS.—Except as specifically provided in this subparagraph, all asbestos claims against a trust are superseded and preempted as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and a trust shall not make any payment relating to asbestos claims after that date. If, in the ordinary course and the normal and usual administration of the trust consistent with past practices, a trust had before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, made all determinations necessary to entitle an individual claimant to a noncontingent cash payment from the trust, the trust shall (i) make any lump-sum cash payment due to that claimant, and (ii) make or provide for all remaining noncontingent payments on any award being paid or scheduled to be paid on an installment basis, in each case only to the same extent that the trust would have made such cash payments in the ordinary course and consistent with past practices before enactment of that Act. A trust shall not make any payment in respect of any alleged contingent right to recover any greater amount than the trust had already paid, or had completed all determinations necessary to pay, to a claimant in cash in accordance with its ordinary distribution procedures in effect as of June 1, 2003.

''(3) INJUNCTION.—

''(A) IN GENERAL.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect. No court, Federal or State, may enjoin the transfer of assets by a trust to the Fund in accordance with this subsection pending resolution of any litigation challenging such transfer or the validity of this subsection or of any provision of the Fairness in Asbestos Injury Resolution Act of 2006, and an interlocutory order denying such relief shall not be subject to immediate appeal under section 1291(a) of title 28.

''(B) AVAILABILITY OF FUND ASSETS.—Notwithstanding any other provision of law, once such a transfer has been made, the assets of the Fund shall be available to satisfy any final judgment entered in such an action and such transfer shall no longer be subject to any appeal or review—

''(i) declaring that the transfer effected a taking of a right or property for which an individual is constitutionally entitled to just compensation; or

''(ii) requiring the transfer back to a trust of any or all assets transferred by that trust to the Fund.

''(4) JURISDICTION.—Solely for purposes of implementing this subsection, personal jurisdiction over every covered trust, the trustees thereof, and any other necessary party, and exclusive subject matter jurisdiction over every question arising out of or related to this subsection, shall be vested in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 1127 of this title, that court may make any order necessary and appropriate to facilitate

prompt compliance with this subsection, including assuming jurisdiction over and modifying, to the extent necessary, any applicable confirmation order or other order with continuing and prospective application to a covered trust. The court may also resolve any related challenge to the constitutionality of this subsection or of its application to any trust, trustee, or individual claimant. The Administrator of the Fund may bring an action seeking such an order or modification, under the standards of rule 60(b) of the Federal Rules of Civil Procedure or otherwise, and shall be entitled to intervene as of right in any action brought by any other party seeking interpretation, application, or invalidation of this subsection. Any order denying relief that would facilitate prompt compliance with the transfer provisions of this subsection shall be subject to immediate appeal under section 304 of the Fairness in Asbestos Injury Resolution Act of 2006. Notwithstanding any other provision of this paragraph, for purposes of implementing the sunset provisions of section 402(f) of such Act which apply to asbestos trusts and the class action trust, the bankruptcy court or United States district court having jurisdiction over any such trust as of the date of enactment of such Act shall retain such jurisdiction.''.

(g) NO AVOIDANCE OF TRANSFER.—Section 546 of title 11, United States Code, is amended by adding at the end the following:

''(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee may not avoid a transfer made by the debtor under its payment obligations under section 202 or 203 of that Act.''.

(h) CONFIRMATION OF PLAN.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

''(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.''.

(i) EFFECT ON INSURANCE RECEIVERSHIP PROCEEDINGS.—

(1) LIEN.—In an insurance receivership proceeding involving a direct insurer, reinsurer or runoff participant, there shall be a lien in favor of the Fund for the amount of any assessment and any such lien shall be given priority over all other claims against the participant in receivership, except for the expenses of administration of the receivership and the perfected claims of the secured creditors. Any State law that provides for priorities inconsistent with this provision is preempted by this Act.

(2) PAYMENT OF ASSESSMENT.—Payment of any assessment required by this Act shall not be subject to any automatic or judicially entered stay in any insurance receivership proceeding. This Act shall preempt any State law requiring that payments by a direct insurer, reinsurer or runoff participant in an insurance receivership proceeding be approved by a court, receiver or other person. Payments of assessments by any direct insurer or reinsurer participant under this Act shall not be subject to the avoidance powers of a receiver or a court in or relating to an insurance receivership proceeding.

(j) STANDING IN BANKRUPTCY PROCEEDINGS.—The Administrator shall have standing in any bankruptcy case involving a debtor participant. No bankruptcy court may require the Administrator to return property seized to satisfy obligations to the Fund.

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON SILICA CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any personal injury claim attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and the exposed person (or another claiming on behalf of or through the exposed person) is not eligible for any monetary award under this Act; or

(II)(aa) the exposed person suffers or has suffered a functional impairment that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such functional impairment; and

(ii) satisfies the requirements of paragraph (2) .

(B) PREEMPTION.—Claims attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—

(A) IN GENERAL.—In any claim to which paragraph (1) applies, the initial pleading (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 60 days after such date, but not later than 60 days before trial, shall plead with particularity the elements of subparagraph (A)(i)(I) or (II) and shall be accompanied by the information described under subparagraph (B)(i) through (iv).

(B) PLEADINGS.—If the claim pleads the elements of paragraph (1)(A)(i)(II) and by the information described under clauses (i) through (iv) of this subparagraph if the claim pleads the elements of paragraph (1)(A)(i)(I)—

(i) admissible evidence, including at a minimum, a B-reader's report, the underlying x-ray film and such other evidence showing that the claim may be maintained and is not preempted under paragraph (1);

(ii) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(iii) if known by the plaintiff after reasonable inquiry by the plaintiff or his representative, the history of the exposed person's exposure, if any, to asbestos; and

(iv) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(c) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Except as provided under paragraph (3) and section 106(f), any agreement, understanding, or undertaking by any person or affiliated group with respect to the treatment of any asbestos claim, including a claim described under subsection (e)(2), that requires future performance by any party, insurer of such party, settlement administrator, or escrow agent shall be superseded in its entirety by this Act.

(2) NO FORCE OR EFFECT.—Except as provided under paragraph (3), any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any such agreement, understanding, or undertaking.

(3) EXCEPTION.—

(A) IN GENERAL.—Except as provided in section 202(f), nothing in this Act shall abrogate a binding and legally enforceable written settlement agreement between any defendant participant or its insurer and a specific named plaintiff with respect to the settlement of an asbestos claim of the plaintiff if—

(i) before the date of enactment of this Act, the settlement agreement was executed by—

(I) the authorized legal representative acting on behalf of the settling defendant or insurer, the settling defendant or the settling insurer; and

(II)(aa) the specific individual plaintiff, or the individual's immediate relatives; or

(bb) an authorized legal representative acting on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by that authorized legal representative;

(ii) the settlement agreement contains an express obligation by the settling defendant or settling insurer to make a future direct monetary payment or payments in a fixed amount or amounts to the individual plaintiff; and

(iii) within 30 days after the date of enactment of this Act, or such shorter time period specified in the settlement agreement, the plaintiff has fulfilled all conditions to payment under the settlement agreement.

(B) BANKRUPTCY-RELATED AGREEMENTS.—The exception set forth in this paragraph shall not apply to any bankruptcy-related agreement.

(C) COLLATERAL SOURCE.—Any settlement payment under this section is a collateral source if the plaintiff seeks recovery from the Fund.

(D) ABROGATION.—Nothing in subparagraph (A) shall abrogate a settlement agreement otherwise satisfying the requirements of that subparagraph if such settlement agreement expressly anticipates the enactment of this Act and provides for the effects of this Act.

(E) HEALTH CARE INSURANCE OR EXPENSES SETTLEMENTS.—Nothing in this Act shall abrogate or terminate an otherwise fully enforceable settlement agreement which was executed before the date of enactment of this Act directly by the settling defendant or the settling insurer and a specific named plaintiff to pay the health care insurance or health care expenses of the plaintiff.

(d) EXCLUSIVE REMEDY.—

(1) IN GENERAL.—Except as provided under paragraph (2) and section 106(f) of this Act and section 524(j)(3) of title 11, United States Code, as amended by this Act, the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(2) 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) of this Act and section 524(j)(3) of title 11, United States Code, as amended by this Act.

(2) CERTAIN SPECIFIED CLAIMS.—

(A) IN GENERAL.—Subject to section 404 (d) and (e)(3) of this Act, no claim may be brought or pursued in any Federal or State court or insurance receivership proceeding—

(i) relating to any default, confessed or stipulated judgment on an asbestos claim if the judgment debtor expressly agreed, in writing or otherwise, not to contest the entry of judgment against it and the plaintiff expressly agreed, in writing or otherwise, to seek satisfaction of the judgment only against insurers or in bankruptcy;

(ii) relating to the defense, investigation, handling, litigation, settlement, or payment of any asbestos claim by any participant, including claims for bad faith or unfair or deceptive claims handling or breach of any duties of good faith; or

(iii) arising out of or relating to the asbestos-related injury of any individual and—

(I) asserting any conspiracy, concert of action, aiding or abetting, act, conduct, statement, misstatement, undertaking, publication, omission, or failure to detect, speak, disclose, publish, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos; or

(II) asserting any conspiracy, act, conduct, statement, omission, or failure to detect, disclose, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos, asserted as or in a direct action against an insurer or reinsurer based upon any theory, statutory, contract, tort, or otherwise; or

(iv) by any third party, and premised on any theory, allegation, or cause of action, for reimbursement of healthcare costs allegedly associated with the use of or exposure to asbestos, whether such claim is asserted directly, indirectly or derivatively.

(B) EXCEPTIONS.—Subparagraph (A) (ii) and (iii) shall not apply to claims against participants by persons—

(i) with whom the participant is in privity of contract;

(ii) who have received an assignment of insurance rights not otherwise voided by this Act; or

(iii) who are beneficiaries covered by the express terms of a contract with that participant.

(3) PREEMPTION.—Any action asserting an asbestos claim (including a claim described in paragraph (2)) in any Federal or State court is preempted by this Act, 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(g) 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(g), 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(g), 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 38.1 percent of the scheduled payment amount of the single payment obligation for the entire affiliated group. The total erosion of limits for any individual defendant participant in the affiliated group shall not exceed its individual share of 38.1 percent of the affiliated group's scheduled payment amount, as measured by the individual defendant participant's percentage share of the affiliated group's prior asbestos expenditures.

(E) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, nothing in this Act shall be deemed to erode remaining aggregate products limits of a defendant participant that can demonstrate by a preponderance of the evidence that 75 percent of its prior asbestos expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury arising exclusively from the exposure to asbestos at premises owned, rented, or controlled by the defendant participant (a ''premises defendant''). In calculating such percentage, where expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant's products and to asbestos at premises owned, rented, or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. If a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by policy period, in ascending order by attachment point.

(B) OTHER EROSION METHODS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the method of erosion of any remaining aggregate products limits which are subject to—

(I) a coverage-in-place or settlement agreement between a defendant participant and 1 or more insurance participants as of the date of enactment; or

(II) a final and nonappealable judgment as of the date of enactment or resulting from a claim for coverage or reimbursement pending as of such date, shall be as specified in such agreement or judgment with regard to erosion applicable to such insurance participants' policies.

(ii) REMAINING LIMITS.—To the extent that a final nonappealable judgment or settlement agreement to which an insurer participant and a defendant participant are parties in effect as of the date of enactment of this Act extinguished a defendant participant's right to seek coverage for asbestos claims under an insurer participant's policies, any remaining limits in such policies shall not be considered to be remaining aggregate products limits under subsection (a)(1)(A).

(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 purchased by a participant after December 31, 1990, that expressly (but not necessarily exclusively) provides coverage for asbestos liabilities, including those policies commonly referred to as ''finite risk'' policies.

(2) LIMITATION.—No person may assert that any amounts paid to the Fund in accordance with this Act are covered by any policy described under paragraph (1)(B) purchased by a defendant participant, unless such policy specifically provides coverage for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims.

(e) EFFECT ON CERTAIN INSURANCE AND REINSURANCE CLAIMS.—

(1) NO COVERAGE FOR FUND ASSESSMENTS.—Subject to section 212(a)(1)(D), no participant or captive insurer may pursue an insurance or reinsurance claim against another participant or captive insurer for payments to the Fund required under this Act, except under a written agreement specifically providing insurance, reinsurance, or other reimbursement for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims or, where applicable, under finite risk policies under subsection (d).

(2) CERTAIN INSURANCE ASSIGNMENTS VOIDED.—Any assignment of any rights to insurance coverage for asbestos claims to any person who has asserted an asbestos claim before the date of enactment of this Act, or to any trust, person, or other entity not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims which

were asserted before such date of enactment, or by any Tier I defendant participant, 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(h), except to the extent that—

(A) such claims are preempted, barred, or superseded by section 403;

(B) any such rights or obligations of such person with respect to insurance or reinsurance are prohibited by paragraph (1) or (2) of subsection (e); or

(C) the limits of insurance otherwise available to such participant in respect of asbestos claims are deemed to be eroded under subsection (a).

SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR 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 disease level, a statement of the percentage of asbestos claimants who filed claims during the prior calendar year and were determined to be eligible to receive compensation under this Act, who have received the compensation to which such claimants are entitled according to section 131;

(2) the administrative performance of the program, including—

(A) the performance of the program in meeting the time limits prescribed by law and an analysis of the reasons for any systemic delays;

(B) any backlogs of claims that may exist and an explanation of the reasons for such backlogs;

(C) the costs to the Fund of administering the program; and

(D) any other significant factors bearing on the efficiency of the program;

(3) the financial condition of the Fund, including—

(A) statements of the Fund's revenues, expenses, assets, and liabilities;

(B) the identity of all participants, the funding allocations of each participant, and the total amounts of all payments to the Fund;

(C) a list of all financial hardship or inequity adjustments applied for during the fiscal year, and the adjustments that were made during the fiscal year;

(D) a statement of the investments of the Fund; and

(E) a statement of the borrowings of the Fund;

(4) the financial prospects of the Fund, including—

(A) an estimate of the number and types of claims, the amount of awards, and the participant payment obligations for the next fiscal year;

(B) an analysis of the financial condition of the Fund, including an estimation of the Fund's ability to pay claims for the subsequent 5 years in full and over the predicted lifetime of the program as and when required, an evaluation of the Fund's ability to retire its existing debt and assume additional debt, and an evaluation of the Fund's ability to satisfy other obligations under the program; and

(C) a report on any changes in projections made in earlier annual reports or sunset analyses regarding the Fund's ability to meet its financial obligations;

(5) a summary of any legal actions brought or penalties imposed under section 223, any referrals made to law enforcement authorities under section 408 (a) and (b), and any contributions to the Fund collected under section 408(e);

(6) any recommendations from the Advisory Committee on Asbestos Disease Compensation and the Medical Advisory Committee of the Fund to improve the diagnostic, exposure, and medical criteria so as to pay those claimants who suffer from diseases or conditions for which exposure to asbestos was a substantial contributing factor;

(7) a summary of the results of audits conducted under section 115; and

(8) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(c) CERTIFICATION.—The Administrator shall certify in the annual report required under subsection (a) whether, in the best judgment of the Administrator, the Fund will have sufficient resources for the fiscal year in which the report is issued to make all required payments—

(1) with respect to all claims determined eligible for compensation that have been filed and that the Administrator projects will be filed with the Office for the fiscal year; and

(2) to satisfy the Fund's debt repayment obligation, administrative costs, and other financial obligations.

(d) CLAIMS ANALYSIS AND VERIFICATION OF UNANTICIPATED CLAIMS.—

(1) IN GENERAL.—If the Administrator concludes, on the basis of the annual report submitted under this section, that—

(A) the average number of claims that qualify for compensation under a claim level or designation exceeds 125 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims qualifying for compensation under the appropriate claim level or designation; or

(B) the average number of claims that qualify for compensation under a claim level or designation is less than 75 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims deemed ineligible for compensation under the appropriate claim level or designation.

(2) DETERMINATIONS.—The Administrator shall examine the best available medical evidence and any recommendation made under subsection (b)(5) in order to determine which 1 or more of the following is true:

(A) Without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(B) A significant number of claimants who qualified for compensation under the claim level or designation do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(C) A significant number of claimants who were denied compensation under the claim level of designation did suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(D) The Congressional Budget Office projections underestimated or overestimated the actual number of persons who suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(3) RECOMMENDATIONS CONCERNING CLAIMS CRITERIA.—If the Administrator determines that a significant number of the claimants who qualified for compensation under the claim level under review do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor, or that a significant number of the claimants who were denied compensation under the claim level under review suffered from an injury or disease for which exposure to asbestos was a substantial contributing factor, the Administrator shall recommend to Congress, under subsection (f), changes to the compensation criteria in order to ensure that the Fund provides compensation for injury or disease for which exposure to asbestos was a substantial contributing factor, but does not provide compensation to claimants who do not suffer from an injury or disease for which asbestos exposure was a substantial contributing factor.

(e) RECOMMENDATIONS OF ADMINISTRATOR AND ADVISORY COMMITTEE.—

(1) REFERRAL.—If the Administrator recommends changes to this Act under subsection (d), the recommendations and accompanying analysis shall be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 (in this subsection referred to as the ''Advisory Committee'').

(2) ADVISORY COMMITTEE RECOMMENDATIONS.—The Advisory Committee shall hold expedited public hearings on the alternatives and recommendations of the Administrator and make its own recommendations for reform of the program under titles I and II.

(3) TRANSMITTAL TO CONGRESS.—Not later than 90 days after receiving the recommendations of the Administrator, the Advisory Committee shall transmit the recommendations of the Administrator and the recommendations of the Advisory Committee to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(f) SHORTFALL ANALYSIS.—

(1) IN GENERAL.—

(A) ANALYSIS.—If the Administrator concludes, at any time, that the Fund may not be able to pay claims as such claims become due at any time within the next 5 years and to satisfy its other obligations, the Administrator shall prepare an analysis of the reasons for the situation, an estimation of when

the Fund will no longer be able to pay claims as such claims become due, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report may include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund. The Administrator shall submit such analysis to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. Any recommendations made by the Administrator for changes to the program shall, in addition, be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 for review.

(B) RANGE OF ALTERNATIVES.—The range of alternatives under subparagraph (A) may include—

(i) termination of the program set forth in titles I and II of this Act in its entirety;

(ii) reform of the program set forth in titles I and II of this Act (including changes in the diagnostic, exposure, or medical criteria, changes in the enforcement or application of those criteria, enhancement of enforcement authority, changes in the timing of payments, changes in contributions by defendant participants, insurer participants (or both such participants), or changes in award values); or

(iii) any measure that the Administrator considers appropriate.

(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 (g), 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.

(g) 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—

(i) the Administrator has begun the processing of claims; and

(ii) as part of the review conducted to prepare an annual report under this section, the Chief Financial Officer of the Department of Labor, giving due consideration to the audit conducted under subsection (h), determines that if any additional claims are resolved, the Fund will not have sufficient non-taxpayer resources and borrowing authorized under section 221when 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 (h) 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 (h), 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 (h).

(7) ASBESTOS TRUSTS AND CLASS ACTION TRUSTS.—On and after the date of termination under this subsection, the trust distribution program of any asbestos trust and the class action trust shall be replaced with the medical criteria requirements of section 121.

(8) PAYMENT TO ASBESTOS TRUSTS AND CLASS ACTION TRUSTS.—The amounts determined under paragraph (1)(B) for payment to the asbestos trusts and the class action trust shall be transferred to the respective asbestos trusts of the debtor and the class action trust within 90 days.

(h) NATURE OF CLAIM AFTER SUNSET.—

(1) IN GENERAL.—

(A) RELIEF.—

(i) IN GENERAL.—On and after the date of termination under subsection (g), any individual with an asbestos claim who has not previously had a claim resolved by the Fund, may in a civil action obtain relief in damages subject to the terms and conditions under this subsection and paragraph (6) of subsection (g).

(ii) RULE OF CONSTRUCTION.—This subparagraph shall not be construed as creating a new Federal cause of action.

(B) RESOLVED CLAIMS.—An individual who has had a claim resolved by the Fund may not pursue a court action, except that an individual who received an award for a nonmalignant disease (Levels I through V) from the Fund may assert a claim for a subsequent or progressive disease under this subsection, unless the disease was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the previous claim against the Fund was disposed.

(C) MESOTHELIOMA CLAIM.—An individual who received an award for a nonmalignant or malignant disease (except mesothelioma) (Levels I through VIII) from the Fund may assert a claim for mesothelioma under this subsection, unless the mesothelioma was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the nonmalignant or other malignant claim was disposed.

(2) EXCLUSIVE REMEDY.—As of the effective date of a termination of this Act under subsection (g), 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 (g), 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 (g)(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.

(i) AUDIT.—Any annual report to Congress required under this section shall be reviewed and certified as fairly representing the financial condition of the Fund by an independent auditor.

SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABILITY OF THE UNITED STATES GOVERNMENT.

(a) CAUSES OF ACTIONS.—Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as creating a cause of action against the United States Government, any entity established under this Act, or any officer or employee of the United States Government or such entity.

(b) FUNDING LIABILITY.—Nothing in this Act shall be construed to—

(1) create any obligation of funding from the United States Government, including any borrowing authorized under section 221(b)(2); or

(2) obligate the United States Government to pay any award or part of an award, if amounts in the Fund are inadequate.

SEC. 407. RULES OF CONSTRUCTION.

(a) LIBBY, MONTANA CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of Libby, Montana. The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(b) HEALTHCARE FROM PROVIDER OF CHOICE.—Nothing in this Act shall be construed to preclude any eligible claimant from receiving healthcare from the provider of their choice.

SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENTS.

(a) ASBESTOS IN COMMERCE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), relating to the manufacture, importation, processing, disposal, and distribution in commerce of asbestos-containing products, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible civil or criminal penalties, including those under section 17 of the Toxic Substances Control Act (15 U.S.C. 2616), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(b) ASBESTOS AS AIR POLLUTANT.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.), relating to asbestos as a hazardous air pollutant, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible criminal and civil penalties, including those under section 113 of the Clean Air Act (42 U.S.C. 7413), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(c) OCCUPATIONAL EXPOSURE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator shall refer the matter in writing within 30 days after receiving that information and refer the matter to the Secretary of Labor or the appropriate State agency with authority to enforce occupational safety and health standards, for investigation for possible civil or criminal penalties under section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666).

(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 2006.''.

(2) PUBLIC SERVICE HEALTH ACT.—Section 2702(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)) is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(3) INTERNAL REVENUE CODE OF 1986.—Section 9802(a)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

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) 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.—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.—

''(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.

SA 2747. Mr. SPECTER proposed an amendment to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; as follows:

On the appropriate page, insert the following and number accordingly:

''Guidelines.—In determining which defendant participants may receive inequity adjustments the Administrator shall give preference in the following order:

(A) Defendant participants that have significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80 percent or more of their available primary insurance limits for asbestos claims remains available. (Note: I recognize that this may not be the most adequate indicator of insurance matching liabilities—however, it's a political reality that must be addressed).

(B) Defendant participants where, pursuant to the guidance set forth in section 404(a)(2)(E), 75% of its prior asbestos expenditures were caused by or arose from premise liability claims.

(C) Defendant participants who can demonstrate that their prior asbestos expenditures is inflated due to an unusually large, anomalous verdict and that such verdict has caused the defendant to be in a higher tier.

(D) Any other factor deemed reasonable by the Administrator to have caused a serious inequity.

In determining whether a company has significant insurance coverage applicable to asbestos claims, such that on the date of enactment, 80% or more of their available primary insurance limits for asbestos claims remains available, the Administrator shall inquire and duly consider:

(1) The defendant participant's expected future liability in the tort system and accordingly the adequacy of insurance available measured against future liability.

(2) Whether the insurance coverage is uncontested, or based on a final judgment or settlement.

SA 2748. Mr. CORNYN (for himself, Mr. COBURN, Mr. GRAHAM, Mr. ENSIGN, Mr. CRAPO, Mr. INHOFE, Mr. MARTINEZ, Mr. DEMINT, Mr. THUNE, Mr. BENNETT, Mr. SMITH, Mr. CRAIG, Mr. BUNNING, Mr. THOMAS, Mr. SUNUNU, Mr. CHAMBLISS, Mr. ENZI, and Mr. HAGEL) proposed an amendment 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; as follows:

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

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) impair interstate commerce and national initiatives.

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

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

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

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

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

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

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

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

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

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

(A) chrysotile;

(B) amosite;

(C) crocidolite

(D) tremolite asbestos;

(E) anthophyllite asbestos;

(F) actinolite asbestos;

(G) winchite;

(H) richterite;

(I) asbestiform amphibole minerals; and

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

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

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

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

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

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

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

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

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

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

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

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

(i) the performance of any examination; and

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

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

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

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

(i) the performance of any examination; and

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

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

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

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

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

(i) any tissue or slide examination; or

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

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

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

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

(i) the performance of any examination; and

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

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

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

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

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

(11) CLAIMANT.—

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

(i) plaintiff;

(ii) counterclaimant;

(iii) cross-claimant; or

(iv) third-party plaintiff.

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

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

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

(13) EXPOSED PERSON.—

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

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

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

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

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

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

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

(A) who is licensed to practice in the State in which the action is pending, or the State in which the claimant resides, if the claimant resides outside the State where the action is pending;

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

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

(D) who receives or received payment for the exposed person's diagnosis, examination, and treatment from the exposed person or claimant or from the exposed person's health maintenance organization or other medical provider, and such payment was not subject to reimbursement by, or on behalf of, anyone providing legal services to the claimant; and

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

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

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

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

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

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

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

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

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

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

(A) acute silicosis;

(B) accelerated silicosis; and

(C) chronic silicosis.

(22) STATE.—The term ''State''—

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

(B) includes—
(i) the District of Columbia;
(ii) Commonwealth of Puerto Rico;
(iii) the Northern Mariana Islands;
(iv) the Virgin Islands;
(v) Guam;
(vi) American Samoa; and
(vii) any other territory or possession of the United States, or any political subdivision of any of the locales described under this paragraph.

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

(A) in the context of an asbestos claim, means that—
(i) a claimant shall identify—
(I) the specific asbestos product to which the exposed person was exposed;
(II) the location and duration of such exposure; and
(III) the specific circumstances of such exposure;
(ii) such exposure—
(I) was more than incidental contact with the product and location; and
(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;
(iii) the exposed person inhaled respirable asbestos fibers in sufficient quantities to be capable of causing harm; and
(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific asbestos exposure; and

(B) in the context of a silica claim, means that—
(i) a claimant shall identify—
(I) the specific silica product to which the exposed person was exposed;
(II) the location and duration of such exposure; and
(III) the specific circumstances of such exposure;
(ii) such exposure—
(I) was more than incidental contact with the product and location; and
(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;
(iii) the exposed person inhaled respirable silica particles in sufficient quantities to be capable of causing harm; and
(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific silica exposure.

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

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

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

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

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

(C) does not include—
(i) the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer; or
(ii) any claim for exemplary or punitive damages by an employee, estate, heir, representative, or any other person or entity against the employer of an exposed person arising out of, or related to, an asbestos-related injury or silica-related injury.

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

(a) IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM.—

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

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

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

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

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

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

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

(c) NEW CLAIM REQUIRED INFORMATION.—

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

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

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

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

(D) For each alleged exposure of the exposed person and for each index person—
(i) the specific location and manner of each such exposure;
(ii) the beginning and ending dates of each such exposure; and
(iii) the identity of the manufacturer of the specific asbestos or silica to which the exposed person or index person was exposed.

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

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

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

(H) Any—
(i) supporting documentation of the condition claimed to exist; and
(ii) documentation to support the claimant or index person's identification of the asbestos or silica product that such person was exposed to.

(2) INDIVIDUAL REQUIREMENT.—

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

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

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

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

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

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—
(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and
(ii) the nature, duration, and level of each such exposure.

(B) Evidence—
(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—
(I) the exposed person's past and present medical problems; and
(II) the most probable cause of each such medical problem; or
(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—
(i) that at least 15 years have elapsed since the exposed person's first exposure to asbestos; and
(ii) the date of any such diagnosis.

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

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

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

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

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

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

(ii) total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal.

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

(H) Copies of—

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

(ii) lung volume tests;

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

(iv) pathology reports; and

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

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

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

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

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

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

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

(B) Evidence—

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

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

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

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

(C) Evidence sufficient to demonstrate—

(i) that at least 15 years have elapsed since the exposed person's first exposure to asbestos; and

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

(D) Evidence verifying that the exposed person has—

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

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

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

(F) Copies of—

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

(ii) lung volume tests;

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

(iv) pathology reports; and

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

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

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

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a report by a qualified Board-certified pathologist certifying the diagnosis of mesothelioma and a report by a qualified physician certifying that—

(A) exposure to asbestos was a substantial contributing factor to the diagnosed mesothelioma; and

(B) the mesothelioma was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) acute silicosis.

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

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

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

(G) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and

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

(ii) lung volume tests;

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

(iv) pathology reports; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Evidence sufficient to demonstrate—

(i) that at least 15 years have elapsed since the exposed person's first exposure to silica; and

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

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

(F) Copies of—

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

(ii) lung volume tests;

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

(iv) pathology reports; and

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

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

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

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

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

SEC. 5. PROCEDURES.

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

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

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

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

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

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

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

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

(2) by order of the trial court upon—

(A) motion of 1 of the parties; and

(B) for good cause shown.

(d) CONSOLIDATION.—

(1) AT TRIAL.—

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

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

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

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

(e) FORUM NON CONVENIENS.—

(1) IN GENERAL.—Any asbestos or silica claim filed on or after the date of enactment of this Act, or that is pending on the date of enactment of this Act, but that has not commenced trial or any new trial or retrial following motion, appeal, or otherwise with the presentation of evidence to the trier of fact prior to the date of enactment of this Act, if the court in which the such claim is pending, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this Act applies would be more properly heard in a forum outside the State, district, or division in which such claim was filed, the court shall—

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

(B) shall stay or dismiss such claim.

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

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

(B) the alternate forum provides an adequate remedy;

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

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

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

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

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

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

(B) ending on the date—

(i) such claim is dismissed; or

(ii) an abatement period of 1 year ends.

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

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

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

(f) VENUE.—

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

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

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

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

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

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

(3) REMOVAL.—

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

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

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

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

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

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

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

(g) PREEMPTION.—

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

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

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

(a) STATUTE OF LIMITATIONS.—

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

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

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

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

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

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

(b) 2-DISEASE RULE; DISTINCT CLAIMS.—

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

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

SEC. 7. EXPERTS.

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

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

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

SEC. 8. PROPORTIONATE RESPONSIBILITY.

(a) DEFINITION.—In this section, the term ''fault'' shall include any and all claims or causes of action for damages caused by—

(1) negligence;

(2) breach of warranty;

(3) defective or unreasonably dangerous products; or

(4) any other act, omission, conduct, or activity that violates an applicable legal standard.

(b) REPORT REQUIREMENTS.—At the time a complaint is filed in a civil action alleging an asbestos or silica claim, the plaintiff shall file a written report with the court that discloses the total amount of any payments which the plaintiff will receive in the future, as a result of settlements or judgments based upon the same claim. The plaintiff shall be required to update the report under this subsection on a regular basis during the course of the proceeding until a final judgment is entered in the case.

(c) LIABILITY.—

(1) SEVERAL NOT JOINT.—The liability of each defendant for damages—

(A) shall be several only; and

(B) shall not be joint.

(2) DIRECT PROPORTION.—Each defendant shall be liable only for the amount of damages allocated to that defendant in direct proportion to the percentage of fault of that defendant, and a separate judgment shall be rendered against the defendant for that amount.

(3) AMOUNT.—The amount of judgment to be entered against each defendant shall be the lower of the amount determined by—

(A) multiplying the total amount of the judgment by the percentage of fault assessed by the trier of fact against each defendant; or

(B) subtracting from the total judgment the total amount of all settlement monies paid or promised to be paid, and allocating the full amount of the difference to those defendants not part of any such settlements in proportion to their relative percentages of fault.

(d) SETTLEMENT EXCEEDS VERDICT.—If the total of all settlement monies paid or promised to be paid to a claimant is greater than the total amount of a verdict in favor of the claimant, the claimant shall recover nothing from any defendant.

(e) ASSESSING FAULT.—

(1) IN GENERAL.—In assessing percentages of fault at trial, a trier of fact shall consider, and the form of the verdict shall reflect, the fault of all persons and entities who contributed to the alleged asbestos-related injury or silica-related injury, regardless of whether such person or entity was, or could have been, named as a party to the suit, including persons or entities—

(A) subject to any pending or past bankruptcy;

(B) who have settled or agreed to settle the asbestos or silica claim with the claimant; or

(C) subject to immunity or statutory limitation of liability.

(2) FAULT OF NONPARTIES.—Any finding of fault assessed against a nonparty shall not—

(A) subject that nonparty to liability in the pending or any other action; and

(B) be referred to or admitted into evidence in any other action involving that nonparty.

SEC. 9. SEVERABILITY.

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

SEC. 10. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

SEC. 11. EFFECTIVE DATE.

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

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

SA 2749. Mr. CORNYN proposed an amendment to amendment SA 2748 proposed by Mr. CORNYN (for himself, Mr. COBURN, Mr. GRAHAM, Mr. ENSIGN, Mr. CRAPO, Mr. INHOFE, Mr. MARTINEZ, Mr. DEMINT, Mr. THUNE, Mr. BENNETT, Mr. SMITH, Mr. CRAIG, Mr. BUNNING, Mr. THOMAS, Mr. SUNUNU, Mr. CHAMBLISS, Mr. ENZI, and Mr. HAGEL) 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; as follows:

In lieu of the matter proposed to be inserted, insert the following:

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

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) impair interstate commerce and national initiatives.

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

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

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

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

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

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

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

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

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

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

(A) chrysotile;

(B) amosite;

(C) crocidolite

(D) tremolite asbestos;

(E) anthophyllite asbestos;

(F) actinolite asbestos;

(G) winchite;

(H) richterite;

(I) asbestiform amphibole minerals; and

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

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

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

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

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

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

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

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

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

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

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

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

(i) the performance of any examination; and

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

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

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

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

(i) the performance of any examination; and

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

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

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

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

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

(i) any tissue or slide examination; or

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

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

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

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

(i) the performance of any examination; and

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

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

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

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

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

(11) CLAIMANT.—

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

(i) plaintiff;

(ii) counterclaimant;

(iii) cross-claimant; or

(iv) third-party plaintiff.

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

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

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

(13) EXPOSED PERSON.—

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

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

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

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

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

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

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

(A) who is licensed to practice in the State in which the action is pending, or the State in which the claimant resides, if the claimant resides outside the State where the action is pending;

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

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

(D) who receives or received payment for the exposed person's diagnosis, examination, and treatment from the exposed person or claimant or from the exposed person's health maintenance organization or other medical provider, and such payment was not subject to reimbursement by, or on behalf of, anyone providing legal services to the claimant; and

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

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

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

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

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

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

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

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

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

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

(A) acute silicosis;

(B) accelerated silicosis; and

(C) chronic silicosis.

(22) STATE.—The term ''State''—

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

(B) includes—

(i) the District of Columbia;

(ii) Commonwealth of Puerto Rico;

(iii) the Northern Mariana Islands;

(iv) the Virgin Islands;

(v) Guam;

(vi) American Samoa; and

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

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

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

(i) a claimant shall identify—

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

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

(III) the specific circumstances of such exposure;

(ii) such exposure—

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

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

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

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

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

(i) a claimant shall identify—

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

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

(III) the specific circumstances of such exposure;

(ii) such exposure—

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

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

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

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

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

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

(26) WORKERS' COMPENSATION LAW.—The term ''workers' compensation law''—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) and chapter 81 of title 5, United States Code; and

(C) does not include—

(i) the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer; or

(ii) any claim for exemplary or punitive damages by an employee, estate, heir, representative, or any other person or entity against the employer of an exposed person arising out of, or related to, an asbestos-related injury or silica-related injury.

SEC. 4. ELEMENTS OF PROOF FOR ASBESTOS OR SILICA CLAIMS.

(a) IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM.—

(1) IN GENERAL.—It shall be an essential element to bring or maintain an asbestos or silica claim, that an exposed person suffer a physical impairment, of which asbestos or silica was a substantial contributing factor to such impairment.

(2) EVIDENCE AS TO EACH DEFENDANT.—Any requirement of a prima facie showing under this section shall be made as to each defendant against whom a claimant alleges an asbestos or silica claim.

(b) PRELIMINARY PROCEEDINGS; SERVICE OF PRIMA FACIE EVIDENCE OF IMPAIRMENT.—

(1) FILING OF REPORT.—A claimant in any civil action alleging an asbestos or silica claim shall file, together with the complaint or other initial pleading, a written report and supporting test results constituting prima facie evidence of the exposed person's asbestos-related or silica-related impairment meeting the requirements of this section as to each defendant.

(2) TIMING.—For any asbestos or silica claim pending on the date of enactment of this Act, a claimant shall file the written report and supporting test results described in paragraph (1) not later than 150 days after such date or not later than 60 days prior to the commencement of trial, whichever occurs first.

(3) DEFENDANTS RIGHT TO CHALLENGE.—A defendant shall be afforded a reasonable opportunity to challenge the adequacy of any proffered prima facie evidence of impairment.

(4) DISMISSAL.—A claim shall be dismissed without prejudice upon a finding of failure to make the prima facie showing required under this section.

(c) NEW CLAIM REQUIRED INFORMATION.—

(1) IN GENERAL.—Any asbestos claim or silica claim filed in a Federal or State court, on or after on the date of enactment of this Act shall include a sworn information form containing the following information:

(A) The name, address, date of birth, social security number, and marital status of the claimant.

(B) The name, last address, date of birth, social security number, and marital status of the exposed person.

(C) If the claimant alleges exposure to asbestos or silica through the testimony of another person or other than by direct or bystander exposure to a product or products, the name, address, date of birth, social security number, and marital status, for each person by which claimant alleges exposure (hereafter in this subsection referred to as the ''index person'') and the relationship of the claimant to each such person.

(D) For each alleged exposure of the exposed person and for each index person—

(i) the specific location and manner of each such exposure;

(ii) the beginning and ending dates of each such exposure; and

(iii) the identity of the manufacturer of the specific asbestos or silica to which the exposed person or index person was exposed.

(E) The occupation and name of the employer of the exposed person at the time of each alleged exposure.

(F) If the asbestos claim or silica claim involves more than 1 claimant, the identity of the defendant or defendants against whom each claimant asserts a claim.

(G) The specific disease related to asbestos or silica claimed to exist.

(H) Any—

(i) supporting documentation of the condition claimed to exist; and

(ii) documentation to support the claimant or index person's identification of the asbestos or silica product that such person was exposed to.

(2) INDIVIDUAL REQUIREMENT.—

(A) IN GENERAL.—All asbestos claims and silica claims along with any sworn information required under paragraph (1) shall be individually filed.

(B) CLASS CLAIMS NOT PERMITTED.—No claims on behalf of a group or class of persons shall be permitted.

(d) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR NONMALIGNANT ASBESTOS CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged nonmalignant asbestos–related condition in the absence of a prima facie showing of physical impairment of the exposed person for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 15 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis.

(D) A determination by the diagnosing, qualified physician, on the basis of a medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, that the claimant had a permanent respiratory impairment rating of at least Class 2 as defined by, and evaluated under, the AMA's Guides to the Evaluation of Permanent Impairment.

(E) Evidence verifying that the exposed person has an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale—

(i) bilateral small irregular opacities (s, t, or u) graded 1/1 or higher on the ILO scale;

(ii) bilateral pleural thickening graded b2 or higher on the ILO scale including blunting of the costophrenic angle; or

(iii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(F) A determination by the diagnosing, qualified physician that asbestosis or diffuse pleural thickening is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the claimant has—

(i) forced vital capacity below the predicted lower limit of normal and FEV–1/FVC ratio (using actual values) at or above the predicted lower limit of normal; or

(ii) total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal.

(G) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or silica-related disease does not meet the requirements of this subsection.

(H) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(e) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged asbestos-related cancer, other than

mesothelioma, in the absence of a prima facie showing of a primary cancer for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 15 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis of the cancer.

(D) Evidence verifying that the exposed person has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral small irregular opacities (s, t, or u) graded 1/1 or higher on the ILO scale; or

(ii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or asbestos-related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(f) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED MESOTHELIOMA.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to alleged mesothelioma in the absence of a prima facie showing of an asbestos-related malignant tumor with a primary site of origin in the pleura, the peritoneum, or pericardium.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a report by a qualified Board-certified pathologist certifying the diagnosis of mesothelioma and a report by a qualified physician certifying that—

(A) exposure to asbestos was a substantial contributing factor to the diagnosed mesothelioma; and

(B) the mesothelioma was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person.

(g) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related condition, other than a silica-related cancer, in the absence of a prima facie showing of physical impairment as a result of a medical condition to which exposure to silica was a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of such history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/1 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis);

(iii) pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988);

(iv) progressive massive fibrosis radiologically established by large opacities greater than 1 centimeter in diameter; or

(v) acute silicosis.

(D) If the claimant is asserting a claim for silicosis, evidence verifying there has been a sufficient latency period for the applicable type of silicosis.

(E) A determination by the diagnosing, qualified physician, on the basis of a personal medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment.

(F) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related disease does not meet the requirements of this subsection.

(G) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(h) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related cancer in the absence of a prima facie showing of a primary cancer for which exposure to the defendant's silica is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including silica and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of that history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not

exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/1 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis); or

(iii) a pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988).

(D) Evidence sufficient to demonstrate—

(i) that at least 15 years have elapsed since the exposed person's first exposure to silica; and

(ii) the date of any such diagnosis of the cancer.

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(i) COMPLIANCE WITH TECHNICAL STANDARDS.—Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies—

(1) shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment in the AMA's Guides to the Evaluation of Permanent Impairment, the most current version of the Official Statements of the American Thoracic Society regarding lung function testing, including general considerations for lung function testing, standardization of spirometry, standardization of the measurement of lung volumes, standardization of the single-breath determination of carbon monoxide uptake in the lung, and interpretative strategies for lung testing in effect at the time of the performance of any examination or test on the exposed person required by this Act;

(2) may not be based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of any State in which the examination, test, or screening was conducted; and

(3) may not be obtained under the condition that a claimant retains the legal services of an attorney or law firm sponsoring the examination, test, or screening.

SEC. 5. PROCEDURES.

(a) NO PRESUMPTION AT TRIAL.—Evidence relating to the prima facie showings required under section 4 shall not—

(1) create any presumption that a claimant has an asbestos or silica-related injury or impairment; and

(2) be conclusive as to the liability of any defendant.

(b) ADMISSIBILITY OF EVIDENCE.—No evidence shall be offered at a trial, and a jury shall not be informed of—

(1) the granting or denial of a motion to dismiss an asbestos or silica claim under the provisions of this Act; or

(2) the provisions of section 4 with respect to what constitutes a prima facie showing of asbestos or silica-related impairment.

(c) DISCOVERY.—Until such time as a trial court enters an order determining that a claimant has established prima facie evidence of impairment, no asbestos or silica claim shall be subject to discovery, except discovery—

(1) related to establishing or challenging such prima facie evidence; or

(2) by order of the trial court upon—

(A) motion of 1 of the parties; and

(B) for good cause shown.

(d) CONSOLIDATION.—

(1) AT TRIAL.—

(A) IN GENERAL.—A court may consolidate for trial any number and type of asbestos or silica claims with the consent of all the parties.

(B) ABSENCE OF CONSENT.—In the absence of any consent under subparagraph (A), a court may consolidate for trial only asbestos claims or silica claims relating to the same exposed person and members of the household of such exposed person.

(2) CLASS ACTIONS.—No class action or any other form of mass aggregation claim filing relating to more than 1 exposed person, except claims relating to the exposed person and members of the household of such exposed person, shall be permitted for asbestos or silica claims.

(3) AT DISCOVERY.—Any decision by a court to consolidate claims under paragraph (1) shall not preclude consolidation of asbestos or silica claim cases by a court order for pretrial or discovery purposes.

(e) FORUM NON CONVENIENS.—

(1) IN GENERAL.—Any asbestos or silica claim filed on or after the date of enactment of this Act, or that is pending on the date of enactment of this Act, but that has not commenced trial or any new trial or retrial following motion, appeal, or otherwise with the presentation of evidence to the trier of fact prior to the date of enactment of this Act, if the court in which the such claim is pending, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this Act applies would be more properly heard in a forum outside the State, district, or division in which such claim was filed, the court shall—

(A) decline to exercise jurisdiction under the doctrine of forum non conveniens; and

(B) shall stay or dismiss such claim.

(2) CONSIDERATIONS.—In determining whether to grant a motion to stay or dismiss a claim under paragraph (1), a court shall consider whether—

(A) an alternate forum exists in which such claim or action may be tried;

(B) the alternate forum provides an adequate remedy;

(C) maintenance of such claim in the court of the State in which the claim was filed would work a substantial injustice to the moving party;

(D) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to such claim;

(E) the balance of the private interests of the parties and the public interest of the State in which such claim was filed predominate in favor of such claim being brought in an alternate forum; and

(F) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(3) WAIVER OF STATUTE OF LIMITATIONS DEFENSE.—A trial court may not abate or dismiss a claim under this subsection until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff, the defendant waives the right to assert a statute of limitations defense in all other States, districts, or divisions in which such claim was not barred by limitations at the time such claim was filed in the State where such claim was originally filed as necessary to effect a tolling of the limitations periods in those States —

(A) beginning on the date such claim was originally filed; and

(B) ending on the date—

(i) such claim is dismissed; or

(ii) an abatement period of 1 year ends.

(4) COURT DUTIES.—A court may not abate or dismiss a claim under paragraph (3) until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff in another State, district, or division, that the claimant and the defendant may—

(A) rely on responses to discovery already provided under the rules of civil procedure of the State, district, or division in which such claim was originally filed; and

(B) rely on any additional discovery that may be conducted under the rules of civil procedure in another State, district, or division.

(f) VENUE.—

(1) IN GENERAL.—An asbestos or silica claim filed after the date of enactment of this Act may be filed only in the county of the State or the district or division of the United States where—

(A) the claimant resided for a period of at least 180 consecutive days immediately prior to filing suit; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which such claim is based.

(2) IMPROPER VENUE.—With respect to asbestos or silica claims pending as of the date of enactment of this Act, and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, has not commenced with presentation of evidence to the trier of fact as of the date of enactment of this Act, any claim as to which venue would not have been proper if the claim originally had been brought in accordance with paragraph (1) shall, not later than 90 days after the date of enactment of this Act, be transferred to the court of general civil jurisdiction in the county, district, or division of the State in which the action is pending in which either—

(A) the claimant was domiciled at the time the asbestos or silica claim originally was filed; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which the claim is based.

(3) REMOVAL.—

(A) IN GENERAL.—If a State court refuses or fails to apply the provisions of this Act, any party in a civil action for an asbestos claim may remove such action to a district court

of the United States in accordance with chapter 89 of title 28, United States Code.

(B) JURISDICTION OVER REMOVED ACTIONS.—The district courts of the United States shall have jurisdiction of all civil actions removed under this paragraph, without regard to the amount in controversy and without regard to the citizenship or residence of the parties.

(C) REMOVAL BY ANY DEFENDANT.—A civil action may be removed to the district court of the United States under this paragraph by any defendant without the consent of all defendants.

(D) REMAND.—A district court of the United States shall remand any civil action removed solely under this paragraph, unless the court finds that—

(i) the State court failed to comply with procedures prescribed by law; or

(ii) the failure to dismiss by the State court lacked substantial support in the record before the State court.

(E) LIMITATION.—Civil actions in State court subject to this Act may not be removed to any district court of the United States unless such removal is otherwise proper without regard to the provisions of this Act or is removed under this paragraph.

(g) PREEMPTION.—

(1) IN GENERAL.—This Act shall govern all asbestos and silica claims filed in Federal or State courts on or after the effective date of this Act, or which are pending in Federal or State courts on the effective date of this Act and in which the trial, or any new trial or retrial following motion, appeal or otherwise, has not commenced with presentation of evidence to the trier of fact as of the effective date of this Act, except for enforcement of claims for which a final judgment has been duly entered by a court and that is no longer subject to any appeal or judicial review on the effective date of this Act.

(2) GREATER LIMITATIONS BY STATES.—Nothing in this Act shall limit or preempt any State law or precedent having the effect of imposing additional or greater limits or restrictions on the assertion or prosecution of an asbestos or silica claim.

SEC. 6. STATUTE OF LIMITATIONS; 2–DISEASE RULE.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—An asbestos or silica claim not barred in a State as of the date of enactment of this Act, a claimant's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date—

(A) on which an exposed person received a medical diagnosis of an asbestos-related impairment or silica-related impairment;

(B) on which an exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment or silica-related impairment; or

(C) of death of the exposed person having an asbestos-related or silica-related impairment.

(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise timebarred as a matter of applicable State law as of the date of enactment of this Act.

(3) NO EFFECT ON SETTLEMENT AGREEMENTS.—Nothing in this section shall be construed so as to adversely affect, impair, limit, modify, or nullify any settlement agreement with respect to an asbestos or silica claim entered into before the date of enactment of this Act.

(b) 2–DISEASE RULE; DISTINCT CLAIMS.—

(1) IN GENERAL.—An asbestos or silica claim arising out of a non-malignant condition shall be a distinct cause of action, wholly separate from a claim for an asbestos-related or silica-related cancer.

(2) NO DAMAGES FOR FEAR.—No damages shall be awarded for fear or increased risk of future disease in any civil action asserting an asbestos or silica claim.

SEC. 7. EXPERTS.

(a) IN GENERAL.—A person who holds a valid medical license in good standing in a State, but who is not licensed to practice medicine in that State, and who testifies, whether by deposition, affidavit, live, or otherwise, as a medical expert witness on behalf of any party in an asbestos or silica claim is deemed to have a temporary license to practice medicine in the State in which the claim is pending solely for the purpose of providing such testimony and is subject to that extent to the authority of the medical licensing board or agency of that State.

(b) PENALTY FOR FALSE TESTIMONY.—If a physician renders expert medical testimony that is false, intentionally misleading or deceptive, or that intentionally misstates the relevant applicable standard of care, the medical licensing board or agency of the State in which the claim is pending may take such action as is permitted under the laws and regulations of that State governing the conduct of physicians.

(c) RULE OF CONSTRUCTION.—This section shall not be construed to permit an out of State physician to practice medicine in any other State other than as provided in this section.

SEC. 8. PROPORTIONATE RESPONSIBILITY.

(a) DEFINITION.—In this section, the term ''fault'' shall include any and all claims or causes of action for damages caused by—

(1) negligence;

(2) breach of warranty;

(3) defective or unreasonably dangerous products; or

(4) any other act, omission, conduct, or activity that violates an applicable legal standard.

(b) REPORT REQUIREMENTS.—At the time a complaint is filed in a civil action alleging an asbestos or silica claim, the plaintiff shall file a written report with the court that discloses the total amount of any payments which the plaintiff will receive in the future, as a result of settlements or judgments based upon the same claim. The plaintiff shall be required to update the report under this subsection on a regular basis during the course of the proceeding until a final judgment is entered in the case.

(c) LIABILITY.—

(1) SEVERAL NOT JOINT.—The liability of each defendant for damages—

(A) shall be several only; and

(B) shall not be joint.

(2) DIRECT PROPORTION.—Each defendant shall be liable only for the amount of damages allocated to that defendant in direct proportion to the percentage of fault of that defendant, and a separate judgment shall be rendered against the defendant for that amount.

(3) AMOUNT.—The amount of judgment to be entered against each defendant shall be the lower of the amount determined by—

(A) multiplying the total amount of the judgment by the percentage of fault assessed by the trier of fact against each defendant; or

(B) subtracting from the total judgment the total amount of all settlement monies paid or promised to be paid, and allocating the full amount of the difference to those defendants not part of any such settlements in proportion to their relative percentages of fault.

(d) SETTLEMENT EXCEEDS VERDICT.—If the total of all settlement monies paid or promised to be paid to a claimant is greater than the total amount of a verdict in favor of the claimant, the claimant shall recover nothing from any defendant.

(e) ASSESSING FAULT.—

(1) IN GENERAL.—In assessing percentages of fault at trial, a trier of fact shall consider, and the form of the verdict shall reflect, the fault of all persons and entities who contributed to the alleged asbestos-related injury or silica-related injury, regardless of whether such person or entity was, or could have been, named as a party to the suit, including persons or entities—

(A) subject to any pending or past bankruptcy;

(B) who have settled or agreed to settle the asbestos or silica claim with the claimant; or

(C) subject to immunity or statutory limitation of liability.

(2) FAULT OF NONPARTIES.—Any finding of fault assessed against a nonparty shall not—

(A) subject that nonparty to liability in the pending or any other action; and

(B) be referred to or admitted into evidence in any other action involving that nonparty.

SEC. 9. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 10. MISCELLANEOUS PROVISIONS.

(a) CONSTRUCTION WITH OTHER LAWS.—This Act shall not be construed to—

(1) affect the scope or operation of any workers' compensation law or veterans' benefit program;

(2) affect the exclusive remedy or subrogation provisions of any such law; or

(3) authorize any lawsuit which is barred by any such provision of law.

(b) CONSTITUTIONAL AUTHORITY.—The constitutional authority for this Act is contained in Article I, section 8, clause 3 and Article III, section 1 of the Constitution of the United States.

SEC. 11. EFFECTIVE DATE.

(a) IN GENERAL.—This Act applies to all asbestos or silica claims filed on or after the date of enactment of this Act.

(b) PENDING PROCEEDINGS.—This Act also applies to any pending asbestos or silica claims in which a trial has not commenced as of the date of enactment of this Act.

SA 2750. Mr. FRIST (for Ms. COLLINS (for herself and Mr. BOND)) proposed an amendment to the bill S. 662, to reform the postal laws of the United States; as follows:

On page 133, line 25, insert before the colon '', each of which shall be applied in conjunction with the others''.

On page 134, between lines 21 and 22, insert the following:

''(8) To establish and maintain a just and reasonable schedule for rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.

On page 135, strike lines 1 through 3.

On page 135, line 4, strike ''(2)'' and insert ''(1)''.

On page 135, line 9, strike ''(3)'' and insert ''(2)''.

On page 135, line 15, strike ''(4)'' and insert ''(3)''.

On page 135, line 19, strike ''(5)'' and insert ''(4)''.

On page 135, line 22, strike ''(6)'' and insert ''(5)''.

On page 136, line 1, strike ''(7)'' and insert ''(6)''.

On page 136, line 5, strike ''(8)'' and insert ''(7)''.

On page 136, line 8, strike ''(9)'' and insert ''(8)''.

On page 136, line 12, strike ''(10)'' and insert ''(9)''.

On page 136, line 16, strike ''(11)'' and insert ''(10)''.

On page 136, line 19, strike ''(12)'' and insert ''(11)''.

On page 136, line 21, strike ''(13)'' and insert ''(12)''.

On page 137, line 1, strike ''(14)'' and insert ''(13)''.

On page 138, line 19, strike ''The'' and insert ''Except as provided under subparagraph (C), the''.

On page 139, strike lines 8 through 17, and insert the following:

''(C) USE OF UNUSED RATE AUTHORITY.—

''(i) DEFINITION.—In this subparagraph, the term 'unused rate adjustment authority' means the difference between—

''(I) the maximum amount of a rate adjustment that the Postal Service is authorized to make in any year subject to the annual limitation under paragraph (1); and

''(II) the amount of the rate adjustment the Postal Service actually makes in that year.

''(ii) AUTHORITY.—Subject to clause (iii), the Postal Service may use any unused rate adjustment authority for any of the 5 years following the year such authority occurred.

''(iii) LIMITATIONS.—In exercising the authority under clause (ii) in any year, the Postal Service—

''(I) may use unused rate adjustment authority from more than 1 year;

''(II) may use any part of the unused rate adjustment authority from any year;

''(III) shall use the unused rate adjustment authority from the earliest year such authority first occurred and then each following year; and

''(IV) for any class or service, may not exceed the annual limitation under paragraph (1) by more than 2 percentage points.

On page 142, strike lines 5 through 10, and insert the following:

''(f) TRANSITION RULE.—For the 1-year period beginning on the date of enactment of this section, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of enactment of this section. Proceedings initiated to consider a request for a recommended decision filed by the Postal Service during that 1-year period shall be completed in accordance with subchapter II of chapter 36 of this title and implementing regulations, as in effect before the date of enactment of this section.''.

On page 162, line 10, strike all through page 164, line 9, and insert the following:

''§ 3662. Rate and service complaints

''(a) IN GENERAL.—Any interested party (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of chapter 1 (except section 101(c)), sections 401, 403, 404, 404a, 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

''(b) PROMPT RESPONSE REQUIRED.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a)—

''(A) either—

''(i) upon a finding that such complaint raises substantial and material issues of fact or law, begin proceedings on such complaint; or

''(ii) issue an order dismissing the complaint; and

''(B) with respect to any action taken under subparagraph (A) (i) or (ii), issue a written statement setting forth the bases of its determination.

''(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

''(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds upon clear and convincing evidence the complaint to be justified, it shall order that the Postal Service take such action as is necessary to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance.

''(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid from the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

On page 168, line 11, strike ''Commission'' and insert ''Postal Service''.

SA 2751. Mr. FRIST (for Mr. HARKIN) proposed an amendment to the bill S. 662, to reform the postal laws of the United States; as follows:

On page 171, line 6, strike ''and''.

On page 171, line 10, strike the period and insert ''; and''.

On page 171, between lines 10 and 11, insert the following:

(D) procedures that the Postal Service will use to—

(i) provide adequate public notice to communities potentially affected by a proposed rationalization decision;

(ii) make available, upon request, any data, analyses, or other information considered by the Postal Service in making the proposed decision;

(iii) afford affected persons ample opportunity to provide input on the proposed decision; and

(iv) take such comments into account in making a final decision.

On page 172, between lines 22 and 23, insert the following:

(5) EXISTING EFFORTS.—Effective on the date of enactment of this Act, the Postal Service may not close or consolidate any processing or logistics facilities without using procedures for public notice and input consistent with those described under paragraph (3)(D).

SA 2752. Mr. FRIST. (for Mr. REID) proposed an amendment to the bill S. 662, to reform the postal laws of the United States; as follows:

On page 202, lines 10 through 14, strike ''demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. Experience in the fields of law and accounting shall be considered in making appointments of Governors.'' and insert ''experience in the fields of public service, law or accounting or on their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size.''

On page 203, line 14, strike ''5'' and insert ''7''.

On page 203, line 17, strike ''5'' and insert ''7''.

On page 205, line 9, strike ''3'' and insert ''2''.

SA 2753. Mr. FRIST. (for Mr. STEVENS) proposed an amendment to the bill S. 662, to reform the postal laws of the United States; as follows:

On page 256, add after line 3, the following:

SEC. 1005. CONTRACTS FOR TRANSPORTATION OF MAIL BY AIR.

(a) DEFINITIONS.—Section 5402(a) of title 39, United States Code, is amended—

(1) in paragraph (4), by striking ''(g)(1)(D)(i)'' and inserting ''(g)(1)(A)(iv)(I)'';

(2) in paragraph (5), by striking ''(g)(1)(D)(i)'' and inserting ''(g)(1)(A)(iv)(I)'';

(3) in paragraph (6), by striking ''only'';

(4) in paragraph (8), by striking ''rates paid to a bush carrier'' and inserting ''linehaul rates and a single terminal handling payment at a bush terminal handling rate paid to a bush carrier'';

(5) in paragraph (11), by striking ''(g)(1)(D)(ii)'' and inserting ''(g)(1)(A)(iv)(II)'';

(6) in paragraph (13)—

(A) in subparagraph (A)—

(i) by striking ''clause (i) or (ii) of subsection (g)(1)(D)'' and inserting ''subclause (I) or (II) of subsection (g)(1)(A)(iv)''; and

(ii) by striking ''and'' after the semicolon;

(B) in subparagraph (B), by adding ''and'' after the semicolon; and

(C) by adding at the end the following:

''(C) is not comprised of previously qualified existing mainline carriers as a result of merger or sale;'';

(7) in paragraph (18), by striking ''bush routes'' and inserting ''routes''; and

(8) in paragraph (22), by striking ''bush routes'' and inserting ''routes''.

(b) NONPRIORITY BYPASS MAIL.—Section 5402(g) of title 39, United States Code, is amended—

(1) in paragraph (2)(C), by inserting ''or a destination city'' after ''acceptance point and a hub'';

(2) in paragraph (3), by adding at the end the following:

''(C) When a new hub results from a change in a determination under subparagraph (B), mail tender from that hub during the 12-month period beginning on the effective date of that change shall be based on the passenger and freight shares to the destinations of the affected hub or hubs resulting in the new hub.''; and

(3) in paragraph (5)(A)(i), by striking ''(g)(1)(D)(ii)'' and inserting ''(g)(1)(A)(iv)(II)''.

(c) EQUITABLE TENDER.—Section 5402(h) of title 39, United States Code, is amended—

(1) in paragraph (1), by inserting ''bush'' after ''providing scheduled'';

(2) by striking paragraph (3) and inserting the following:

''(3)(A) Except as provided under subparagraph (C), a new or existing 121 bush passenger carrier qualified under subsection (g)(1) shall be exempt from the requirements under paragraphs (1)(B) and (2)(A) on a city pair route for a period which shall extend for—

''(i) 1 year;

''(ii) 1 year in addition to the extension under clause (i) if, as of the conclusion of the first year, such carrier has been providing not less than 5 percent of the passenger service on that route (as calculated under paragraph (5)); and

''(iii) 1 year in addition to the extension under clause (ii) if, as of the conclusion of the second year, such carrier has been providing not less than 10 percent of the passenger service on that route (as calculated under paragraph (5)).

''(B)(i) The first 3 121 bush passenger carriers entitled to the exemptions under subparagraph (A) on any city pair route shall divide no more than an additional 10 percent of the mail, apportioned equally, comprised of no more than—

''(I) 5 percent of the share of each qualified passenger carrier servicing that route that is not a 121 bush passenger carrier; and

''(II) 5 percent of the share of each nonpassenger carrier servicing that route that transports 25 percent or more of the total nonmail freight under subsection (i)(1).

''(ii) Additional 121 bush passenger carriers entering service on that city pair route after the first 3 shall not receive any additional mail share.

''(iii) If any 121 bush passenger carrier on a city pair route receiving an additional share of the mail under clause (ii) discontinues service on that route, the 121 bush passenger carrier that has been providing the longest period of service on that route and is otherwise eligible but is not receiving a share by reason of clause (ii), shall receive the share of the carrier discontinuing service.

''(C) Notwithstanding the requirements of this subsection, if only 1 passenger carrier or aircraft is qualified to be tendered nonpriority bypass mail as a passenger carrier or aircraft on a city pair route in the State of Alaska, the Postal Service shall tender 20 percent of the nonpriority bypass mail described under paragraph (1) to the passenger carrier or aircraft providing at least 10 percent of the passenger service on such route.'';

(3) in paragraph (5)(A)—

(A) by striking ''(i)'' after ''(A)''; and

(B) by striking clause (ii).

(d) PERCENT OF NONMAIL FREIGHT.—Section 5402(i)(6) of title 39, United States Code, is amended—

(1) by striking ''(A)'' after ''(6)''; and

(2) by striking subparagraph (B).

(e) PERCENT OF TENDER RATE.—Section 5402(j)(3)(B) of title 39, United States Code, is amended by striking ''bush routes in the State of Alaska'' and inserting ''routes served exclusively by bush carriers in the State of Alaska''.

(f) DETERMINATION OF RATES.—Section 5402(k) of title 39, United States Code, is amended by striking paragraph (5).

(g) TECHNICAL AND CONFORMING AMENDMENT.—Section 5402(p)(3) of title 39, United States Code, is amended by striking ''(g)(1)(D)'' and inserting ''(g)(1)(A)(iv)''.

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided under paragraph (2), this section shall take effect on the date of enactment of this Act.

(2) EQUITABLE TENDER.—Subsection (c) shall take effect on July 1, 2006.

SA 2754. Mr. KYL (for himself and Mr. CHAMBLISS) proposed an amendment to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; as follows:

SEC. 1. PROPORTIONAL PAYMENTS.

(a) At page 171, after line 5, insert new (c) as follows (the subsection references assume that the required renumbering has occurred):

''(c) LIMITATION.—For any affiliated group, the total payment in any year, including any guaranteed payment surcharge under subsection (m) and any bankruptcy trust guarantee surcharge under section 222(c), shall not exceed the lesser of $16,702,400 or 1.67024 percent of the revenues of the affiliated group for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation is applied, whichever is greater. For purposes of this subsection, the term ''affiliated group'' shall include any defendant participant that is an ultimate parent. The limitation in this subsection shall not apply to defendant participants in Tier I or to any affiliated group whose revenues for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation applied, whichever is greater, exceeds $1,000,000,000. The revenues of the affiliated group shall be determined in accordance with section 203(a)(2), except for the applicable date. An affiliated group that claims a reduction in its payment in any year shall file with the Administrator, in accordance with procedures prescribed by the Administrator, sufficient information to allow the Administrator to determine the amount of any such reduction in that year. If as a result of the application of the limitation provided in this subsection an affiliated group is exempt from paying all or part of a guaranteed payment surcharge or bankruptcy trust surcharge, then the reduction in the affiliated group's payment obligation due to the limitation in this subsection shall be redistributed in accordance with subsection (m). Nothing in this subsection shall be construed as reducing the minimum aggregate annual payment obligation of defendant participants as provided in section 204(i)(1).''

(b) Renumber subsections following new subsection (c).

(c) Subsequent to renumbering the subsections following new subsection 204(c), make the following cross-reference changes:

At page 142, line 7, replace ''204(g)'' with ''204(h)''

At page 151, line 20, replace ''204(i)(6)'' with ''204(j)(6)''

At page 160, line 21, replace ''204(l)'' with ''204(m)''

At page 167, line 24, replace ''204(d)'' with ''204(e)''

At page 170, lines 21 and 22, replace ''(d) and (m)'' with ''(e) and (n)''

At page 171, line 22, replace ''(i)(10)'' with ''(j)(10)''

At page 172, line 3, replace ''(j)'' with ''(k)''

At page 177, line 12, replace ''(j) with ''(k)''

At page 178, line 25, replace ''(j)(3)'' with ''(k)(3)''

At page 179, line 2, replace ''(k)(1)(A)'' with ''(l)(1)(A)''

At page 182, line 16, replace ''(i) with ''(j)''

At page 183, line 6, replace ''(i)'' with ''(j)''

At page 186, lines 7 and 8, replace ''(d), (f), (g), and (m)'' with ''(e), (g), (h) and (n)''

At page 186, line 11, replace ''(d) and (m)'' with ''(e) and ''(n)''

At page 186, line 20, replace ''(d) and (m)'' with ''(e) and ''(n)''

At page 186, line 23, replace ''(l)'' with ''(m)''

At page 187, line 8, replace ''(f)'' with ''(g)''

At page 196, line 20, replace ''(d)'' with ''(e)''

At page 196, line 22, replace ''(m)'' with ''(n)''

At page 197, line 13, replace ''(h)'' with ''(i)''

At page 198, line 11, replace ''(d)'' with ''(e)''

At page 198, line 16, replace ''(h)'' with ''(i)''

At page 198, line 17, replace ''(j)'' with ''(k)''

At page 198, line 23, replace ''(d)'' with ''(e)''

At page 199, line 10, replace ''(h)'' with ''(i)''

At page 199, line 12, replace ''(d) and (m)'' with ''(e) and (n)''

At page 199, line 20, replace ''(k)'' with ''(l)''

At page 199, line 22, replace ''(h)'' with ''(i)''

At page 200, line 3, replace ''(h)'' with ''(i)''

At page 200, line 7, replace ''(d), (f), (g), and (m)'' with ''(e), (g), (h) and (n)''

At page 200, line 22, replace ''(d), (f), and (g)'' with ''(e), (g), and (h)''

At page 201, line 5, replace ''(i)(9)'' with ''(j)(9)''

At page 203, line 6, replace ''204(i)'' with ''204(j)''

At page 204, line 23, replace ''204(d)'' with ''204(e)''

At page 205, line 11, replace ''(i)(10)'' with ''(j)(10)''

At page 205, line 16, replace ''204(h)'' with ''204(i)''

At page 248, line 21, replace ''204(f)(3)'' with ''204(g)(3)''

At page 261, line 14, replace ''204(i)(10)'' with ''204(j)(10)''

At page 266, line 14, replace ''204(f)'' with ''204(g)''

At page 289, line 9, replace ''204(i)'' with ''204(j)''

At page 289, line 11, replace ''204(d)'' with ''204(e)''

At page 289, line 12, replace ''204(m)'' with ''204(n)''

At page 289, line 19, replace ''204(i)'' with ''204(j)''

At page 289, line 20, replace ''204(d)'' with ''204(e)''

At page 289, line 21, replace ''204(m)'' with ''204(n)''

At page 289, line 23, replace ''204(i)(10)'' with ''204(j)(10)''

At page 334, line 8, replace ''204(f)'' with ''204(g)''

SEC. 2. HARDSHIP ADJUSTMENTS.

(a) Strike page 172, line 6, through page 173, line 17, and insert the following:

''(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such an adjustment by demonstrating to the satisfaction of the Administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to payor satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the Administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to payor satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.—In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected financial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately preceding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101 (31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments of extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the Administrator considers relevant.

(C) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the Administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the Administrator determines at the time of the renewed adjustment that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this sub-paragraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and analyses submitted to the Administrator were made in good faith and are reasonable and attainable.''

(b) CONFORMING CHANGES.

At page 177, line 10, strike ''hardship and''

At page 178, lines 19–20, strike ''financial hardship adjustments under paragraph (2) and''

At page 178, lines 22–23, strike ''—(A).''

At page 179, line 2, insert a period after ''(k)(1)(A)'' and delete ''; or''

At pages 179–181, strike line 10 on page 179 through line 2 on page 181.

At page 181, at line 3: Insert ''RULEMAKING AND'' before ''ADVISORY''

At page 181, line 5: Strike ''shall'' and insert ''may''

At page 181, following line 14, insert: ''The Administrator may adopt rules consistent with this Act to make the determination of hardship and inequity adjustments more efficient and predictable.''

At page 197, line 8, strike ''HARDSHIP AND''

At page 197, line 15, strike ''hardship and''

At page 197, line 19, strike ''hardship and''

At page 197, lines 24 and 25, strike ''severe financial hardship or''

SEC. 3. STEPDOWNS AND FUNDING HOLIDAYS

(a) At page 205, line 20, strike ''The'' and insert: ''Except as otherwise provided in this paragraph, the''

(b) At page 205, lines 22 through 24 strike: '', except with respect to defendant participants in Tier I, Subtiers 2 and 3, and class action trusts'' and insert the following:

''. The reductions under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reduction under this subsection exceeds the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reduction provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reduction provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.''

(c) At page 207, line 10 through 12, strike the text following ''except'' in line 10 and insert ''as otherwise provided under this paragraph. The reductions or waivers provided under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions or waivers under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reductions or waivers under this subsection exceed the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reductions or waivers provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.''

SA 2755. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 385, line 1, strike all through page 392, line 5.

SA 2756. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 366, between lines 12 and 13, insert the following:

(c) APPLICATION OF THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT.—Employers and their insurers who pay compensation or medical benefits or who are potentially liable to their employees and other beneficiaries for compensation or medical benefits under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) shall be entitled to—

(1) a lien for compensation and medical benefits paid; 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.

SA 2757. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, line 22, strike ''monetary''.

SA 2758. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 363, insert between lines 18 and 19, 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 363, line 21, strike ''(4)'' and insert ''(5)''.

On page 364, line 15, strike ''(5)'' and insert ''(6)''.

NOTICES OF HEARINGS/MEETINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. COLEMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations Minnesota field hearing, ''Volatility in the Natural Gas Market: The Impact of High Natural Gas Prices on American Consumers,'' originally scheduled for this Friday, February 10th has been rescheduled for Monday, February 13, 2006. The Subcommittee field hearings will examine the natural gas market and allegations that price and supply manipulation have caused increasingly high and volatile natural gas prices. The Subcommittee intends to hold this hearing to examine the impact higher prices have on the economy, business, and families, and the government's role in ensuring that natural gas prices are determined in a competitive and informed marketplace.

The Subcommittee hearing has been scheduled for Monday, February 13, 2006, at 8:30 a.m. at the James J. Hill Reference Library at 80 West 4th Street in St. Paul, Minnesota. For further information, please contact Raymond V. Shepherd, III, Staff Director and Chief Counsel to the Permanent Subcommittee on Investigations.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will be held on Thursday, February 16, 2006 at 10 a.m., in Room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony regarding S. 2253, to require the Secretary of the Interior to offer certain areas of the 181 Area of the Gulf of Mexico for oil and gas leasing.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Frank Macchiarola or Shannon Ewan.

SUBCOMMITTEE ON NATIONAL PARKS

Mr. THOMAS. Mr. President, the Subcommittee on National Parks of the Committee on Energy and Natural Resources has previously announced a hearing to be held on Thursday, February 16, 2006, at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC. In addition to the bills previously listed, the following joint resolution will be included.

S.J. Res. 28, a joint resolution approving the location of the commemorative work in the District of Columbia honoring former President Dwight D. Eisenhower.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Tom Lillie or David Szymanski.

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. CRAIG. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources.

The hearing will be held on Wednesday, March 1st at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to review the role of the Forest Service and other Federal agencies in protecting the health and welfare of foreign guest workers carrying out tree planting and other service contracts on National Forest System lands, and to consider related Forest Service guidance and contract modifications issued in recent weeks.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Frank Gladics or Sara Zecher.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. COBURN. Mr. President. I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, February 9, 2006, at 10 a.m., on TSA and Passenger Screening.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. COBURN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Thursday, February 9, 2006, at 10 a.m., in 215 Dirksen Senate Office Building, to hear testimony on ''The President's Fiscal Year 2007 Budget Proposal''.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. COBURN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 9, 2006, at 9:30 a.m. to hold a hearing on New Initiatives in Cooperative Threat Reduction.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. COBURN. Mr. President, I ask unanimous consent that the committee on energy and natural resources be authorized to meet during the session of the Senate on Thursday, February 9 at 9:30 a.m. The purpose of this hearing is to consider the President's proposed budget for FY 2007 for the Department of Energy.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. COBURN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to hold a hearing during the session of the Senate on Thursday, February 9, 2006, at 10 a.m. in SD–106.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. COBURN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Thursday, February 9, 2006, at 10 a.m. for a hearing titled, ''Hurricane Katrina: The Defense Department's Role in the Response.''

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. COBURN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 9, 2006, at 10:30 a.m. to hold a closed hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON CLEAN AIR, CLIMATE CHANGE, AND NUCLEAR SAFETY

Mr. COBURN. Mr. President, I ask unanimous consent that the Subcommittee on Clean Air, Climate Change, and Nuclear Safety be authorized to hold a hearing February 9, 2006, at 9:30 a.m. on the impact of clean air regulations on natural gas prices.

The PRESIDING OFFICER. Without objection, it is so ordered.

FOREIGN TRAVEL FINANCIAL REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following reports for standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Elizabeth Croker:									
United States	Dollar				8,431.17				8,431.17
Senegal	Franc		1,155.00						1,155.00
Stephanie Mercier:									
United States	Dollar				7,782.00				7,782.00
Hong Kong	Dollar		3,110.04						3,110.04
Steven Meeks:									
United States	Dollar				7,812.68				7,812.68
Hong Kong	Dollar		3,110.04						3,110.04
Hayden Milberg:									
United States	Dollar				7,812.68				7,812.68
Hong Kong	Dollar		3,110.04						3,110.04
Sara McPherson:									
United States	Dollar				7,812.68				7,812.68
Hong Kong	Dollar		3,109.89						3,109.89
Hannah Lambiotte:									
United States	Dollar				7,812.68				7,812.68
Hong Kong	Dollar		3,109.89						3,109.89
Robert Holifield:									
United States	Dollar				7,859.68				7,859.68
Hong Kong	Dollar		3,109.89						3,109.89
Total			19,814.79		55,323.57				75,138.36

SAXBY CHAMBLISS,
Chairman, Committee on Agriculture, Nutrition and Forestry, Jan. 18, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Sam Brownback:									
Dem Repub Congo	Dollar		368.00						368.00
Rwanda	Dollar		454.00						454.00
Kenya	Shilling		475.00		444.00				919.00
United States	Dollar				6,489.00				6,489.00
Hannah Royal:									
Dem Repub Congo	Dollar		368.00						368.00
Rwanda	Dollar		454.00						454.00
Kenya	Shilling		430.00		444.00				874.00
United States	Dollar				6,021.00				6,021.00
Paul Grove:									
Egypt	Pound		867.00						867.00
Belgium	Euro		764.00						764.00
United States	Dollar				6,535.98				6,535.98
Thomas Hawkins:									
Egypt	Pound		867.00						867.00
Belgium	Euro		764.00						764.00
United States	Dollar				6,535.98				6,535.98
Tim Rieser:									
Colombia	Dollar		350.00				250.00		600.00
United States	Dollar				745.00				745.00
Allen Cutler:									
Italy	Euro		672.00						672.00
United States	Dollar				7,444.91				7,444.91
Total			6,833.00		34,659.87		250.00		41,742.87

THAD COCHRAN,
Chairman, Committee on Appropriations, Jan. 24, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2005—Amended

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Mary L. Landrieu:									
United States	Dollar				3,255.99				3,255.99
Ireland	Euro		463.19				246.30		709.49
Jason Matthews:									
United States	Dollar				2,484.99				2,484.99

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2005—Amended—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Ireland	Euro		600.00				809.50		1409.50
Norma Jane Sabiston:									
United States	Dollar				2,381.99				2,381.99
Ireland	Euro		600.00				809.50		1,409.50
Total			1,663.19		8,122.97		1,865.30		11,651.46

THAD COCHRAN,
Chairman, Committee on Appropriations, Dec. 12, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754, COMMITTEE ON ARMED SERVICES—THIRD QUARTER, AMENDED FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Hillary Rodham Clinton:									
United States	Dollar				6,683.18				6,683.18
Singapore	Dollar		501.35						501.35
Huma Abedin:									
United States	Dollar				6,683.18				6,683.18
Singapore	Dollar		386.01						386.01
Total			887.36		13,366.36				14,253.72

JOHN WARNER,
Chairman, Committee on Armed Services, Jan. 20, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Stephen Higley:									
United States	Dollar				328.40				328.40
Canada	Dollar		992.80						992.80
John Shanahan:									
United States	Dollar				1,428.45				1,428.45
Canada	Dollar		992.80						992.80
William Holbrook:									
United States	Dollar				328.40				328.40
Canada	Dollar		992.80						992.80
Christy Plumer:									
United States	Dollar				348.52				348.52
Canada	Dollar		1,588.48						1,588.48
Brian Mormino:									
United States	Dollar				1,428.45				1,428.45
Canada	Dollar		1,191.36						1,191.36
Thomas Lawler:									
United States	Dollar				1,428.17				1,428.17
Canada	Dollar		1,588.48						1,588.48
James Sandberg:									
United States	Dollar				1,428.45				1,428.45
Canada	Dollar		992.80						992.80
Alison Taylor:									
United States	Dollar				1,428.45				1,428.45
Canada	Dollar		992.80						992.80
Michael Goo:									
United States	Dollar				1,428.45				1,428.45
Canada	Dollar		992.80						992.80
Kenneth Connolly:									
United States	Dollar				703.20				703.20
Canada	Dollar		198.56						198.56.
United States	Dollar				6,548.00				6,548.00
Switzerland	Franc		1,140.00						1,140.00
Malcolm Woolf:									
United States	Dollar				6,548.00				6,548.00
Switzerland	Franc		1,140.00						1,140.00
Total			12,803.68		23,374.94				36,178.62

JAMES M. INHOFE,
Chairman, Committee on Environment and Public Works, Jan. 18, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator George Allen:									
India	Rupee		50.40						50.40
Hong Kong	Dollar		81.89						81.89
China	Yuan		324.15						324.15
United States	Dollar				7,711.45				7,711.45
Senator Lincoln Chafee:									
Liberia	Dollar		180.00						180.00
Senator Norm Coleman:									
Hong Kong	Dollar		1,857.12						1,857.12

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				7,932.68				7,932.68
Senator Christopher Dodd:									
Qatar	Rial		862.00						862.00
Kuwait	Dinar		394.00						394.00
United States	Dollar				9,479.51				9,479.51
Senator Chuck Hagel:									
Israel	Shekel		316.00						316.00
Jordan	Dinar		382.00						382.00
Saudi Arabia	Riyal		146.00						146.00
Kuwait	Dinar		364.00						364.00
Egypt	Pound		239.00						239.00
United States	Dollar				6,493.99				6,493.99
Senator Richard G. Lugar:									
Belgium	Euro		432.00						432.00
United Kingdom	Pound		458.00						458.00
United States	Dollar				6,330.00				6,330.00
Lisa Curtis:									
Pakistan	Rupee		1,164.98						1,164.98
United States	Dollar				8,727.79				8,727.79
Heather Flynn:									
Tanzania	Shilling		2,500.00						2,500.00
United States	Dollar				7,738.00				7,738.00
Patrick Garvey:									
Kuwait	Dinar		840.00						840.00
United States	Dollar				3,618.00				3,618.00
James B. Greene:									
Canada	Dollar		595.68						595.68
United States	Dollar				1,657.97				1,657.97
Frank Jannuzi:									
United Kingdom	Pound		1,470.00						1,470.00
Hong Kong	Dollar		1,383.00						1,383.00
Cambodia	Riel		786.00						786.00
Thailand	Baht		782.00		168.00				950.00
United States	Dollar				10,867.00				10,867.00
Jill Marie Konz:									
Canada	Dollar		397.12						397.12
United States	Dollar				1,690.64				1,690.64
Carl Meacham:									
Colombia	Peso		702.00						702.00
United States	Dollar				2,008.20				2,008.20
Kenneth A. Myers, III:									
Belgium	Euro		432.00						432.00
United Kingdom	Pound		458.00				256.03		714.03
United States	Dollar				6,330.00				6,330.00
Janice O'Connell:									
Qatar	Rial		862.00						862.00
Kuwait	Dinar		394.00						394.00
United States	Dollar				11,131.85				11,131.85
Debra B. Rich:									
Liberia	Dollar		180.00						180.00
Manisha Singh:									
China	Yuan		292.00						292.00
Thailand	Dollar		283.00						283.00
Cambodia	Dollar		282.00						282.00
Vietnam	Dollar		232.00						232.00
Kyrgyzstan	Dollar		119.00						119.00
Caroline Tess:									
Haiti	Dollar		570.00						570.00
United States	Dollar				977.20				977.20
Paul Unger:									
India	Rupee		142.00						142.00
Hong Kong	Dollar		72.59						72.59
China	Yuan		334.96						334.96
United States	Dollar				7,711.45				7,711.45
Total			21,360.89		100,573.73		256.03		122,190.65

RICHARD LUGAR,
Chairman, Committee on Foreign Relations, Jan. 17, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator James M. Inhofe:									
United States	Dollar				6,983.20				6,983.20
Angola	Dollar		201.10						201.10
Uganda	Dollar		310.50				25.00		335.50
Germany	Dollar		312.15				20.00		332.15
John Bonsell:									
United States	Dollar				6,497.70				6,497.70
Angola	Dollar		201.10						201.10
Uganda	Dollar		253.40						253.40
Germany	Dollar		352.50				50.00		402.50
Mark Powers:									
United States	Dollar				6,497.70				6,497.70
Angola	Dollar			201.10					201.10
Uganda	Dollar			254.00					254.00
Germany	Dollar		300.50						300.50
Senator Jack Reed:									
United States	Dollar				13,330.85				13,330.85
Qatar	Rial		465.00						465.00
Kuwait	Dinar		310.00						310.00
Elizabeth King:									
United States	Dollar				11,151.85				11,581.85
Qatar	Rial		494.00						494.00
Kuwait	Dinar		315.00						315.00
Senator Joseph I. Lieberman:									
United States	Dollar				9,145.38				9,145.38

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Israel	Dollar		1,810.00						1,810.00
Frederick M. Downey:									
United States	Dollar				8,517.00				8,517.00
Israel	Dollar		1,810.00						1,810.00
Senator John Cornyn:									
China	Dollar		292.00						292.00
Thailand	Dollar		283.00						283.00
Cambodia	Dollar		282.00						282.00
Vietnam	Dollar		232.00						232.00
Kyrgyzstan	Dollar		119.00						119.00
Russell J. Thomasson:									
China	Dollar		292.00						292.00
Thailand	Dollar		283.00						283.00
Cambodia	Dollar		282.00						282.00
Vietnam	Dollar		232.00						232.00
Kyrgyzstan	Dollar		119.00						
Senator James M. Inhofe:									
United States	Dollar				7,581.40				7,581.40
John Bonsell:									
United States	Dollar				7,137.90				7,137.90
Ryan Thompson:									
United States	Dollar				7,137.90				7,137.90
Total			10,006.35		83,980.88				93,987.23

JOHN WARNER,
Chairman, Committee on Armed Services, Jan. 20, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Lou Ann Linehan:									
Israel	New Shekel		271.00						271.00
Jordan	Dinar		546.00						546.00
Kuwait	Dinar		384.00						384.00
Egypt	Pound		282.00						282.00
Total			1,483.00						1,483.00

RICHARD SHELBY,
Chairman, Committee on Banking, Housing, and Urban Affairs,
Jan. 11, 2006.

CONSOLIDATED REPORT OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Josh Johnson:									
Micronesia	Dollar		1,253.53						1,253.53
United States	Dollar				7,739.95				7,739.95
Allen Stayman:									
Micronesia	Dollar		982.57						982.57
United States	Dollar				5,962.21				5,962.21
Jonathan Black:									
Canada	Dollar		1,440.46						1,440.46
United States	Dollar				348.40				348.40
Senator Jeff Bingaman:									
Canada	Dollar		549.79						549.79
United States	Dollar				878.42				878.42
Alex Flint:									
Canada	Dollar		182.22						182.22
United States	Dollar				1,431.57				1,431.57
Robert S. Simon:									
Canada	Dollar		566.33						566.33
United States	Dollar				898.42				898.42
Total			4,974.90		17,258.97				22,233.87

PETE DOMENICI,
Chairman, Committee on Energy and Natural Resources, Feb. 1, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Floyd DesChamps:									
Canada	Dollar		675.00						675.00
United States	Dollar				898.42				898.42
Rebecca Jensen:									
Canada	Dollar		530.00						530.00
United States	Dollar				898.42				898.42
Virginia L. Worrest:									
Canada	Dollar		268.00						268.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				801.82				801.82
Derrick Freeman:									
Canada	Dollar		477.62						477.62
United States	Dollar				898.42				898.42
Garret Graves:									
Canada	Dollar		378.90						378.90
United States	Dollar				1,299.12				1,299.12
John Easton:									
China	Yuan		292.00						292.00
Thailand	Baht		282.00						282.00
Cambodia	Dollar		282.00						282.00
Vietnam	Dollar		232.00						232.00
Kyrgyzstan	Dollar		119.00						119.00
Total			3,536.52		4,796.20				8,332.72

TED STEVENS,
Chairman, Committee on Commerce, Science and Transportation,
Jan. 18, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FINANCE FOR TRAVEL FROM OCT. 1 TO DEC. 31. 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Gordon Smith:									
China	Yuan		292.00						292.00
Thailand	Baht		282.00						282.00
Cambodia	Riell		282.00						282.00
Vietnam	Dong		232.00						232.00
Kyrgyzstan	Som		119.00						119.00
Senator Jim Bunning:									
China	Yuan		292.00						292.00
Thailand	Baht		283.00						283.00
Cambodia	Riel		282.00						282.00
Vietnam	Dong		232.00						232.00
Kyrgyzstan	Som		119.00						119.00
Senator Mike Crapo:									
China	Yuan		292.00						292.00
Thailand	Baht		282.00						282.00
Cambodia	Riel		282.00						282.00
Vietnam	Dong		232.00						232.00
Kyrgyzstan	Som		119.00						119.00
Rob Epplin:									
China	Yuan		292.00						292.00
Thailand	Baht		282.00						282.00
Cambodia	Riel		282.00						282.00
Vietnam	Dong		232.00						232.00
Kyrgyzstan	Som		119.00						119.00
David Young:									
China	Yuan		292.00						292.00
Thailand	Baht		282.00						282.00
Cambodia	Riel		282.00						282.00
Vietnam	Dong		232.00						232.00
Kyrgyzstan	Som		119.00						119.00
Erik Heilman:									
Hong Kong	Dollar		1,253.00						1,253.00
United States:	Dollar				7,213.68				7,213.68
David Johanson:									
Hong Kong	Dollar		1,253.00						1,253.00
United States:	Dollar				5,094.68				5,094.68
Jill Gerber:									
Hong Kong	Dollar		1,253.00						1,253.00
United States:	Dollar				6,956.68				6,956.68
Barry LaSala:									
Hong Kong	Dollar		1,253.00						1,253.00
United States:	Dollar				7,214.68				7,214.68
Tiffany McCullen Atwell:									
Hong Kong	Dollar		1,253.00						1,253.00
United States:	Dollar				6,956.68				6,956.68
Demetrios Marantis:									
Hong Kong	Dollar		1,253.00						1,253.00
United States:	Dollar				6,691.68				6,691.68
Total			13,554.00		40,128.08				53,682.08

CHARLES E. GRASSLEY,
Chairman, Committee on Finance, Jan. 19, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Thomas Carper:									
United States	Dollar				7,066.51				7,066.51
Kuwait	Dinar		130.00						130.00
Israel	Shekel		115.00						115.00
Jordan	Dinar		210.00						210.00
Saudi Arabia	Riyal		102.00						102.00
Mischa Thompson:									
United States	Dollar				6,970.07				6,970.07

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Jordan	Dinar		563.00						563.00
Israel	Shekel		196.00						196.00
Saudi Arabia	Riyal		135.00						135.00
Kuwait	Dinar		437.20						437.20
Brian White:									
United States	Dollar				2,316.68				2,316.68
China	Yuan		2,931.12						2,931.12
Joseph Goffman:									
United States	Dollar				348.40				348.40
Canada	Dollar		530.00						530.00
David Hunter:									
United States	Dollar				1,448.17				1,448.17
Canada	Dollar		1,360.00						1,360.00
Total			6,709.32		18,149.83				24,859.15

SUSAN M. COLLINS,
Chairman, Committee on Homeland Security and Governmental Affairs Committee, Jan. 23, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM OCT. 1 TO DEC. 30, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Christopher Bond			1,477.00						1,477.00
	Dollar				6,443.20				6,443.20
Louis Tucker			1,477.00						1,477.00
	Dollar				6,443.20				6,443.20
Jack Bartling			1,477.00						1,477.00
	Dollar				6,443.20				6,443.20
Senator Christopher Bond			837.00						837.00
	Dollar				6,653.27				6,653.27
Total			5,268.00		25,982.87				31,250.87

PAT ROBERTS,
Chairman, Committee on Intelligence, Jan. 10, 2006.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMISSION ON SECURITY AND COOPERATION IN EUROPE FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2005

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Sean Woo:									
United States	Dollar				7,537.44				7,537.44
Poland	Zloty		858.00						858.00
Russia	Rouble		1,134.00						1,134,00
Azerbaijan	Manat		656.00						656.00
Dorothy Taft:									
United States	Dollar				5,049.05				5,059.05
Poland	Zloty		1,284.52		103.00				1,387.52
Ronald McNamara:									
United States	Dollar				6,578.10				6,578.10
Poland	Zloty		1,536.08						1,536.08
Janice Helwig:									
Austria	Euro				988.16				988.16
Poland	Zloty		3,436.00		65.00				3,501.00
Erika Schlager:									
United States	Dollar				5,578.97				5,578.97
Poland	Zloty		3,244.35						3,244.35
H. Knox Thames:									
United States	Dollar				6,364.74				3,364.74
Pland	Zloty		511.72		142.38				654.10
John Finerty:									
United States	Dollar				6,243.97				6,243.97
Poland	Zloty		966.00						966.00
James Geoffrey:									
United States	Dollar				6,243.74				6,243.74
Poland	Zloty		546.22						546.22
Dorothy Taft:									
United States	Dollar				9,421.10				9,421.10
Ukraine	Hryvnia		1,084.00						1,084.00
Georgia	Lari		1,470.00						1,470.00
Austria	Euro		455.75						455.75
Ronald McNamara:									
United States	Dollar				6,907.86				6,907.86
Azerbaijan	Manat		1,640.00		580.00				2,220.00
Sean Woo:									
United States	Dollar				11,146.84				11,146.84
Austria	Euro		456.00						456.00
Azerbaijan	Manat		1,312.00						1,312.00
Kazakhstan	Tenge		1,325.00						1,325.00
H. Knox Thames:									
United States	Dollar				8,175.23				8,175.23
Kazakhstan	Tenge		1,010.41		107.35		151.07		1,268.83
Total			22,926,05		81,232.90		151.07		104,310.02

SAM BROWNBACK,
Chairman, Commission on Security and Cooperation In Europe, Jan. 18, 2006.

EXECUTIVE NOMINATIONS

Mr. FRIST. Mr. President, over the last several weeks and months, we have run into a situation where executive nominations are brought to the floor, but they are being held up for a final vote for reasons that are totally unrelated to those individuals and the positions they seek.

It has been done historically to some extent, but it is done in a way that one Member—not necessarily a Democrat or Republican but a Member in this body—uses that nomination in some way to focus attention on an issue or focus attention on something they need or want. Therefore, it can be very useful leverage for an individual Senator, but it has now gotten to the point that it is unfair to that individual. We have public servants who are dedicating their lives and have been nominated by the President of the United States for executive positions, and then they are being stopped or held up for this unrelated matter. And, therefore, in a systematic way we were going to address that.

Yesterday, on one such event, I filed a cloture motion on the nomination of Eric Edelman to be Under Secretary of Defense for Policy. Mr. Edelman had been reported out of the Armed Services Committee on July 29 of last year, 2005—came out of that Armed Services Committee and has been held up by someone on the other side of the aisle since that time.

In order to overcome that, I filed a cloture motion to ensure that the Senate was able to act on that nomination. We did that last night. That vote would have occurred tomorrow morning on cloture, and, because it is one person holding up Mr. Edelman, we would have gotten cloture and then it would have required a rollcall vote.

I understand that the other side has agreed to vitiate the cloture vote, and has agreed to a voice vote now—this evening—instead of requiring that cloture vote tomorrow and a rollcall vote. Our side appreciates that, and I think most Senators appreciate that since the vote would have probably been 100 to 0 if we had that vote.

What all this means is we will finally be able to move forward on a nomination, and we are not going to have to have a vote tomorrow. Some of my colleagues have said that we are expecting a vote tomorrow, and you are going to have a vote that we need to have the vote. On the other hand, since cloture can be vitiated with this unanimous consent, we will go ahead and approve it by a voice vote.

The larger issue is we need to systematically address executive nominations which are being held up for unrelated reasons.

Again, Mr. Edelman came out on July 29, and already we are in early February of 2006.

EXECUTIVE SESSION

NOMINATION OF ERIC S. EDELMAN TO BE UNDER SECRETARY OF DEFENSE FOR POLICY

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to executive session; I ask unanimous consent that the cloture vote with respect to Executive Calendar No. 309 be vitiated, the Senate proceed to its consideration, the nomination be confirmed, the motion to reconsider be laid on the table, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

DEPARTMENT OF DEFENSE

Eric S. Edelman, of Virginia, to be Under Secretary of Defense for Policy.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

HONORING THE MEMORY OF WEST VIRGINIA COAL MINERS AND COMMENDING VOLUNTEERS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 331 at the desk and just received from the House.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 331) to honor the memory of the coal miners who recently perished in accidents in West Virginia and to commend all the volunteers who worked tirelessly in providing support to the families during the rescue operations.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, en bloc, and any statements relating thereto be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 331) was agreed to.

HURRICANE ELECTION RELIEF ACT OF 2005

Mr. FRIST. I ask unanimous consent that the Committee on Rules and Administration be discharged from further consideration of S. 2166 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2166) to direct the Election Assistance Commission to make grants to States to restore and replace election administration supplies, materials, records, equipment, and technology which were damaged, destroyed, or dislocated as a result of Hurricane Katrina or Hurricane Rita.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2166) was read the third time and passed, as follows:

S. 2166

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Hurricane Election Relief Act of 2005''.

SEC. 2. GRANTS TO STATES FOR RESTORING AND REPLACING ELECTION ADMINISTRATION SUPPLIES, MATERIALS, RECORDS, EQUIPMENT, AND TECHNOLOGY WHICH WERE DAMAGED, DESTROYED, OR DISLOCATED BY HURRICANES KATRINA OR RITA.

(a) AUTHORITY TO MAKE GRANTS.—The Election Assistance Commission shall make a grant to each eligible State, in such amount as the Commission considers appropriate, for purposes of restoring and replacing supplies, materials, records, equipment, and technology used in the administration of Federal elections in the State which were damaged, destroyed, or dislocated as a result of Hurricane Katrina or Hurricane Rita and ensuring the full participation in such elections by individuals who were displaced as a result of Hurricane Katrina or Hurricane Rita.

(b) USE OF GRANT FUNDS.—Funds received under a grant under subsection (a) shall be used in a manner that is consistent with the requirements of title III of the Help America Vote Act of 2002.

(c) ELIGIBILITY.—A State is eligible to receive a grant under this section if it submits to the Commission (at such time and in such form as the Commission may require) a certification that—

(1) supplies, materials, records, equipment, and technology used in the administration of Federal elections in the State were damaged, destroyed, or dislocated as a result of Hurricane Katrina or Hurricane Rita; or

(2) the system of such State for conducting Federal elections has been significantly impacted by the displacement of individuals as a result of Hurricane Katrina or Hurricane Rita.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal year 2006 for grants under this Act $50,000,000, to remain available until expended.

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 106–398, as amended by Public Law 108–7, in accordance with the qualifications specified under section 1238(b)(3)(E) of Public Law 106–398, and upon the recommendation of the majority leader,

in consultation with the chairmen of the Senate Committee on Armed Services and the Senate Committee on Finance, appoints the following individual to the United States-China Economic Security Review Commission: Mr. Daniel A. Blumenthal of the District of Columbia for a term expiring December 31, 2007.

ORDERS FOR FRIDAY, FEBRUARY 10, 2006

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m. on Friday, February 10; the time for the two leaders be reserved, and the Senate proceed to a period of morning business until 10 a.m.; further, that at 10 a.m. the Senate resume consideration of S. 852, the asbestos bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, the Senate has been on the asbestos bill since Monday. Tomorrow, we will complete a full week of debate and consideration of this very important bill which, as has been said again and again, is a bill that addresses the fact that 150,000 people have lost their jobs, 77 companies have gone bankrupt, and many more are likely to go bankrupt in the future. Most importantly, we have victims of asbestos exposure—whether it is lung cancer or mesothelioma—who are not being compensated in a timely and appropriate way. It is a system crying out for reform.

Tomorrow, we will not have any rollcall votes, given the earlier action we took on the Edelman nomination. We will be continuing debate and discussion of the asbestos bill over the course of the day tomorrow, Friday.

As we look to next week, we will have a busy week as we finish our work for the Presidents Day recess. There will be votes each day next week beginning with Monday as we wrap up our business.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 8:28 p.m., recessed until Friday, February 10, 2006, at 9:30 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate Thursday, February 9, 2006:

DEPARTMENT OF DEFENSE

ERIC S. EDELMAN, OF VIRGINIA, TO BE UNDER SECRETARY OF DEFENSE FOR POLICY.

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.